

立法會
Legislative Council

LC Paper No CB(1)2248/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/03

**Bills Committee on
Merchant Shipping (Security of Ships and Port Facilities) Bill**

**Minutes of first meeting on
Friday, 28 May 2004, at 3:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Miriam LAU, JP (Chairman)
Dr Hon David CHU, JP
Hon Margaret NG
Hon SIN Chung-kai
- Public officers
Attending** : Mr Raymond FAN
Deputy Secretary for Economic Development and
Labour (Economic Development)
- Mr Roger TUPPER
Deputy Director of Marine
- Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting and Administration)
- Miss Amy CHAN
Government Counsel
Department of Justice
- Mr K M FUNG
Chief Assistant Secretary for Economic Development
and Labour
(Port, Maritime & Logistics)
- Mr K L LEE
Chief, Marine Accident Investigation
Marine Department

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Debbie YAU
Senior Council Secretary (1)1

Action

I Election of Chairman

Dr David CHU, member of the Bills Committee who had the highest precedence among the members present, presided over the election of the Chairman of the Bills Committee and invited nominations for the chairmanship.

2. Ms Miriam LAU was nominated by Mr SIN Chung-kai and the nomination was seconded by Miss Margaret NG. Ms LAU accepted the nomination.

3. There being no other nominations, Ms Miriam LAU was elected Chairman of the Bills Committee. Ms LAU then took over the chair. Members agreed that it was not necessary to elect a Deputy Chairman.

II Meeting with the Administration

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| LC Paper No. CB(3)471/03-04 | - The Bill |
| <i>(issued by the Administration to Members on 24.3.2004)</i> | - Preliminary draft of the Merchant Shipping (Security of Ships and Port Facilities) Regulation |
| MA 150/47 | - The Legislative Council Brief issued by the Economic Development and Labour Bureau on 10 March 2004 |
| LC Paper No. LS52/03-04 | - The Legal Service Division Report on the Bill (with correspondences between the Administration and the Legal Service Division attached) |

LC Paper No. CB(1)1898/03-04	- Background brief on Merchant Shipping (Security of Ships and Port Facilities) Bill prepared by the Secretariat
LC Paper No. CB(1)1945/03-04(01)	- The new provisions of the International Convention for the Safety of Life at Sea, 1974
LC Paper No. CB(1)1945/03-04(02)	- The International Ship and Port Facility Security Code
LC Paper No. CB(1)1980/03-04(01) <i>(tabled and subsequently issued to members on 31.5.2004)</i>	- Letter dated 20 May 2004 from the Assistant Legal Adviser (ALA) to the Administration
LC Paper No. CB(1)1980/03-04(02) <i>(tabled and subsequently issued to members on 31.5.2004)</i>	- Reply dated 27 May 2004 from the Administration to ALA's letter of 20 May 2004
LC Paper No. CB(1)1980/03-04(03) <i>(tabled and subsequently issued to members on 31.5.2004)</i>	- Working draft of the Bill provided by the Administration (English version only)

4. The Bills Committee deliberated (Index of proceedings attached at Appendix).

Draft Merchant Shipping (Security of Ships and Port Facilities) Regulation

5. The Administration briefed members on the Bill. The Deputy Law Draftsman said that the final draft of the Merchant Shipping (Security of Ships and Port Facilities) Regulation (the Regulation) would be ready by the early part of the following week.

Clause-by-clause examination of the Bill.

Long Title

6. The Administration would move a Committee Stage amendment (CSA) to re-arrange the long title to read "To implement the December 2002 amendments to the International Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Security Code and related provisions in the Convention for enhancing security of ships and port facilities; and to provide for incidental or related matters."

Clause 1 – Short title and commencement

7. Miss Margaret NG expressed her strong reservation on clause 1(2), (3) and (4) which carried retrospective effect.

8. The Administration explained that clause 1(2), (3) and (4) sought to provide the legal basis for certain work to be performed prior to the enactment of the Bill. These proposed retrospective provisions could be deleted if the Bill could be enacted before 1 July 2004 when the new provisions of the International Convention for the Safety of Life at Sea, 1974 (the Convention) and the International Ship and Port Facility Security Code (the Code) adopted by the International Maritime Organization (IMO) came into operation. If the Bill could not be enacted on or before 1 July 2004, the retrospective provisions would allow the Director of Marine (D of M) to have bare minimum power to carry out control on ships visiting and staying in Hong Kong, such as the power to inspect and deny entry of ships, and detain non-compliance ships. Members agreed to defer the deliberation of this clause and would re-visit this clause later.

9. The Administration would provide a list of proposed recognized security organizations as referred under clause 1(4).

Clause 3 - Interpretation

10. The Assistant Legal Adviser 2 (ALA2) would consider the Administration's proposed definition on "an Administration".

11. The Administration agreed to amend the definitions of "authorized officer", "high-speed craft" and "international voyage" as proposed by ALA2.

