

立法會
Legislative Council

LC Paper No. CB(2) 556/99-00

(These minutes have been seen
by the Administration)

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

**Minutes of meeting
held on Tuesday, 15 June 1999 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam (Chairman)
Hon WONG Yung-kan
Hon Howard YOUNG, JP
Hon Mrs Miriam LAU Kin-yee, JP
- Member absent** : Hon LEE Kai-ming, JP
Hon SIN Chung-kai
Hon TAM Yiu-chung, JP
Hon FUNG Chi-kin
- Public Officers attending** : Mr Roger TUPPER
Principal Assistant Secretary for Economic Services
- Mr Peter KWOK
Assistant Secretary for Economic Services
- Mr K M LEE
Deputy Director of Marine (Atg)
- Mr K M VARGHESE
Assistant Director of Marine
- Mr F L CHEUK
Senior Marine Officer
- Mr G FOX
Deputy Law Draftsman (Atg)

Mr Lawrence PENG
Senior Assistant Law 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

Submission from the Hong Kong & Kowloon Motor Boats & Tug Boats Association Ltd

(LC Paper No. CB(2) 2291/98-99(01))

At the invitation of Mrs Miriam LAU, Deputy Director of Marine (Ag) (DD of M)(Ag) gave an initial response to the submission. He said that there was no safety inspection requirement in respect of pleasure vessels in New Zealand. Though a mandatory safety inspection was imposed on pleasure vessels in Singapore, he reserved his comment on the practice in another jurisdiction. He added that consideration had been given to introducing a mandatory periodic safety inspection for pleasure vessels. However, having regard to the fact that there were some 5 000 pleasure vessels in Hong Kong and that most of them were used solely for private purpose, it would result in additional financial burden on the owners of pleasure vessels should pleasure vessels be subject to mandatory periodic inspection. As pleasure vessels varied greatly in size and structure, it was difficult, if not impossible, for the Administration to devise a uniform safety standard and requirement for pleasure vessels.

2. Mrs Miriam LAU enquired whether letting of pleasure vessels were permitted in New Zealand and whether all types of vessels, including pleasure vessels were subject to the same safety standards and requirements in Singapore. DD of M(Ag) said that pleasure vessels in New Zealand were not allowed to be let or hired. The Administration did not have information on the safety standards of vessels in Singapore,. The Chairman requested the Administration to provide more information, if any, on the regulatory control for pleasure vessels in overseas countries.

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3. DD of M(Ag) said that the safety requirements for pleasure vessels engaging in charter party arrangement were being considered by the Marine Department (MD). The Local Vessels Advisory Committee (LVAC) would be consulted accordingly. The Administration would incorporate the proposed safety requirements in its response to the Bills Committee, if available.

4. Mr Howard YOUNG opined that due emphasis should be given to the safety of passengers on board pleasure vessels in drawing up the safety standards for chartered pleasure vessels. DD of M(Ag) said that the Provisional Local Vessels Advisory Committee (PLVAC) was considering several proposals in respect of the safety standards and requirements for pleasure vessels. He assured members that notwithstanding PLVAC had to take into account the affordability of individual owners of pleasure vessels in meeting the safety requirements, the safety of passengers would be a major consideration.

5. Responding to Mrs Miriam LAU, DD of M(Ag) said that the Administration would take into account the affordability of vessels owners and the protection for passengers in the event of accidents in determining the minimum amount of insurance cover required for respective classes of local vessels. Once the insurance sector had gained experience and confidence in the operation, the insurance amount might be raised.

6. Mrs Miriam LAU enquired about the specific measures to be adopted by the Administration to ensure that pleasure vessels would not be used for commercial purpose which involved the sale of tickets. DD of M(Ag) said that the primary objective of the legislative proposal in respect of pleasure vessels was to ensure proper protection to passengers by being covered under third party risks insurance when an accident occurred. Given that pleasure vessels were not used for commercial purpose, it was therefore the owners' and passengers' choice as to whether they should be on board the vessels. To allow flexibility for letting of pleasure vessels to a party, pleasure vessels hired or let under the terms of a charter agreement were permitted under the Bill. DD of M(Ag) said that the Administration would consult the trade through LVAC when formulating the safety standards and requirements for chartered pleasure vessels.

