

立法會
Legislative Council

LC Paper No. CB(2) 405/98-99
(These minutes have been seen by
the Administration)

Ref : CB2/BC/20/98

**Bills Committee on
Merchant Shipping (Local Vessels) Bill**

**Minutes of meeting
held on Wednesday, 2 June 1999 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon CHAN Kam-lam (Chairman)
Hon LEE Kai-ming, JP
Hon WONG Yung-kan
Hon Howard YOUNG, JP
Hon Mrs Miriam LAU Kin-ye, JP
Hon TAM Yiu-chung, JP

Member absent : Hon SIN Chung-kai
Hon FUNG Chi-kin

Public Officers attending : Mr Roger TUPPER
Deputy Secretary for Economic Services (Ag)

Mr Peter KWOK
Assistant Secretary for Economic Services

Mr K M LEE
Deputy Director of Marine (Ag)

Mr K M VARGHESE
Assistant Director of Marine

Mr F L CHEUK
Senior Marine Officer

Mr G FOX
Deputy Laws Draftsman (Atg)

Mr Lawrence PENG
Senior Assistant Laws Draftsman (Atg)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Miss Betty MA
Senior Assistant Secretary (2) 1

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I. Meeting with the Administration

Matters arising

At the invitation of the Chairman, Deputy Secretary for Economic Services (Ag) (DSES(Ag)) briefed members on the Administration's response to concerns raised by the Bills Committee and the deputations at the last meeting, in particular the major differences between passenger and pleasure vessels. Passenger vessels were used for the transportation of passengers between ferry routes or work sites, i.e. they were used primarily for commercial operation. Whilst for pleasure vessels, they were used primarily for leisure and pleasure purposes. He pointed out that chartering of pleasure vessels were permitted under the legislative proposal, subject to certain conditions and the monitoring of the Marine Department (MD) as well as the provision of the third party risks insurance for the passengers on board the pleasure vessels.

2. Referring to Appendix I of the Administration's response to issues raised by members (LC Paper No. CB(2) 2181/98-99(01)), Mr WONG Yung-kan enquired about the causes for accidents under the category of "Others" in connection with pleasure vessels. Assistant Director of Marine (AD of M) replied that such accidents were minor incidents.

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Chartering of pleasure vessels

3. Mr Howard YOUNG considered that the new proposal to require the owner of a pleasure vessel to display the relevant charter agreement on the pleasure vessel was more desirable than the original proposal. He further enquired whether the existing requirement to notify MD within 72 hours of the activity, i.e. the chartering of pleasure vessels, was still in need under the new proposal. Deputy Director of Marine (Ag) (DD of M)(Ag) said that owners of pleasure vessels would no longer be required to notify MD of any charter agreement under the new proposal. The new proposal intended to plug the loophole in the existing notification requirement, under which when owners of pleasure vessels were spotted for unlawful chartered service, they could notify MD immediately and would still meet the 72 hours notification requirement.

4. Mr TAM Yiu-chung considered that the proposed regulation of pleasure vessels was acceptable having regard to the established mode of operation of leasing pleasure vessels for commercial purpose.

5. The Chairman said that members of the public were not conversant with the monitoring mechanism put in place in respect of pleasure vessels. They might probably expect that when they were on board a pleasure vessel, the vessel did meet the safety standards and they were under the protection of third party risks insurance. The public would complain about an insufficient regulation of chartered pleasure vessels in the event of an accident occurred. The Chairman urged the Administration to seriously consider adopting a monitoring mechanism in respect of pleasure vessels and requiring the owners concerned to take out third party risks insurance for passengers on board pleasure vessels.