12. The Administration would amend the definition of "port facility" to be in line with that in the Convention and consequentially to amend clause 7(1)(a) of the Bill.

13. The Administration would consider in consultation with ALA2 the revised definition of "ship" under the Bill.

14. Members noted that substantive provisions on "security levels" and "security instructions" were proposed to be contained in the Regulation made under the Bill. However, members considered it necessary to define "security levels" and "security instructions" in the principal legislation in order to suitably limit the power conferred on D of M under clause 6(2)(g) of the Bill. The Administration would consider members' request.

Clause 4 – Application to ships

15. As the term "ship" was narrowly defined in the Bill and in exceptional circumstances, D of M might need to extend application of the Bill to other vessels (such as when it was necessary to declare an "exclusion zone"), the Administration would consider improving the drafting of clause 4(1) and (2) and if necessary, revise the heading for the section.

16. On the rationale for clause 4(3)(c), the Administration explained that pursuant to the Protocol of 1988 relating to the Convention, ships and vessels of non-contracting governments should receive equal treatment as far as the

exemption was concerned. At the request of the Chairman, the Administration would provide a copy of the Protocol of 1988 for members' reference.

Clause 5 – Extent of application to certain port facilities

17. The Administration agreed to delete the phrase "in his opinion".

18. Miss Margaret NG was gravely concerned that as currently drafted, clause 5 would confer on D of M excessive general power to specify the extent of application of an international convention.

19. Members also noted that after D of M had decided on the extent of application to certain port facilities, such information would be posted on the IMO website as well as specified in the relevant certificate to be issued by D of M to operators of port facilities. The Administration was requested to improve the drafting of the clause to reflect more clearly that the discretion of D of M would be exercised on a case by case basis and to consider whether the extent of relaxation should be explicitly stipulated in the Regulation. At the Chairman's request, the Administration would provide a paper on the justifications for conferring the discretionary power on D of M and on how D of M might specify the extent of application, (for example, whether by Notice in the Gazette).

Clause 6 - Regulation

20. The Chairman requested the Administration to ensure consistency on the use of the term "regulation" and "regulations".

21. In response to the concern raised by members and ALA2 about clause 6(2)(b) which exceeded the limitation provided in section 28(1)(e) of the Interpretation and General Clauses Ordinance (Cap 1) that subsidiary legislation might create offences punishable on summary conviction by a fine of not exceeding \$5,000 or by a term of imprisonment not exceeding 6 months, the Chairman requested the Administration to provide a paper explaining the justification for expanding the power under the proposed Regulation and details of similar precedent cases.

22. The Administration would improve the drafting of clause 6(2)(d) to the effect that the Regulation might make provision on procedures for recognition under section 8.

23. The Administration would consider introducing a CSA to clause 6(2)(f) to provide that a decision made by the D of M pursuant to the Ordinance might be subject to appeal and if appropriate, to specify the scope of such decisions. It would also consider the suggestion of stipulating details of the procedures for appeal in the Regulation.

24. The Administration was requested to advise in writing the powers which might be exercised under Chapter XI-2 of the Convention or the Code by a Contracting Government, an Administration or any person who was authorized

by a Contracting Government as stated in clause 6(2)(j). The Administration would consider whether the reference of "the Secretary" in the clause could be deleted.

25. The Administration agreed to amend clause 6(1), 6(2)(b), (k), (m) and 6(5), as suggested by ALA2.

26. The Administration would consider members' view that clause 6(3) should make reference to clause 4 so that the extra-territorial effect of the Regulation would not exceed that of the Ordinance.

27. At the request of members, the Administration would clarify the intention under clause 6(4) which provided for the Regulation to amend the Schedule to the Administrative Appeals Board Ordinance (Cap 442).

28. On clause 6(5), ALA2 pointed out that making reference to the provisions of the Convention and the Code did not mean that they could be incorporated as part of Hong Kong law. On the drafting approach adopted to give effect to international conventions by way of domestic legislation, the Chairman asked the Administration to provide information on the past and present arrangements of localizing international conventions into domestic merchant-shipping legislation.

Dates of next meetings

29. The Administration informed members that it intended to resume Second Reading debate on the Bill on 23 June 2004. Members noted that under such circumstances, the Bills Committee would report to the House Committee on 11 June 2004.

30. Members agreed that subsequent meetings of the Bills Committee would be held as follows:

<u>Date</u>	<u>Time</u>
1 June 2004 (Tuesday)	2:30 pm - 4:30 pm
2 June 2004 (Wednesday)	10:30 am - 2:15 pm
4 June 2004 (Friday)	3:30 pm - 6:00 pm

31. To facilitate scrutiny, members urged the Administration to provide the requested information, the draft Regulation and proposed CSAs to be moved by the Administration in time for members' consideration at the next meeting.

