

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1220/15-16  
(These minutes have been seen  
by the Administration)

Ref: CB4/SS/4/15

**Subcommittee on Four Regulations under the Merchant Shipping (Safety)  
Ordinance (Cap. 369) Gazetted on 6 May 2016**

**Minutes of the first meeting held on  
Wednesday, 1 June 2016, at 8:45 am  
in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon Frankie YICK Chi-ming, JP (Chairman)  
Hon WONG Kwok-kin, SBS  
Hon Alan LEONG Kah-kit, SC  
Hon CHAN Han-pan, JP

**Member attending** : Hon James TO Kun-sun

**Member absent** : Hon SIN Chung-kai, SBS, JP

**Public Officers** : **Agenda item II**  
**Attending**

Transport and Housing Bureau

Ms Louisa YAN  
Principal Assistant Secretary for Transport and  
Housing (Transport)10

Miss Crystal CHIU  
Assistant Secretary for Transport and Housing  
(Transport)10C

Marine Department

Mr CHENG Yeung-ming  
Assistant Director/Shipping

Mr YU Ying-wai  
Assistant Director/Multi-lateral Policy (Acting)

Mr SHI Qiang  
Senior Surveyor of Ships/Technical Policy 1

Department of Justice

Ms Phyllis POON  
Senior Government Counsel

Ms Carmen CHAN  
Senior Government Counsel (Acting)

Miss Queenie WU  
Government Counsel

Mr Gary LI  
Government Counsel

Mr WONG Lok-king  
Government Counsel

**Clerk in attendance** : Ms Shirley CHAN  
Chief Council Secretary (4)5

**Staff in attendance** : Miss Evelyn LEE  
Assistant Legal Adviser 10

Ms Shirley TAM  
Senior Council Secretary (4)5

Ms Lauren LI  
Council Secretary (4)5

Ms Zoe TONG  
Legislative Assistant (4)5

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Action

**I. Election of Chairman**

Mr WONG Kwok-kin, the member with the highest precedence among those

Action

present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr Frankie YICK was nominated by Mr Alan LEONG and the nomination was seconded by Mr WONG Kwok-kin. Mr Frankie YICK accepted the nomination. There being no other nomination, Mr YICK was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

**II. Meeting with the Administration**

(L.N. 53 of 2016	— Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) (Amendment) Regulation 2016
L.N. 54 of 2016	— Merchant Shipping (Safety) (Carriage of Cargoes) (Amendment) Regulation 2016
L.N. 55 of 2016	— Merchant Shipping (Safety) (IMSBC Code) Regulation
L.N. 56 of 2016	— Merchant Shipping (Safety) (High Speed Craft) (Amendment) Regulation 2016
File Ref: THB PML CR 8/10/80/2	— Legislative Council Brief issued by the Transport and Housing Bureau
LC Paper No. LS52/15-16	— Legal Service Division Report on Subsidiary Legislation Gazetted on 6 May 2016
LC Paper No. CB(4)1035/15-16(01)	— Marked-up copy of the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)

Action

- LC Paper No. CB(4)1035/15-16(02) — Marked-up copy of the Merchant Shipping (Safety) (Carriage of Cargoes) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1035/15-16(03) — Marked-up copy of the Merchant Shipping (Safety) (High Speed Craft) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1035/15-16(04) — Letter from the Assistant Legal Adviser dated 20 May 2016 to the Administration
- LC Paper No. CB(4)1035/15-16(05) — Administration's response to the letter from the Assistant Legal Adviser dated 20 May 2016 as set out in LC Paper No. CB(4)1035/15-16(04)
- LC Paper No. CB(4)1035/15-16(06) — Background brief prepared by the Legislative Council Secretariat)

Discussion

4. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up action to be taken by the Administration

5. Given that there was discrepancy in the English and Chinese versions of section 4(17) of L.N. 53 which sought to amend paragraph 1(c) of Annex III in the Schedule to the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N), the Administration was requested to rectify the discrepancy as a matter of priority before L.N. 53 came to effect on 1 July 2016, and advise how and when the rectification would be implemented.