6. DSES(Ag) said that the codes of practice for the four types of vessels under the Bill would be drawn up by MD in consultation with the Local Vessels Advisory Committee (LVAC) with a view to making it more transparent to the industry on the requirements under the Bill. The standards of the different types of vessels would be made known to the public. As regards the third party risks insurance requirement, DD of M(Ag) said that the minimum insurance cover for third party risks insurance proposed for pleasure vessels (carrying not more than 12 passengers) was \$5 million. He pointed out most pleasure vessels owners had indeed taken out unlimited insurance cover for their pleasure vessels. DD of M(Ag) added that MD would also take into account the validity of the third party risks insurance policy in respect of a vessel when considering a licence renewal application. MD would further discuss with the industry via LVAC on the safety standards and requirements of pleasure vessels.

7. Mr LEE Kai-ming said that notwithstanding that the Administration did not accept members' suggestion of issuing separate licences for pleasure vessels which were used solely for private purpose and pleasure vessels which were

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leased for commercial purpose under charter agreements, LVAC should take into account the differences in nature between these two types of pleasure vessels when drawing up the codes of practice. He considered that a more stringent safety standard should be imposed on pleasure vessels which were let under the terms of a charter agreement than those which were used for private purpose so as to safeguard public safety.

8. Referring to para.20 of the minutes of the Sai Kung Provisional District Board meeting (LC Paper No. CB(2) 2047/98-99(01)), Mrs Miriam LAU asked whether the explanation given by the representative from MD attending the Provisional District Board meeting was in line with the principle in the Bill, i.e. after a person had entered a charter agreement with the owner of a pleasure vessel, he could then sell tickets to individuals without violating the law. In reply, DD of M (Ag) said that it was difficult, if not impossible, to state explicitly in the legislation under what circumstances would a charter agreement be lawful. Hence, the emphasis of the legislation would be on the requirement for such a charter agreement to specify the pleasure vessel only to be used for private pleasure purpose. Under the Bill, pleasure vessels would not be allowed to carry fare-paying passengers.

9. The Chairman said that under the proposed chartering of pleasure vessels, members were concerned whether the arrangement would create a loophole in the legislation, i.e. pleasure vessels would be used for commercial purpose which involved the sale of tickets. DD of M(Ag) said that the Bill sought to plug the existing loophole as far as practicable. However, the loophole could be plugged entirely only if pleasure vessels were under no circumstance allowed to be let or hired.

10. The Chairman urged the Administration to take note of members' concerns on the proposed regulatory control for pleasure vessels.

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Clause-by-clause examination

Clause 1 - Short title and commencement

11. In response to the Chairman's enquiry about when the Ordinance would come into operation, DSES(Ag) said that some sections of the Ordinance would be brought into force by publication in the Gazette after the relevant subsidiary legislation was passed.

Clause 2 - Interpretation

12. Assistant Legal Adviser 2 (ALA2) said that the Administration had been requested to clarify some points about the legal and drafting aspects of the Bill

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(LC Paper No. CB(2) 2185/98-99(01)). On clause 2, the Administration was requested to clarify whether the Bill, if enacted, and the Shipping and Port Control Ordinance (SAPCO) (Cap.313) were to be exclusive of each other; and whether there would be vessels not subject to any of these two Ordinances. ALA2 further sought clarification on the definition of "passenger ship" as mentioned in clause 3(4) of the Bill.

13. In response, AD of M said that after the enactment of the Bill, ocean-going vessels would be regulated and controlled under SAPCO whereas the new Ordinance would take care of local vessels. All vessels were subject to the Bill or SAPCO. SAPCO would apply to passenger ships as mentioned in clause 3(4).

14. Referring to paragraph (e) of the definition of "local vessel", ALA2 said that it was not clear as to whether mainland coastal vessel was within the meaning of "local vessel" and would be issued with a permit in accordance with clause 89(2) of the Bill. Deputy Laws Draftsman (Ag) ((DLD)(Ag)) said that in accordance with clause 89(2), D of M might issue a permit to a vessel to enable it to enter and remain in the waters of Hong Kong where the vessel might not otherwise lawfully enter or remain in the waters of Hong Kong. He pointed out that as at present, only mainland coastal vessels were involved, there was no need to spell out the term "mainland coastal vessels" in the Bill.