III Any other business

32. There being no other business, the meeting ended at 6:00 pm.

**Proceedings of the meeting of the
Bills Committee on Merchant Shipping (Security of Ships and Port Facilities) Bill
Friday, 28 May 2004, at 3:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 002602	Dr David CHU Mr SIN Chung-kai Ms Miriam LAU Miss Margaret NG	Election of Chairman.	
002603 - 004229	The Chairman The Administration Miss Margaret NG	(a) The Administration's request to expedite the scrutiny of the Bill to tie in with the commencement of the new provisions of the International Convention for the Safety of Life at Sea, 1974 (the Convention) and the International Ship and Port Facility Security Code (the Code) adopted by the International Maritime Organization (IMO) with effect from 1 July 2004. (b) The need for the Administration to provide response and supplementary information in time for members' consideration. (c) The Administration briefed members on the Bill.	The Administration to provide the draft Regulation as per paragraph 5 of the minutes.
004230-004400	The Chairman The Administration Assistant Legal Adviser 2 (ALA2) Miss Margaret NG	<u>Clause-by-clause examination of the Bill</u> (Working draft of the Bill having incorporated the latest amendment provided by the Administration (CB(1)1980/03-04(03)) <u>Long title</u> Re-arrangement of long title.	The Administration to amend the long title as per paragraph 6 of the minutes.
004401 - 005150	The Chairman The Administration ALA2 Miss Margaret NG	<u>Clause 1</u> (a) The rationale for clause 1(2), (3) and (4). (b) Miss Margaret NG requested to put on record her strong reservation on clause 1(2), (3) and (4), which carried retrospective effect. (c) Recognized security organizations.	The Administration to act accordingly as per paragraph 8 of the minutes. The Administration to provide a list of proposed recognized security organizations as per paragraph 9 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
005151 - 012228	The Chairman The Administration ALA2 Miss Margaret NG	<p><u>Clause 2</u></p> <p>Members raised no query.</p> <p><u>Clause 3</u></p> <p>(a) The need to define "an Administration" under the Bill.</p> <p>(b) To amend the definitions of "authorized officer", "high-speed craft", "international voyage", "port facility" and "ship".</p> <p>(c) The need to define "security levels" and "security instructions" under the Bill.</p>	The Administration to follow-up as per paragraphs 10 to 14 of the minutes.
012229-014500	The Chairman The Administration ALA2 Miss Margaret NG	<p><u>Clause 4</u></p> <p>(a) To improve the drafting of clause 4(1) and (2).</p> <p>(b) Rationale for clause 4(3)(c).</p>	The Administration to follow-up and provide the information as per paragraphs 15 and 16 of the minutes.
014501 - 020235	The Chairman ALA2 The Administration Miss Margaret NG	<p><u>Clause 5</u></p> <p>(a) The Administration agreed to delete the phrase "in his opinion".</p> <p>(b) Justification for conferring the discretionary power on D of M.</p> <p>(c) Ways that D of M might specify the extent of application.</p> <p>(d) To improve drafting to reflect D of M's exercise of discretionary power on a case by case basis.</p>	The Administration to follow-up and provide the information as per paragraphs 17 and 19 of the minutes.
020236 - 024855	The Chairman The Administration Miss Margaret NG ALA2	<p><u>Clause 6</u></p> <p>(a) Consistency on the use of the terms "regulation" and "regulations".</p> <p>(b) Justification for expanding the power under the proposed Regulation to exceed the limitation provided in section 28(1)(e) of the Interpretation and General Clauses Ordinance (Cap 1).</p> <p>(c) Drafting of clause 6(2)(d).</p> <p>(d) Decisions made by D of M pursuant to the Ordinance might be subject to appeal under clause 6(2)(f) and the</p>	The Administration to follow-up and provide the information as per paragraphs 20 to 28 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>procedures for appeal.</p> <p>(e) Powers to be exercised under Chapter XI-2 of the Convention and the Code as stated in clause 6(2)(j).</p> <p>(f) The Administration agreed to amend clause 6(1), 6(2)(b), (k), (m) and 6(5) as proposed by ALA2.</p> <p>(g) The need for clause 6(3) to make reference to clause 4.</p> <p>(h) Policy intent of clause 6(4).</p> <p>(i) Drafting approaches in localizing the provisions of the Convention and the Code into Hong Kong Ordinance.</p>	
024856 - 025733	The Chairman The Administration Miss Margaret NG	Dates of subsequent meetings.	The Administration to note and provide the information as per paragraph 31 of the minutes.