*(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(4)1080/15-16(02) on 6 June 2016.)*

ActionInvitation of views

6. Members agreed that there was no need to invite public views.

Legislative timetable and extension of the scrutiny period

7. The Chairman concluded that the Subcommittee had completed the scrutiny of the four Regulations made under the Merchant Shipping (Safety) Ordinance (Cap. 369) gazetted on 6 May 2016 ("the four Regulations"). Pending the Administration's reply to the issue raised in paragraph 5, he would decide whether there was a need to convene a further meeting to discuss the matter.

8. The Subcommittee noted that the scrutiny period of the four Regulations would expire on 8 June 2016. To allow sufficient time for the Administration to provide a reply pursuant to members' request and for the Subcommittee to compile a report to the House Committee, the Subcommittee agreed that a proposed resolution should be moved at the Council meeting of 8 June 2016 to extend the scrutiny period of the four Regulations to the Council meeting of 29 June 2016. If the scrutiny period was extended, the deadline for giving notices of motions to amend the four Regulations was 22 June 2016.

*(Post-meeting note: Since the Secretariat did not receive further views from members on the Administration's response issued vide LC Paper No. CB(4)1080/15-16(02), no further meeting was required. The proposed resolution to extend the scrutiny period of the four Regulations was not dealt with at the Council meeting of 8 June 2016, and thus the scrutiny period of the four Regulations expired at the said Council meeting.)*

**III. Any other business**

9. There being no other business, the meeting ended at 10:40 am.

**Proceedings of the first meeting of  
the Subcommittee on Four Regulations under the Merchant Shipping (Safety) Ordinance  
(Cap. 369) Gazetted on 6 May 2016  
on Wednesday, 1 June 2016, at 8:45 am  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Election of Chairman</b>			
000639 – 000828	Mr WONG Kwok-kin Mr Alan LEONG Mr Frankie YICK	Election of Chairman	
<b>Agenda item II – Meeting with the Administration</b>			
000829 – 001623	Chairman Administration	Briefing by the Administration on the four Regulations made under the Merchant Shipping (Safety) Ordinance (Cap. 369) ("the Ordinance") in order to implement the latest requirements of the Convention on the International Regulations for Preventing Collisions at Sea ("COLREGs") and the International Convention for the Safety of Life at Sea ("SOLAS") adopted by the International Maritime Organization ("IMO")	
001624 – 002128	Chairman Mr WONG Kwok-kin Administration	<p>In respect of the new requirement on verifying the gross mass of cargoes ("VGM") reflected by L.N. 54, Mr WONG Kwok-kin enquired about the difference between the existing and the new VGM requirements, and the practical implementation arrangement.</p> <p>The Administration responded that under the existing legislation, shippers or their agents should furnish information on the gross mass of the cargoes to the master or owner of the ship concerned before loading them on board. With the implementation of VGM requirement, shippers or their agents should also verify the gross mass of the packed container, which could be done by physically weighing the packed container as a whole, or by adding up the tare mass of the container and the mass of all the cargoes and packages to be packed into the container. To comply with the new requirement –</p> <p>(a) shippers could register with the Marine Department ("MD") and undertake to verify the gross weight of their containers by adding up the weight of the constituent packages, cargoes and loads. MD would assign a registration number to each registered shipper and accept the VGM documentation provided by them using such method;</p>	