15. Mrs Miriam LAU asked whether mainland coastal vessels must apply for a permit from MD whenever they entered or remained in the waters of Hong Kong and whether mainland coastal vessels must take out third party risks insurance policies. DD of M(Ag) responded that the requirement for third party risks insurance would be extended to mainland coastal vessels when they entered the waters of Hong Kong. Such requirement was the same as that imposed on local vessels as mainland coastal vessels were regarded as local vessels for the purpose of paragraph (e) of the definition of "local vessel" in the Bill. He pointed out that according to the navigation sector, a vessel would be regarded as having entered the waters of Hong Kong only if it anchored and carried out activities in the waters of Hong Kong. Otherwise, the vessel would be regarded as in transit. Thus, only those mainland coastal vessels which had entered the waters of Hong Kong were required to obtain permits from MD and take out third party risks insurance policies. The minimum insurance cover for mainland coastal vessels was \$5 million, i.e. same as local vessels. MD could monitor the compliance by requesting the relevant owners of mainland coastal vessels to present the relevant insurance policies when they sought customs clearance. Otherwise, mainland coastal vessels could be ordered to leave the waters of Hong Kong.

16. ALA2 pointed out that in paragraph (c) of the definition of "pleasure vessel", the provision did not spell out clearly whether a charter agreement must be in writing. DD of M(Ag) said that the Administration would stipulate in the

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subsidiary legislation that the relevant charter agreement should be displayed on the chartered pleasure vessel for inspection purpose. Hence, it would put beyond doubt that the charter agreement must be in writing. To further clarify the drafting of the legislation, DLD(Ag) agreed to add "in writing" at the end of paragraph (c) of the definition of "pleasure vessel".

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17. ALA2 enquired whether, given there were two regulations on signals of distress, viz. the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations and the Merchant Shipping (Safety) (Use of Signals of Distress) Regulations, consideration would be given to adding "使用" to the Chinese version of the definition of 《遇險訊號規例》("use of signals of distress regulations") so as to reflect more clearly which Regulation was being referred to. Senior Assistant Law Draftsman (Ag) (SALD)(Ag) said that it was stipulated in the definition of "use of signals of distress regulations" that it meant the Merchant Shipping (Safety) (Use of Signals of Distress) Regulations. Nevertheless, SALD(Ag) agreed to add "使用" to the definition of 《遇險訊號規例》.

18. Mrs Miriam LAU asked what vessels were referred to in paragraph (b) of the definition of "local vessel". She expressed concern about whether a local vessel would be exempted from the regulation of the Bill if it was registered in another country. DD of M(Ag) explained that local vessels, including vessels from the Mainland and Macau must either be licensed by MD or have a relevant permit issued by MD when they were operating in the waters of Hong Kong, and were subject to the regulation of the Bill. Generally speaking, an ocean-going vessel would be registered somewhere else, but it was subject to more stringent international safety standards. Such ocean-going vessels were regulated under SAPCO. Notwithstanding that owners of ocean-going vessels were not required to take out third party risks insurance under the Bill, protection for sustaining injuries in marine accidents, if arose, would be available as they were already covered under other comprehensive insurance schemes. DSES(Ag) added that vessels should be licensed if they were used for domestic trading. Whilst for vessels engaged in international trading, they should be registered somewhere else and be subject to international law of marine safety.

19. Members raised no further question on other definitions of the Bill.

Clause 3 - Application

20. Mr Howard YOUNG said that as spelt out in clause 3(1), the Bill, if enacted, would apply to all local vessels whether in or beyond the waters of Hong Kong. However, it was noted from paragraph (c) of the definition of "local vessel" that pleasure vessels meant those in the waters of Hong Kong. He therefore enquired whether there were any discrepancies in the above references. In response, DLD(Ag) said that there was no contradiction in the provisions.

