

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2249/03-04  
(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 second meeting  
held on Tuesday, 1 June 2004, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, JP (Chairman)  
Dr Hon David CHU Yu-lin, 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 Meeting with the Administration**

Background information on the Bill

- |   |   |
|---|---|
| LC Paper No. CB(3)471/03-04   | - The Bill  |
| LC Paper No. CB(1)2020/03-04(01)<br><i>(tabled and subsequently issued on 2.6.2004)</i> | - Draft Merchant Shipping (Security of Ships and Port Facilities) Rules provided by the Administration (English version only)             |
| 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 (SOLAS)  |
| LC Paper No. CB(1)1945/03-04(02)  | - The International Ship and Port Facility Security (ISPS) Code   |

- LC Paper No. CB(1)1980/03-04(03) - Working draft of the Bill provided by the Administration (English version only)
- LC Paper No. CB(1)1996/03-04(01) - A list of definitions of key terms under the International Convention for the Safety of Life at Sea (English version only)
- LC Paper No. CB(1)2020/03-04(03) - Extract from Maritime Transport Security Act 2003, Australia provided by Assistant Legal Adviser 2 (English version only)  
*(tabled and subsequently issued on 2.6.2004)*
- (issued by the Administration to Members on 24.3.2004)* - Preliminary draft of the Merchant Shipping (Security of Ships and Port Facilities) Regulation

Papers provided by the Administration

- LC Paper No. CB(1)2015/03-04(01) - A list of Recognized Security Organizations (English version only)
- LC Paper No. CB(1)2015/03-04(02) - The Protocol of 1988 relating to SOLAS (English version only)
- LC Paper No. CB(1)2015/03-04(03) - A list of port facilities required to comply with the ISPS Code in Hong Kong (English version only)
- LC Paper No. CB(1)2020/03-04(02) - The Administration's response to issues raised at the meeting on 28 May 2004  
*(tabled and subsequently issued on 2.6.2004)*

Correspondence between the Administration and the Legal Service Division

- LC Paper No. CB(1)1980/03-04(01) - Letter dated 20 May 2004 from the Assistant Legal Adviser (ALA) to the Administration

LC Paper No. CB(1)1980/03-04(02) - Reply dated 27 May 2004 from the Administration to ALA's letter of 20 May 2004

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

Clause-by-clause examination of the Bill.

*Clause 7 - Declaration of port facility*

2. The Administration agreed to re-draft the definition of "port facility" under clause 3 incorporating clause 7(1)(a), and to empower the Director who might by notice published in the Gazette to vary the particulars of such port facility under clause 7(1). Such "particulars", which should include the delineation of boundary, hours of operation and the names of facilities, should also be included in the definition under clause 3. Subject to the revised definition of "port facility" in clause 3, members would have no objection to clause 7(2) that the notice published under clause 7(1) was not subsidiary legislation.

3. The Administration agreed to add "to declare or" at the start of clause 7(3)(b) so that consistency could be achieved between clause 7(3)(a) and (b).

4. Miss Margaret NG pointed out the discrepancy between clause 7(4) and 8(5) in that the scope of the former clause was much wider. To avoid unintended consequences, the Administration agreed to bring clause 7(4) in line with clause 8(5) by limiting the scope of clause 7(4) to the decisions of D of M. To avoid any possible interpretation that the result of an appeal, instead of the lodging of an appeal, against a decision of D of M would continue to prevent the decision from taking effect, the Administration agreed to specify "The lodging of an appeal" for the purpose of both clauses 7(4) and 8(5).

*Clause 8 - Recognized security organization*

5. The Administration agreed to add "or an organization" after "person" under clause 8(1) to improve clarity.

*Clause 9 - Authorized Officers*

6. Members considered the scope of "any function" under clause 9(2) too wide. The Administration was requested to tighten up the scope of this clause so that only those functions which could be delegated by D of M would be covered.

*Clause 10 - Inspections and control of ships*

7. The Administration would replace "recordings" under clause 10(d) with "records".

8. Members noted that section 205 of the Maritime Transport Security Act 2003 of Australia enacted to implement the Convention provided for the payment of a reasonable amount of compensation for unnecessary delay of a foreign ship. However, the Bill did not contain any explicit provision relating to payment of compensation. The Administration agreed to look into the issue with reference to the Maritime Transport Security Act 2003 of Australia and revert to members.

*Clause 12 - Magistrate's warrants*

9. The Administration agreed to add "by information" before "on oath" under clause 12(2).

*Clause 13 - Further provisions as to powers of inspection*

10. The Administration agreed to delete the phrase "As far as it is practicable" under clause 13(1) as proposed by the Assistant Legal Adviser 2 (ALA2).

11. As regards situations referred to under clause 13(5)(b) whereby a person who recklessly provided document or information that was false in a material particular would commit an offence, the Administration was requested to provide details of similar precedents of such recklessness for members' further consideration.

*Clause 14 - Exemption*

12. The Administration agreed to change "ship" under clause 14(2) to "ships" as proposed by ALA2.

13. Members agreed to revisit "a class of port facility" under clause 14(3) in the light of the re-drafted definition of "port facility".