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		<p>(b) shippers should forward the VGM information via the master of the ship or the master's representative to the terminal operators in advance for the preparation of the ship's stowage plans; and</p> <p>(c) MD would conduct random checks on the compliance of registered shippers in respect of their VGM records.</p>	
002129 – 002225	Chairman	<p>The Chairman said that some representatives of the shipping industry had recently discussed with the Administration on the new VGM requirement and accepted the proposed arrangement. He urged the Administration to step up publicity on its registration system and deploy more manpower to handle the registrations before the global commencement of the new VGM requirement on 1 July 2016.</p>	
002226 – 002509	Chairman Assistant Legal Adviser 10 ("ALA10") Administration	<p>Referring to her letter to the Administration (LC Paper No. CB(4)1035/15-16(04)) and the Administration's response (LC Paper No. CB(4)1035/15-16(05)), ALA10 enquired about the means and timing for rectifying the discrepancy arising from the amendment made by section 4(17) of L.N. 53 of 2016 to the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N), under which two paragraphs after the table in paragraph 1(c) of Annex III in the Schedule to Cap. 369N were repealed in the Chinese text whereas these two paragraphs would be retained in the English text. She added that it was essential to make both texts tally with each other by 1 July 2016 when L.N. 53 would come into operation.</p> <p>The Administration assured members that it would rectify the discrepancy as soon as practicable with the adoption of the most appropriate approach having regard to the progress of the forthcoming Council meetings.</p> <p>Although the Subcommittee noted that it might not be possible to move a motion to extend the scrutiny period of the four Regulations to the Council meeting of 29 June 2016 in view of the number of items to be dealt with at the Council meeting of 8 June 2016, the Subcommittee would nonetheless give notice to move a motion for the extension. The attempt, if succeeded, would allow more time for the Administration to implement the means to amend L.N. 53.</p>	

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		<p>In response to the Chairman, ALA10 explained that if the discrepancy could not be rectified by the day on which L.N. 53 would come into operation, members of the public who were only competent in Chinese might have difficulties in complying with the provision concerned and the court might find the matter unsatisfactory when it interpreted the provision.</p>	
002510 – 004310	<p>Chairman Mr Alan LEONG ALA10 Administration</p>	<p>Mr Alan LEONG was concerned about the discrepancy in discussion which might bring about difficulties in instituting a criminal prosecution under the Ordinance.</p> <p>The Administration explained that the proposed amendments under L.N. 53 were intended to reflect the latest changes of COLREGs, and the wordings employed in COLREGs were basically adopted in L.N. 53 for the purpose. The two paragraphs after the table in paragraph 1(c) of Annex III in the Schedule to Cap. 369N were explanatory notes to the table therein regarding the range of whistles' audibility. Given that the two paragraphs were included in COLREGs, they should be retained in both English and Chinese texts. If the court had doubt as a result of the discrepancy found between the English and Chinese texts of the regulation, it was expected that the court would make reference to the original text of COLREGs which was written in English.</p>	
004311 – 004349	<p>Chairman Mr WONG Kwok-kin</p>	<p>Mr WONG Kwok-kin stressed that it was the duty of the Subcommittee to scrutinize the four Regulations submitted by the Government and it was unlikely for the Subcommittee to allow the passage of L.N. 53 with such a discrepancy.</p>	
004350 – 004621	<p>Chairman Administration</p>	<p>In response to the Chairman, the Administration explained the various approaches being considered to rectify the discrepancy. The Transport and Housing Bureau would discuss further with the Department of Justice before deciding the best solution on this matter, with a view to rectifying the discrepancy as soon as possible.</p>	
004622 – 005149	<p>Chairman Mr Alan LEONG ALA10</p>	<p>Mr Alan LEONG asked if the agenda items currently set for the Council meetings on 1 June and 8 June 2016 could be reshuffled so that the problem could be resolved by the effective day of L.N. 53.</p>	



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		<p>ALA10 advised that the Administration might consider moving a motion under Rule 91 of the Rules of Procedure ("RoP") to suspend the order of business at a Council meeting under Rule 18 of RoP. Mr Alan LEONG urged the Administration to consider reshuffling its agenda items being introduced into the Council so as to accord priority to rectify the discrepancy.</p> <p>The Administration was requested to rectify the discrepancy as a matter of priority before L.N. 53 came to effect on 1 July 2016, and advise how and when the rectification would be implemented.</p> <p>The Subcommittee agreed that if the discrepancy could not be rectified before the effective day of L.N. 53, the Subcommittee report should reflect members' strong objections to the implementation of L.N. 53 with the existing discrepancy.</p>	The Administration to follow up as per paragraph 5 of the minutes
005150 – 010137	Chairman Administration	<p><u>Examination of the provisions</u></p> <p><u>The amended Cap. 369N</u></p>	
010138 – 010338	Chairman Administration Mr Alan LEONG	<p><u>Section 13</u></p> <p>In response to Mr Alan LEONG, the Administration advised that both the Chinese and English names of the International Code of Safety for High-Speed craft, 1994 and the International Code of Safety for High-Speed Craft, 2000 were made with reference to those used by IMO.</p>	
010339 – 010900	Chairman Administration	<p><u>The amended Merchant Shipping (Safety) (Carriage of Cargoes) Regulation (Cap. 369AV)</u></p>	
010901 – 011511	Chairman ALA10 Administration	<p><u>New section 3A</u></p> <p>ALA10 drew members' attention to her enquiry as to whether a notice made under the new section 3A(7) had legislative effect (LC Paper No. CB(4)1035/15-16(04)).</p> <p>The Administration referred to its written response (LC Paper No. CB(4)1035/15-16(05)) and advised that a notice published by the Director of Marine in Gazette pursuant to the new section 3A(7) sought to provide administrative guidelines for VGM requirement. It was not subsidiary legislation and had no legislative effect.</p>	

