

政府總部經濟局的信頭

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Dear Miss Ho,

**Merchant Shipping (Local Vessels) Bill**  
*(the Bill)*

Thank you for your letter of 30 April 1999. With regard to your queries, I reply as follows using the same headings as in your letter:

**Clause 2 - Interpretation**

- (a) The purpose of the Bill is to provide a new statutory framework under a comprehensive body of legislation solely for the control and regulation of local vessels as distinguished from ocean-going vessels. A number of provisions of the Bill mirror the provisions of Shipping and Port Control Ordinance (SAPCO) which governs all vessels (including both local vessels and ocean-going vessels) in the waters of Hong Kong. After the enactment of the Bill, provisions in SAPCO relating to local vessels will be repealed consequentially. The revised SAPCO will regulate and control ocean-going vessels within the waters of Hong Kong while the new Ordinance will take care of local vessels. All vessels are subject to the Bill or SAPCO.

SAPCO will apply to passenger ships as mentioned in clause 3 (4).

- (b) In preparing the Bill, we have consulted the shipping industry through the Provisional Local Vessels Advisory Committee. Operators of mainland coastal vessels were represented in the Committee. No objection was received in our consultation with the committee, or since the gazettal of the Bill, on the definition of “local vessel”. While not required to pay port dues, mainland coastal vessels have to apply for permits and pay the prescribed fee when they enter Hong Kong waters. Mainland coastal vessels are not exempt from compulsory pilotage. In respect of provisions of the Bill which apply to mainland vessels differently from other local vessels, please see clauses 3(3)(a) and 10(e) and section (1)(a) of the Schedule.
- (c) “Vessels operating in dynamically supported mode” is the technical term for high speed craft such as hydrofoils and jetfoils. There are local ferry vessels operating in dynamically supported mode which requires the definition’s inclusion. The term “dynamically supported craft” appears in para (a) of the definition of “vessel”. The definition of “tidal water” is redundant as the term does not appear elsewhere in the Bill. It will be deleted by Committee Stage Amendment. The term “lighthouse” appears in the definitions of “aid to navigation”, “beacon” and “buoy”. The term “buoy” appears in the definitions of “aid to navigation”, “beacon”, “lighthouse” and “mooring”.

**Clause 7 - authorization of surveyors**

There will not be any regulation specifying the qualifications of authorized surveyors. However, under clause 7 (1) of the Bill, the Director may authorize any person to be surveyor for the purposes of the Bill subject to conditions, if any.

**Clause 11**

The Marine Department will keep a register of local vessels for administrative purposes. Subject to the provisions of the Personal Data

(Privacy) Ordinance (Cap. 486), the public may gain access to the information contained in the register.

**Part V and Clause 16(8)**

- (a) A clause equivalent to clause 10(e) is not required in Part V because 3(3)(a) already disappplies Part V to local vessels referred to in para. (e) of the definition of “local vessel”.
- (b) Clause 16(1) to (7) is based on section 29 of SAPCO. Rules made under that section do not have legislative effect and are not subsidiary legislation. Similarly, rules made under clause 16 will not have legislative effect and will not be subsidiary legislation. Clause 16(8) aims at putting the matter beyond doubt.

**Clause 17 - Inquiry into fitness of holder of local certificate of competency**

The rules to be made under clause 20 will be subsidiary legislation in exactly the same way as the Merchant Shipping (Seafarers) (Conduct of Inquiries) Rules (Cap. 478 sub. leg.) made under section 115 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478). The proceedings of the inquiry are quasi-judicial. The Bill does not provide that all or any of the persons holding an inquiry must be a member of the judiciary. In the event that a serving member of the judiciary was appointed to hold the inquiry, that member would continue to draw his judicial benefits and would not be remunerated under the clause.

**Clause 21**

Clause 21 is based on section 118 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478). The intent is to empower the Director to re-issue the certificate to seafarers whose certificates have been cancelled or suspended when circumstances so justify, for example, on a successful appeal against the decision of an inquiry. To avoid any ambiguity, we shall replace, “if of the opinion that the justice of the case requires it” by “if required to do so by the panel of inquiry”.

**Clause 37 - Interpretation**

Depending on the timing of the enactment of the Shipping and Port Control (Amendment) Bill 1999 and this Bill, consequential amendments will be made as appropriate.

**Clause 40(1)(a) and 3(a)**

Since clause 40(3)(a) makes it clear that the powers in clause 40(1) are exercisable by the Director and an inspector separately as well as jointly, it is not necessary to revise the clause along the lines suggested.

**Clause 40(1)(f) and (g)**

Subsidiary legislation to be made under this Part will specify the keeping of registers, certificates or other documents for inspection.