*Clause 15 - Master's discretion for ship safety and security*

14. The Administration would delete "made in good faith" under clause 15.

15. Miss Margaret NG questioned whether clause 15, which exonerated the master of a ship from any duty owed by him under any contract, was sufficient to encapsulate Regulation 8 of the Convention which was of a wider scope. The Administration would consider the matter. Members agreed to re-visit the clause again.

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

16. The Administration was requested to consider annotating the Rules with reference to the Code and be prepared to codify or incorporate some of the provisions into the Rules.

17. The Administration had checked with the International Maritime Organization that the copyright of the Convention and the Code had to be cleared before the texts could be uploaded onto the relevant website of a Contracting Government. The Administration undertook to attach the relevant extract from the Convention or Code to the loose-leaf edition of the Laws of Hong Kong, which would contain the Bill after its enactment.

**II Any other business**

18. There being no other business, the meeting ended at 4:50 pm.

Council Business Division 1  
Legislative Council Secretariat  
28 June 2004

**Proceedings of the meeting of the  
Bills Committee on Merchant Shipping (Security of Ships and Port Facilities) Bill  
on Tuesday, 1 June 2004, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000-000318	The Chairman	(a) Introductory remarks. (b) Members noted that the following documents had been provided by the Administration:  (i) A list of Recognized Security Organization (CB(1)2015/03-04(01)). (ii) The Protocol of 1988 relating to the Convention (CB(1)2015/03-04(02)). (iii) A list of port facilities required to comply with the Code in Hong Kong (CB(1)2015/03-04(03)). (iv) Draft Merchant Shipping (Security of Ships and Port Facilities) Rules (CB(1)2020/03-04(01)). (v) The Administration's response to issues raised at the meeting on 28 May 2004 (CB(1)2020/03-04(02)).	
000319 - 003848	The Administration The Chairman Miss Margaret NG Assistant Legal Adviser 2	<u>Clause 7</u>  (a) Particulars of port facility that might be varied by the Director of Marine (D of M). (b) Whether notice published under clause 7(1) should be subsidiary legislation. (c) Whether, under clause 7(3), the owner, occupier or operator of a port facility might appeal against the decision of the D of M for declaring that the port facility ceased to be a port facility. (d) Discrepancy in scope between clause 7(4) and 8(5).	The Administration to note and follow-up as per paragraphs 2 to 4 of the minutes.
003949 - 004306	The Chairman The Administration Assistant Legal Adviser 2 Miss Margaret NG	<u>Clause 8</u>  Meaning of "person".	The Administration to add "organization" to "person" as per paragraph 5 of the

Time Marker	Speaker	Subject(s)	Action Required
			minutes.
004307 - 005044	The Chairman The Administration Assistant Legal Adviser 2 Miss Margaret NG	<u>Clause 9</u> The wide scope of clause 9(2).	The Administration to consider tightening the scope of the clause as per paragraph 6 of the minutes.
005045 - 010954	The Chairman Assistant Legal Adviser 2 The Administration Miss Margaret NG	<u>Clause 10</u> (a) Difference between "ascertaining" and "ensuring". (b) The use of the term "recordings" or "records" (c) Whether or not provision relating to the payment of a reasonable amount of compensation for undue delay or detain of a foreign ship should be provided for under the Bill. (d) Reference to the Australian Maritime Transport Security Act 2003.	The Administration to follow-up as per paragraphs 7 to 8 of the minutes.
010955 - 013325	The Chairman The Administration Miss Margaret NG Assistant Legal Adviser 2	<u>Clause 11</u> Members raised no query. <u>Clause 12</u> Issuance of a warrant by a magistrate. <u>Clause 13</u> (a) The need for an authorized officer to use reasonable force in exercising his powers under clauses 10 and 11. (b) Recklessness in providing/producing document or information that was false in a material particular.	The Administration to follow-up as per paragraphs 9 to 11 of the minutes.
013326 - 013805	The Chairman The Administration Assistant Legal Adviser 2 Miss Margaret NG	<u>Clause 14</u> (a) Example of short international voyages. (b) Proposed scope of "class of port facilities".	The Administration to follow-up as per paragraphs 12 to 13 of the minutes.



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
013805 - 020431	The Chairman The Administration Miss Margaret NG	<u>Clause 15</u>  (a) Difference between making and taking a decision. (b) Whether it was implicit that a professional judgement was made in good faith. (c) Whether clause 15 was sufficient to encapsulate Regulation 8 of the Convention which was of a wider scope.	The Administration to follow-up as per paragraphs 14 to 15 of the minutes.
020432 - 021631	The Chairman The Administration Miss Margaret NG Mr SIN Chung-kai	<u>Draft Merchant Shipping (Security of Ships and Port Facilities) Rules</u> (a) The need to annotate the Rules with reference to the texts of the Convention and the Code. (b) Copyright of the Convention and the Code.	The Administration to follow-up as per paragraphs 16 to 17 of the minutes.