7. Mrs Miriam LAU expressed concern about the enforcement of the charter party arrangement of pleasure vessels. She urged the Administration to make it clear that pleasure vessels used other than for private pleasure purpose or were let for hire under a charter agreement would not be tolerated. Failure to do so would be subject to prosecution. Principal Assistant Secretary for Economic Services (PAS(ES)) said that the Administration was aware of the concerns expressed over the issue. He pointed out that it was a common practice in most of the other jurisdictions that if pleasure vessels were used solely for private pleasure purpose, the owners of the pleasure vessels would be held responsible for their own safety while on board the vessels. The Administration

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would convey clearly to the trade through LVAC the regulations and the relevant codes of practice on the letting of pleasure vessels. He assured members that the safety requirements would also be made known to the public.

8. The Chairman said that the regulatory control for pleasure vessels would be dealt with by LVAC. Members agreed.

Clause-by-clause examination

Clause 16 - Local certificate of competency for persons employed as coxswains, etc.

9. Assistant Legal Adviser 2 (ALA2) said that clause 16(8) stated that the rules made in respect of the examinations for granting local certificates of competency to coxswains, engine operators or pleasure vessel operators on vessels were not subsidiary legislation. However, it was noted from the Administration's response to a submission that the details of the examinations would be specified in the relevant subsidiary legislation (LC Paper No. CB(2) 2174/98-99(05)). ALA2 sought clarification on whether the rules were subsidiary legislation.

10. In response, Deputy Law Draftsman (Ag) (DLD)(Ag) said that as stated in sub-clause (3), the Director might publish any rules made under sub-clause (2) as he thought fit. The Director was therefore not required to publish the rules in the Gazette. Moreover, under the provisions in relation to the examination and certification of officers and other seafarers in the Merchant Shipping (Seafarers) Ordinance, it was stated that the Director was empowered to make relevant rules which were not subsidiary legislation. Similarly, rules made under clause 16 would not have legislative effect and were not subsidiary legislation. Assistant Director of Marine (AD of M) added that as the rules involved the technical details of the examination procedures, it was considered not necessary to publish the rules in the Gazette. Senior Marine Officer (SMO) pointed out that regulations made under clause 89 of the Bill in respect of local vessels were subsidiary legislation, in particular sub-clauses (1)(p) to (r) which were related to the qualifications for coxswains and crew.

11. Mr Howard YOUNG asked whether the local certificates of competency were recognized in other jurisdictions. DD of M(Ag) said that the local certificates of competency in respect of pleasure vessels were recognized by some jurisdictions.

12. Responding to Mr WONG Yung-kan, AD of M said that clause 16(2)(k) provided for any person who held relevant certificates issued by another jurisdiction to apply for operating vessels in the waters of Hong Kong. The MD would assess whether the examination taken by the applicant was equivalent to

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the standards adopted in Hong Kong and his experience in considering granting an approval or exemption.

13. Mrs Miriam LAU asked whether the requirement of holding certificates of competency was applicable to persons employed as coxswains on vessels from the Mainland. DD of M(Ag) said that should the vessels enter the waters of Hong Kong for transit purpose, they would be exempted from obtaining permits. Incoming vessels were subject to permit requirements if they remained or operated in the waters of Hong Kong.

14. Mrs Miriam LAU questioned the rationale for exempting the permit requirements for vessels in transit given that they might affect the marine traffic when plying in the waters of Hong Kong. DD of M(Ag) said that any persons employed as coxswains or engine operators on vessels should have satisfied the qualifications requirements of respective issuing authorities. PAS(ES) added that it was the international practice for the shipping and aviation sectors to recognize qualification approved by different jurisdictions. Hence, the Administration would permit those vessels to transit the waters of Hong Kong without a licence or a permit.

