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**Paper for the House Committee Meeting
of the Legislative Council
on 3 December 1999**

**Legal Service Division Report on
Dangerous Goods (Amendment) Bill 1999**

Objects of the Bill

In relation to the Dangerous Goods Ordinance (Cap. 295) ("the Ordinance"), to-

- (a) revise the definitions of "dangerous goods", "explosives" and "vessel" and introduce new definitions of "IMDG" Code" and "UN Number" (clause 2);
- (b) amend the application section (section 3 of the Ordinance) to provide that the Ordinance applies only to the substances, materials and articles contained in the Schedules to it and empower the Secretary for Security to amend the Schedules (clause 3);
- (c) amend the regulation section making section to empower the Director of Marine to grant exemptions in respect of shipping and to set the maximum fine at level 6 (not more than \$100,000) (clause 4);
- (d) enact a new section empowering the Director of Fire Services and the Director of Marine to issue codes of practice (clause 5);
- (e) increase the penalties for breach of a licence (clause 6);
- (f) create an exception to the notice requirement in respect of the conveyance of dangerous goods (clause 7);
- (g) amend the search and seizure provisions to include officers of the Marine Department in the group of officers authorised to exercise the powers (clause 8);

- (h) revise the level of fine for contravention of various provisions (clause 10);
- (i) enact a new section that provides for compliance with the International Maritime Dangerous Goods (IMDG) Code as an alternative to complying with the requirements under the Ordinance (clause 11);
- (j) add new Schedules itemizing the substances to which the Ordinance applies (clause 12); and
- (k) make consequential amendments to other Ordinances (clauses 13 to 16).

LegCo Brief Reference

2. File Ref. : SBCR 1/1336/86 Pt.28 of 17 November 1999 issued by the Security Bureau.

Date of First Reading

3. 1 December 1999.

Background

4. The Ordinance provides for classification, labelling and packaging of dangerous goods. However, they are in many ways different from the United Nations' Recommendations and IMDG Code, on which most overseas countries' dangerous goods legislation is based. In order to bring the Ordinance in line with the international standards, the Bill proposes to revise the provisions on classification and amend the application section to provide that the Ordinance applies to the substances, materials and articles contained in the new Schedules to it. It also provides for regulation making power in respect of labelling, packaging, exemption and conveyance of dangerous goods under the Ordinance, and penalties for breach of various offences under it.

Comments

5. Presently, the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg.) ("the Regulations") provide for 11 Categories of dangerous goods. The Bill proposes to revise the classification of dangerous goods (some of them are already listed in the Regulations while some of them are currently listed in the IMDG Code) into 9 Classes to follow closely the IMDG Code. Clause 12 of the Bill (new Schedules 1 and 2 to the Ordinance) proposes to increase

the coverage of items of dangerous goods from about 400 to 1,600. The Ordinance applies to dangerous goods in Schedules 1 and 2 but dangerous goods in Schedule 2 are subject to control at sea only. Clause 11 of the Bill provides that shipment of dangerous goods at sea which are already packed, marked and labelled in accordance with the IMDG Code are deemed to comply with the requirements of the Ordinance in respect of the same for conveyance by vessels or by vehicles transporting the dangerous goods to or from any berth where the vessel on which they have been, or will be, conveyed is located. Clause 11 further provides that where dangerous goods are passing through Hong Kong as part of an international journey and such goods are packed, marked and labelled in accordance with the IMDG Code, they are deemed to comply with the requirements of the Ordinance in respect of the same for conveyance by vessels or by vehicles across the territory. A comparison of the proposed classification system and the existing classification system is at Annex 1 to Annex B to the LegCo Brief. For easy reference, a copy of the comparison table is reproduced at the Appendix to this report.

6. The Bill also amends the regulation making section to authorise the Chief Executive in Council to, amongst other things, impose duties on drivers of vehicles carrying dangerous goods and empower the Director of Marine to grant an exemption from all or any of the provisions of a regulation relating to vessels. It further increases the maximum fine for breach of the regulations from \$25,000 to level 6 (\$100,000).