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Although pleasure vessels meant those in the waters of Hong Kong, it did not necessarily mean that these vessels would not be allowed to leave the waters of Hong Kong. Nor would pleasure vessels be escaped from the law of Hong Kong simply because of leaving the waters of Hong Kong.

Clause 4 - Local Vessels Advisory Committee

21. DSES(Ag) said that a Provisional Local Vessels Advisory Committee (PLVAC) had been established for over nine years. The Bill sought to establish a LVAC to advise D of M on any matter related to the performance of the Director's functions under the Bill.

22. The Chairman asked whether the appointment of a secretary to serve LVAC was considered sufficient in providing the necessary support. DD of M(Ag) said that D of M would deploy additional resources if necessary.

23. Mr Howard YOUNG asked whether LVAC would extend its functions to promoting and providing training on the safety of pleasure boating operations. DD of M(Ag) responded that a person who had expertise in the field of seafarers' training and a person who had expertise in pleasure boating operations would be appointed to LVAC respectively in accordance with clause 4(2)(d)(v) and 4(2)(d)(xi). He added that MD was discussing with the Hong Kong Yacht Club Association with a view to organizing training courses and issuing licences for pleasure boating operations. MD would perform a monitoring role.

24. Referring to clause 4(5) which stated that five members would form a quorum at any meeting of LVAC, Mr LEE Kai-ming questioned the rationale for determining the quorum for a meeting. He pointed out that there were a total of 16 members and four members from MD. DLD(Ag) said that the normal rule for determining the quorum of a meeting was not less than half of the membership of a committee. To alleviate members' concern on the formation of a quorum at a meeting, DSES(Ag) agreed to consider spelling out clearly in the legislation that not less than half of the membership of LVAC should form a quorum at any meeting.

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25. Mr WONG Yung-kan urged the Administration to consider appointing more representatives from the fishing industry to LVAC as there was presently only one representative from the fishing industry serving at PLVAC. DD of M(Ag) said that LAVC was an advisory body which solicited views from the trade concerned.

26. Responding to Mr WONG Yung-kan, DD of M(Ag) said that a representative from the Agricultural and Fisheries Department would attend LVAC meetings advising on fishing matters on a need basis.

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27. Responding to Mr TAM Yiu-chung, DD of M(Ag) said that paragraph (vi) of sub-clause (2)(d) sought to include a representative from the trade unions for seafarers or seafarers working on local launches and ferries. While agreeing with the need to include a representative from seafarers, Mr TAM Yiu-chung considered that the reference to "welfare" in paragraph (vi) of sub-clause (2)(d) would unnecessarily narrow the scope of the legislative intent. DLD(Ag) agreed to delete the word "welfare" from paragraph (vi) of clause 4(2)(d).

28. Mrs Miriam LAU considered that frontline operational staff, such as coxswain, was not sufficiently represented in LAVC. In response, DD of M(Ag) said that frontline and technical issues were normally dealt with by the working groups or subcommittees of LVAC. Although the Administration had no strong views to enlarge the membership of LVAC, it did not want the Committee to be oversized given that it could bring in views from the relevant working groups or subcommittees. DLD(Ag) added that should members consider necessary to enlarge the membership of LVAC so as to enhance its representativeness, the membership of LVAC could be revised to 16 plus not more than four other members. The provision of "not more than four other members" would give the discretion to the Administration to appoint persons who had expertise in the relevant fields. As regards the appointment of a coxswain to LVAC, DD of M(Ag) said that there was technical difficulty in doing so. As there were coxswains worked in different types of vessels, it would be inappropriate to appoint a coxswain from a particular type of vessel to LAVC for representing all coxswains in all types of vessels. Hence, it would be more effective for a coxswain to reflect his views or concerns to LAVC through the representative of his company or the trade where he was serving.

29. Mr TAM Yiu-chung shared with Mrs Miriam LAU's view that consideration should be given to appointing representatives from frontline operational staff to LVAC.