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011512 – 012105	Chairman Mr Alan LEONG Administration	Mr Alan LEONG enquired about the permitted margin of error on the VGM requirement. The Administration advised that it allowed 0.5 tons of difference for containers weighing less than 10 tons whereas a 5% discrepancy would be allowed for containers of over 10 tons. Such rates were not provided under the legislation. They were determined in the light of the relevant standards adopted in the Mainland and the United Kingdom as well as the views of the industry. MD would conduct spot checks at the container terminals by weighing the packed containers.	
012106 – 013035	Chairman Administration	<u>The new Merchant Shipping (Safety) (IMSBC Code) Regulation</u>	
013036 – 013230	Chairman Mr James TO Administration	Mr James TO asked whether the new regulation provided for a notification mechanism and enhanced emergency measures for any incidents in respect of ships transporting gaseous products in the Hong Kong waters.  The Administration replied that this regulation only applied to the shipment of solid bulk cargoes in accordance with the IMO standards. IMO adopted separate rules on governing the carriage of gaseous and liquid products with more stringent requirements.	
013231 – 013522	Chairman Administration	<u>The amended Merchant Shipping (Safety) (High Speed Craft) Regulation (Cap. 369AW)</u>	
013523 – 014417	Chairman Mr James TO Administration ALA10 Mr WONG Kwok-kin	<u>Part I</u>  <u>Section 2</u>  <u>"high speed craft"</u>  Mr James TO asked for more information about the craft the hull of which was supported completely clear above the water surface in non-displacement mode by aerodynamic forces generated by ground effect. He was concerned about the lack of proper provisions in the existing legislation to govern the use of such craft.  The Administration responded that this was a new type of vessel with Wing-In-Ground effect. It flew close to the water surface and looked similar to a seaplane. Currently there was no specific regulation governing this type of craft. However, under the Shipping and Port Control Ordinance (Cap. 313), the Director of Marine might give directions prohibiting the entry of a vessel into, or requiring the removal of	

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		a vessel from, the waters of Hong Kong if in his opinion the condition of that vessel was such that its presence in the waters of Hong Kong might involve grave and imminent danger to the safety of any person or property. The Administration would keep in view the development and would consider introducing regulation to govern the use of such craft in future.	
014418 – 015235	Chairman Mr James TO Administration	<u>Section 3</u>  <u>Subsection (3)(a)</u>  Mr James TO expressed concern about the lack of definitions of troopcraft and craft of war in this regulation. The Chairman said that the Subcommittee should focus its discussion on the translation of IMO's SOLAS into local legislation.	
015236 – 015337	Chairman	Invitation of deputations' views  Legislative timetable and extension of the scrutiny period  Date of next meeting	
015338 – 015406	Chairman Mr Alan LEONG Administration	The Chairman urged the Administration to consider members' views expressed at the meeting and stressed the Subcommittee's objection to the implementation of L.N. 53 with the discrepancy as discussed.	
015407 – 015613	Chairman ALA10 Administration	Discussion on the names of the International Code of Safety for High-Speed craft, 1994 and the International Code of Safety for High-Speed Craft, 2000 used under the amended Cap. 369N and Cap. 369AW.	
<b>Agenda item III –Any other business</b>			
015614 – 015646	Chairman	Closing remarks	