15. Mrs Miriam LAU expressed concern about the frequent collision of Mainland vessels in the waters of Hong Kong should they be exempted from obtaining a licence. DD of M(Ag) reiterated that the arrangement was a universal practice. Should any Mainland vessel enter and operate in the waters of Hong Kong, the vessel concerned would be subject to the requirements under the Bill.

16. Mr WONG Yung-kan asked whether consideration would be given to requiring Mainland vessels to hold operating licences while operating in the waters of Hong Kong. AD of M said that although there was no formal agreement between Hong Kong and the Mainland regarding the recognition of certificates of competency issued by the respective authorities, a mutual recognition arrangement was established. He added that MD was discussing with the Mainland authorities in reaching a formal arrangement on the recognition of certificates of competency issued by the respective authorities.

Clause 20 - Rules as to inquiries, etc.

17. At the invitation of the Chairman, ALA2 said that the rules were subsidiary legislation.

Clause 21 - Power to restore certificate, etc.

18. Mr Howard YOUNG enquired whether the existing certificate holders had to change their certificates to the new ones upon the enactment of the Bill.

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AD of M said that the Administration would make rules stating that there was no need for existing certificate holders to apply for a change. However, if the existing certificate holders wished to have the new form of local certificates of competency, they could do so.

19. ALA2 pointed out that the Administration agreed to replace "if of the opinion that the justice of the case requires it" by "if required to do so by the panel of inquiry". According to the Administration, clause 21 was based on section 118 of the Merchant Shipping (Seafarers) Ordinance. Since the Administration would move amendment to clause 21, she enquired whether similar amendment would be proposed to section 118 of the Merchant Shipping (Seafarers) Ordinance. PAS(ES) responded that a consequential amendment would be proposed to the relevant section of the Merchant Shipping (Seafarers) Ordinance.

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Clause 22 - Offences relating to local certificates of competency

20. Mrs Miriam LAU asked, in the event that clause 21 was not applicable, whether a person might apply for re-issue of certificate after his licence was cancelled or suspended under clause 22; if so, what the requirements were. AD of M said that presently when a person's certificate was suspended or cancelled, he might re-apply for a certificate after a certain period of time. The person concerned would have to go through the entire application procedures. Upon the enactment of the Bill, a person might re-apply for a local certificate of competency after a period specified by the court.

Clause 27 - Application of collision regulations and use of signals of distress regulations

21. Responding to Mrs Miriam LAU, DD of M(Ag) said that the provision was applicable to the Mainland vessels, including those in transit the waters of Hong Kong.

Claus 30 - Unseaworthy vessels

22. Responding to Mr WONG Yung-kan's enquiry, AD of M said that the provision was applicable to all types of local vessels. Mr WONG Yung-kan further asked under what circumstances would a vessel be considered unseaworthy. DLD(Ag) said that a vessel would be regarded as unseaworthy if it failed to pass an objective and reasonable test, which might vary according to the type of vessel in question.

23. Mrs Miriam LAU asked whether the proposed penalty for contravening the provisions under clauses 27 to 30 were in line with the existing penalty levels. DD of M(Ag) said that there was no change proposed to the penalty

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levels.

Clause 46 - Interpretation

24. ALA2 pointed out that the definition of "oil" had been amended by the Merchant Shipping (Prevention and Control of Pollution) Bill 1999. The Administration had been requested to clarify whether a consequential amendment would be made to the definition of "oil" in this clause. In response, DLD(Ag) said that the definition of "oil" in clause 46 was the same as the definition of "oil" in section 45 of the Shipping and Port Control Ordinance (SAPCO). Since no consequential amendment was made to the definition of "oil" in SAPCO upon the enactment of the Merchant Shipping (Prevention and Control of Pollution) Bill 1999, it was therefore the Administration's intention to retain the existing definition of "oil" in SAPCO. Hence, no amendment to the definition of "oil" in this clause would be made.