30. While agreeing with the Administration that the membership of LVAC should not be too large, Mr LEE Kai-ming requested the Administration to take into account the representativeness of individual members when appointing LVAC members.

Clause 5 - Functions of Committee

31. DD of M(Ag) said that the clause provided for LVAC to advise D of M on any matter related to the performance or exercise of the Director's functions or powers under the Bill, or the general regulation or control of local vessels.

Clause 6 - Subcommittees

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32. DD of M(Ag) said that the clause provided for the establishment of subcommittees of LVAC whenever necessary and to report back to LVAC on matters that had been referred to the subcommittees.

33. Mr WONG Yung-kan enquired about the membership and composition of the subcommittees of LVAC. In response, DD of M(Ag) said that the number of subcommittees to be established and their respective membership would be decided after LVAC held its first meeting. Senior Marine Officer (SMO) said that the membership of the subcommittees of PLVAC varied in size having regard to the complexity of the issues being referred by PLVAC.

34. Noting from clause 6(3) that the Chairman of LVAC had the right to attend and vote as a member of a subcommittee whether or not he was a member of that subcommittee, Mr LEE Kai-ming considered that the arrangement was unsatisfactory and unnecessary as the subcommittee would report to the LVAC after its deliberations. He pointed out that, from his experience, the arrangement was unusual as compared with other advisory committees. Mrs Miriam LAU suggested that the Administration might make reference to other advisory committees to see if the chairmen had the right to attend and vote as a member at any meeting of any subcommittee of the respective advisory committees.

35. DSES(Ag) said that the provision intended to allow the Chairman of LVAC to attend any meeting of any subcommittee. To address members' concern, the Chairman suggested and DSES(Ag) agreed to make it clear that the Chairman of LVAC should have the right to attend any meeting of any subcommittee, but he did not have the right to vote if he was not appointed as a member of that subcommittee.

36. Referring to clause 6(5), Mrs Miriam LAU enquired about the relationship between the transaction of business at and a quorum of a meeting. DLD(Ag) responded that a subcommittee should not make decision (i.e. transacted business) at a meeting if it did not have a quorum for that meeting. Mrs Miriam LAU suggested that the Administration might consider making it clear that the quorum of a subcommittee should be 1/4 of the membership provided that it was not less than two members. DLD(Ag) agreed with the suggestion and would amend the clause accordingly.

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Clause 7 - Authorization of surveyors

37. AD of M said that the clause provided for the authorization by D of M of persons as surveyors of local vessels. At present, the inspection of local vessels was carried out by Government surveyors.

38. Mr WONG Yung-kan enquired about the qualifications for a person to be

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authorized by D of M as a surveyor for the purpose of the Bill and whether an authorized surveyor could carry out the inspection of local vessels at places outside Hong Kong. In response, AD of M said that when a person was authorized by D of M as a surveyor, he was not restricted to inspect local vessels in Hong Kong. As regards the qualifications for an authorized surveyor, AD of M said that D of M would authorize a person as a surveyor in accordance with the standards adopted by various international classification societies or organizations. After gaining experience in this area, D of M might decide on his own to authorize persons with other qualifications. Nevertheless, the criteria for authorizing a person as a surveyor would be laid down in the codes of practice.

39. As to whether there would be regulation empowering D of M to specify the qualifications of authorized surveyors, ALA2 pointed out that she had raised the query with the Administration in her letter (LC Paper No. CB(2) 2185/98-99(01)). The Administration had stated in its reply that there would not be any regulation in this respect. Hence, the decision on the qualifications for authorized surveyors would not be subject to the scrutiny of the Legislative Council. AD of M said that the Administration intended to incorporate into the codes of practice the qualifications for authorized surveyors after consulting LVAC. The codes of practice would be accessible by the public.