**Clause 46**

Since the Merchant Shipping (Prevention and Control of Pollution) (Amendment) Bill (MS (PCP) Bill) does not consequentially amend the definition of “oil” in section 45 of SAPCO, it follows that neither this section nor clause 46 should be consequentially amended if MS (PCP) Bill is enacted.

**Part X - seizure, removal and detention of vessels**

- (a) Since “Heading” does not have any legislative effect and is merely descriptive in nature, we do not consider it necessary to revise it as suggested.
- (b) The proposed warrantless seizure and detention of local vessels is justifiable as it is impracticable to obtain prior judicial authorization for boarding and seizure of vessels which could move away quickly.

Further, the ground for seizure and detention as specified under Clause 52(1)(a) relates to the safety of persons, property or the environment. In such circumstances, there is a case for seizure and detention without delay.

In addition to the above, the powers under Clause 52 of the Bill should be distinguished from those under Clause 62. Clause 62 is concerned with “any premises” or “any domestic premises” whereas Clause 52 deals with local vessels, the subject matter to be regulated under the Bill. It has been established that a person who engages in a regulated activity, such as the owner of a local vessel, should adjust his expectation of privacy to accommodate the regulatory regime.

- (c) The intent is to give a period of not less than 3 months for owners of the detained vessels to put right the required remedial work. To reflect our policy intent more accurately, we shall delete “being, in any case, not less than 3 months from the date on which the vessel was seized”.
- (d) No need to add the word “reasonable”, as there is already an implication that expenses must be reasonable.

### **Clause 53**

In justified cases, cargo can be removed from vessels detained under SAPCO. For example, cargo of a detained vessel has to be removed to ensure navigation safety. The level of fine is set so as to deter offenders.

### **Clause 54(3) and Clause 56**

Yes, the vessels will be regarded as abandoned and sold by public auction.

### **Clause 75**

The clause is based on section 14 of SAPCO. Director of

Marine has the power of delegation under clause 72.

**Clause 77(2)(c)**

The reference will be deleted.

**Clause 86**

The existing wording is considered adequate.

**Clause 89(1)(zs)**

This is a drafting matter. There is no concern.

On your points regarding the Chinese version of the Bill, our comments are as follows -

**Clause 2**

- (a) In the definition of “起重工具”，the expressions “吊桶鉤” and “鉤環” should be “吊桶鉤” and “鉤環” respectively.
- (b) In the definition of “起重裝置”，the expression “吊杆” should be “吊桿”。
- (c) The expression “信號站” is correct. It means a “信號站” as specified in regulations under Cap. 313, which adopts “信號站” as the Chinese equivalent of “signal station”.
- (d) The definitions of “船員” and “船隻” should be placed immediately after the definition of “船長”。

**Clause 3**

The Chinese equivalent of “Government” is “政府”。Section 3 of Cap. 1 will be amended in due course.

**Clause 8(3)**

The phrases “根據(b)段作出的核准” will be revised to “根據本款作出的核准” .

**Clause 40(1)(a)**

“處所” is the usual Chinese equivalent of “premises”. The expression “地方” has a wider meaning and does not seem appropriate here.

**Clause 42(1)**

It is not necessary to delete the two characters “中” . The minor inconsistency with clause 43(1) does not create any ambiguity.

**Clause 47(1)(b)(i)**

The expression “排放” in “如排放來自某本地船隻” refers to the “排放” mentioned in the opening sentence in subsection (1) ( i.e.油或含油混合物排放入香港水域 ) .

**Clause 51(3)**

The expression “再犯” refers to any offences subsequent to the first one and is equivalent to the expression “a second or subsequent offence”. The English text will be revised by replacing “a second or subsequent offence” with “any subsequent offence”.

**Clause 56(3)(b)**

As the Chinese equivalent of the phrase “unable to trace the owner of the vessel”, “不能探知該船隻的船東” is better than “不能追查該船隻的船東” . The expression “追查” refers to action of “look for” or “investigate” and does not carry the element of “found” or “discovered”. The expression “不能探知” means the owner cannot be found or discovered.

**Clause 68(4)**

The expression “進入……財產” is the Chinese equivalent for the expression “enter the property”. The word “property” is defined in section 3 of Cap. 1 and its Chinese equivalent under that section is “財產”. When read with section 3 of Cap. 1, the meaning of the expression “進入……財產” is clear, which has the same meaning as the expression “enter the property”.

**Clause 70(3)**

“須正於某船隻上” should be “須正於某本地船隻上”. Apart from that, the meaning of this clause is equivalent to the meaning of the English version.

Yours sincerely,

(Peter KWOK)  
for Secretary for Economic Services