7. New section 5A provides that the Director of Fire Services or the Director of Marine may, for the purpose of providing practical guidance in respect of the Ordinance or of regulations made under the Ordinance, issue codes of practice. The breach of a code of practice per se is not a criminal offence. But in any criminal proceedings, the evidence of compliance with or non-compliance with a relevant provision of a code may be relied upon by a party to the proceedings to establish or negative any liability which is in question in the proceedings. Upon our enquiry, the Administration confirms that a code of practice issued under new section 5A is not intended to be a subsidiary legislation within the meaning of the Interpretation and General Clauses Ordinance (Cap. 1).

8. The Bill further amends section 9B of the Ordinance to increase the penalty for breach of licence issued under section 9. It proposes that, for a first offence, a person is liable for a fine at level 5 (\$50,000) and imprisonment not exceeding 1 month; for a subsequent offence, a person is liable for a fine at level 6 (\$100,000) and imprisonment not exceeding 3 months. The existing penalty for breach of licence is a fine not exceeding \$10,000 and imprisonment not exceeding 1 month.

Public Consultation

9. Paragraph 25 of the LegCo Brief states that the Dangerous Goods Standing Committee was consulted and supported the proposals.

10. Paragraph 26 of the LegCo Brief also states that a public consultation exercise was conducted in March 1999. It goes on to say that in general, the Provisional District Boards and the trade are in support of the proposed amendments.

Consultation with the LegCo Panel

11. The Administration briefed the Security Panel about the Bill at its meeting held on 16 October 1999. Although the Panel supported the general principle of the legislative proposals, some members have expressed concern over the detailed implementation of the proposals and their impact on the trade.

Recommendation

12. The Bill contains important proposals to revise the classification and control of dangerous goods. At the Security Panel meeting held on 16 October 1999, some members have expressed concerns over certain aspects of the proposals in the Bill. Members are recommended to form a Bills Committee to study the Bill in detail.

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**Comparison of the Proposed and
Existing classification systems**

Properties	Proposed Classification	Existing Classification under DGO
Explosives	Class 1	Category 1
Compressed gases	Class 2	Category 2
Flammable liquids having a flash point below -18°C (0°F) closed cup test	Class 3.1	Category 5 Class 1*
Flammable liquids having a flash point of -18°C (0°F) up to but not including 23°C (73°F) closed cup test	Class 3.2	
Flammable liquids having a flash point of 23°C (73°F) up to and including 61°C (141°F) closed cup test	Class 3.3	Category 5 Class 2*
Flammable liquids having a flash point exceeding 61°C closed cup test	Class 3.4	Category 5 Class 3*
Flammable solids	Class 4.1	Category 8
Substances liable to spontaneous combustion	Class 4.2	Category 9
Substances which become dangerous in contact with water	Class 4.3	Category 6
Oxidizing substances	Class 5.1	Category 7
Organic peroxides	Class 5.2	Category 10
Toxic substances	Class 6.1	Category 4
Corrosives	Class 8	Category 3
Miscellaneous #	Class 9	-
Combustible goods exempted from Section 6 to 11 of the Ordinance	Class 9A	Category 9A

*Note: (i) *The generic definitions of the existing Class 1, Class 2 and Class 3 in Category 5 are as follows:-*

Class 1 Substances having a flash point below 23°C

Class 2 Substances having a flash point of or exceeding 23°C but not exceeding 66°C

Class 3 Substances having a flash point of or exceeding 66°C

(ii) #Most of the dangerous goods in the proposed Class 9 are currently not stipulated under "the Legislation".

(iii) "Closed Cup Test" means a testing method conforming to British Standard BS2000 Part 170 or equivalent where a closed receptacle apparatus is utilized to determine the flash point of a flammable liquid.