Clause 47 - Discharge of oil into the waters of Hong Kong

25. Mr Howard YOUNG asked whether the provision was applicable to a local vessel which was being broken up in the waters of Hong Kong. DD of M(Ag) said that polluting the waters of Hong Kong by oil was within the meaning of this clause.

Clause 48 - Defences under section 47

26. Responding to Mrs Miriam LAU, SMO said that clause 48(1) was modelled from SAPCO. Mrs LAU said that the way of drafting this defence provision was uncommon. She considered the wording "unless the court is satisfied that the discharge of the oil or mixture containing oil was not necessary for that purpose" superfluous. It would be the obligation of the defendant to prove that the discharge of the oil or mixture of oil was necessary for the purpose in sub-clause (1)(a) to (1)(c). In reply, DLD(Ag) said that he agreed with Mrs LAU's view. However, as the provision was modelled from SAPCO, the Administration did not want the drafting of the provision to be deviated from SAPCO.

Clause 51 - Emission of smoke from local vessel

27. Mrs Miriam LAU asked about the criteria adopted for determining the quantity of smoke emitted which would constitute a nuisance under the Bill. DD of M(Ag) said that presently prosecution against emission of smoke from local vessels was brought in accordance with the Ringelmann Chart as defined in the Air Pollution Control (Smoke) Regulations (Cap.311). There were 13 complaints about the emission of smoke from local vessels in the past three

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years, four of them were successfully prosecuted. Upon the enactment of the Bill, emission of smoke from local vessels would be prosecuted in accordance with this Bill. Mrs Miriam LAU considered that the Bill did not spell out clearly the objective criteria for determining an excessive emission of smoke from local vessels which would constitute an offence. It might lead to unnecessary litigation. DD of M(Ag) said that the Administration would take note of Mrs LAU's view.

Clause 52 - Seizure, etc. of local vessel

28. ALA2 said that the Administration agreed to delete "being, in any case, not less than 3 months from the date on which the vessel was seized" from clause 52(5)(h).

Clause 53 - Detained vessels may only be moved as permitted, etc.

29. ALA2 asked whether the cargoes on the detained vessel could be removed. In reply, DD of M(Ag) said that in justifiable cases, cargoes could be removed from vessels detained. Responding to the Chairman, DD of M(Ag) said that the cargoes concerned could be removed from detained vessels without applying for approval from the court.

Clause 60 - Powers of authorized officers

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30. ALA2 suggested and DLD(Ag) agreed to replace the word "who" with "whom" in clause 60(2)(a).

Clause 65 - Dead vessel

31. Mrs Miriam LAU asked which party would be held responsible in the event that a dead vessel entered the waters of Hong Kong following the current. DD of M(Ag) explained that what Mrs LAU referred to was a "wrecked vessel" instead of a "dead vessel" under the Bill. Senior Assistant Law Draftsman (Ag) pointed out that as there was no corresponding Chinese term for "dead vessel", the meaning of the term "dead vessel" was spelt out explicitly in the definition, i.e. clause 2 of the Bill.

Clause 86 - Indemnity against damage, etc.

32. ALA2 pointed out that it was a common drafting practice to state that "if the relevant person had acted *in good faith* and in the ordinary course of the discharge of duties ..." in other ordinances. DLD(Ag) said that although it was considered that the Director would act in good faith when performing or exercising any function or power under the Bill, he agreed to add "in good faith" to the clause.

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Schedule

33. Members raised no question on the consequential amendments proposed to the Ordinances and Regulations stipulated in the Schedule.

Resumption of the Second Reading debate of the Bill

34 Members agreed that the Committee Stage amendments to be proposed by the Administration would be circulated for their consideration once available. The Bill would resume its Second Reading debate at the Council meeting on 7 July 1999, subject to the Committee Stage amendments being in order. The Bills Committee would report its deliberations to the House Committee on 25 June 1999.

35. There being no other business, the meeting ended at 12:45 pm.

Legislative Council Secretariat
29 October 1999