40. ALA2 further asked the reasons why an owner of a local vessel who had self-interest and might not be an expert could be authorized as a surveyor of his own vessel. She wondered whether the safety of vessels would be compromised. AD of M said that clause 7(5) was an enabling provision for extending the scheme to small vessels in future. Although the provision might give rise to concern about a possible conflict of interests if a person was authorized as a surveyor of his own vessel, the Administration did not particularly worry about the problem bearing in mind that the person in question would be a qualified person.

41. Referring to a submission to the Bills Committee (LC Paper No. CB(2) 2132/98-99(01)), Mr WONG Yung-kan asked whether fishing vessels could be inspected by authorized surveyors in the Mainland. AD of M replied that inspection of steel fishing vessels could be carried out by persons authorized by recognized classification societies, including the one that operated in the Mainland. As far as the frequency of inspection was concerned, the Administration was of the view that the bi-yearly bottom survey for steel fishing vessels was necessary to ensure that the structure and watertight integrity of the vessels were properly maintained.

Clause 8 - Approval of codes of practice by Director

42. AD of M said that clause 8 sought to empower D of M to approve codes of practice for the purpose of providing practical guidance in respect of

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requirements under the Bill which would be made available to the public. The codes of practice would be revised to tie in with the changing technology. LVAC would be consulted before introducing any changes to the codes of practice.

43. Responding to Mrs Miriam LAU, DLD(Ag) said that the codes of practice would be published by notice in the Gazette, which were not regarded as subsidiary legislation.

44. Mrs Miriam LAU further enquired about the consequence for violating any provision of the codes of practice. In reply, DLD(Ag) said that a person was not subject to criminal nor civil liability for breaching any provision of the codes of practice as they were not legislation. However, a person would be prosecuted for violating the relevant section of the Ordinance. Should there be an allegation of contravening any provision of a code of practice, the burden of proof was on the defendant (i.e. the owner of a vessel) to demonstrate that he had complied with the requirements under the Bill.

45. Members raised no question on clause 9.

Clause 10 - Application

46. Mr Howard YOUNG asked whether the exemption provision as stipulated in paragraph (a) of clause 10 was a universal practice. DD of M(Ag) said that it was an established practice in Hong Kong, instead of a universal practice, in determining whether a pleasure vessel was subject to the regulation of Hong Kong law.

47. Mr Howard YOUNG expressed concern that the provision might create loopholes given that pleasure vessels might leave the waters of Hong Kong half-yearly in order to escape from the regulatory control. DD of M(Ag) assured members that no loophole would be created in this regard as the requirement for pleasure vessels remaining in the waters of Hong Kong for more than 182 days was calculated on a yearly basis.

48. In response to Mrs Miriam LAU's enquiry on the enforcement of the provision, DD of M(Ag) said that pleasure vessels were subject to customs clearance when entering and leaving the waters of Hong Kong. Moreover, harbour patrol staff was able to detect irregularities during their routine patrol. SMO added that overseas pleasure vessels would be exempted from the licensing requirements under the Bill if they did not remain in the waters of Hong Kong for more than 182 days out of 365 consecutive days.

49. Members raised no question on clauses 11 and 12.

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Clause 13 - Certificated local vessel must be licensed

50. Referring to clause 13(2), the Chairman asked whether the proposed penalty was in line with that in the existing legislation. DLD(Ag) said that the proposed penalty was same as the existing one.

51. Responding to Mr Howard YOUNG, DD of M(Ag) said that presently the owner of a local vessel was required to keep the licence of the vessel on the vessel for inspection purpose because the licence contained a lot of information about the vessel, e.g. the life saving appliance on the vessel. As a result, owners of local vessels could not use the licences for securing loans from the banks. The proposed certification of vessel was to provide a record of who owned the vessel so that the owner could prove his ownership in securing a loan from the bank.

II. Date of next meeting

52. The next meeting would be held on 15 June 1999 at 10:45 am.

53. The meeting ended at 10:35 am.

Legislative Council Secretariat

29 October 1999