

立法會
Legislative Council

LC Paper No. CB(1)2329/03-04
(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 third meeting
held on Wednesday, 2 June 2004, at 10:30 am
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

I Meeting with the Administration

Background information on the Bill

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| LC Paper No. CB(3)471/03-04 | - The Bill |
| LC Paper No. CB(1)2020/03-04(01) | - 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
- 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)
- (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
- LC Paper No. CB(1)2032/03-04(01) - Marked-up copy of the Merchant Shipping (Security of Ships and Port Facilities) Rules provided by the Administration (English version only)
(tabled and subsequently issued on 3.6.2004)
- LC Paper No. CB(1)2032/03-04(02) - Examples of localizing international conventions into domestic merchant-shipping legislation (English version only)
(tabled and subsequently issued on 3.6.2004)

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).

2. For the purpose of considering, inter alia, the Administration's proposed Committee Stage amendments (CSAs) to the Bill, and its proposed amendments to the draft Merchant Shipping (Security of Ships and Port Facilities) Rules, members agreed to hold a further meeting on Tuesday, 8 June 2004, from 2:30 pm to 6:30 pm.

3. In order that the relevant legislation (the Bill and the subsidiary legislation) could be enacted in time for Hong Kong to implement the Convention and the Code on 1 July 2004, the Administration had proposed to resume Second Reading debate on the Bill on 23 June 2004. In accordance with existing procedures, the Administration was required to give notice of resumption of Second Reading debate by 7 June 2004, i.e. before the Bills Committee concluded scrutiny and reported to the House Committee. Having regard to the special circumstances and the urgency of the legislative proposals, the Bills Committee agreed on an exceptional basis that the Administration could give the notice for resumption on 7 June 2004.

4. Miss Margaret NG requested to put on record her strong request that the Administration should provide an explanation on the urgency of the legislative proposals and the tight time frame put before members. Members also stressed that such exceptional arrangement should not be considered as a precedent.

Clause-by-clause examination of the Bill

Clause 17 - Co-operation with other Contracting Governments

5. The Administration agreed to delete the clause to avoid unnecessary confusion.

Clause 18 - Access to Convention and Code

6. The Administration would delete clause 18(1) after confirming with the International Maritime Organization (IMO) that it would not give its consent for the Government of Hong Kong Special Administrative Region (SAR) to upload the texts of the Convention and the Code onto the SAR Government's website.

Notwithstanding the deletion of clause 18(1), Mr SIN Chung-kai considered that the Administration would still be able to make available the texts of the Convention and the Code on its website after it had settled the copyright issue with IMO. The Administration would provide relevant correspondence with IMO on the copyright issue for members' reference. The Administration had undertaken to attach the relevant extract from the Convention and Code to the loose-leaf edition of the Laws of Hong Kong, which would contain the Bill after its enactment.

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

Rule 2 - Interpretation

7. The Administration agreed to adopt the definition of "company" in the Convention with minor modification.

8. The Administration was requested to delete "for the purposes of this Ordinance" in the definitions of "company security officer" and "ship security officer"; and to cross out the references of the Code for the two terms under Rule 10(1). The functions of the ship security officers and company security officers would be spelt out in Rule 10(2). The Administration was requested to adopt the same drafting approach for the definition on "port facility security officer" and Rule 25.

9. In connection with the definition of "Interim Security Certificate", the Administration was requested to consider importing section 19.4.1.1, 19.4.1.2, 19.4.1.3 and 19.4.1.4 of part A of the Code into Rule 17 and set out the restrictive circumstances in which an Interim International Ship Security Certificate would be issued.

10. The Chairman requested the Administration to be consistent in the use of the term "International Ship Security Certificate" and "Security Certificate".

Rule 2A - Director may exercise power under the Convention or the Code

11. The Administration would delete Rule 2A since there were already specific provisions in the Rules on the powers that might be exercised by a Contracting Government or an Administration pursuant to the Convention or the Code. If there was any new power to be exercised, it should be specifically provided for.

Rule 3 - Setting of security levels

12. The Administration agreed to amend the provision to provide that the Director of Marine (the Director) should set and promulgate security levels with reference to or having regard to section 4.1 of part A of the Code.

Rule 4 - Security instructions

13. The Administration was requested to add a provision under Rule 4(1) indicating the ways by which the Director would promulgate security instructions when security level 3 was set. It was also necessary to specify under Rule 4(3) that the security instruction was given "under subrule (1)".

14. The Administration agreed to re-draft the penal provision in Rule 4(4) to set out more clearly the ingredients for the offence. The Administration was requested to improve the drafting arrangement of Rule 4(5) in the light of the amendments to Rule 4(4).

Rule 5 - Delegation of powers to recognized security organizations

15. Members pointed out that the Director's powers under the Rules to authorize/delegate should derive from the Ordinance. As such, the Administration was requested to include under Clause 6(2)(c) of the Bill those security-related duties under section 4.3 of the Code that could not be delegated to a recognized security organization. The Assistant Legal Adviser 2 pointed out that there was a difference between "delegation" and "authorization" in the context of Hong Kong legislation in that under section 43 of Interpretation and General Clauses Ordinance (Cap.1), "delegation" would mean "delegation" to subordinates or to other public officers. The Administration was asked to re-consider the appropriate term to be used.

Rule 6 - Declaration of closed area

16. The Administration would consider whether it was necessary to specify the ways by which the Director would promulgate his declaration of closed area under Rule 6(1).

17. The Administration agreed to re-draft the penal provision in Rule 6(2) along the lines of Rule 4(4) with a view to setting out the circumstances in which the person who was in control of the vessel would commit an offence.

Rule 11 - Control of ships in Hong Kong

Rule 12 - Control of ships intending to enter Hong Kong

18. After discussion, the Chairman reminded the Administration to ensure that the numberings of the regulations of the Convention referred to under Rule 11(1) and Rule 12(1) were listed in a clear and accurate manner.

Rule 14 - Certificates for Hong Kong ships

19. The Administration was requested to re-draft Rule 14(2) and (3) to provide clearly that the master of a ship would commit an offence if he allowed a Hong Kong ship to engage on an international voyage without keeping on board either a valid Security Certificate or a valid Interim Security Certificate.

Rule 15 - International Ship Security Certificates
Rule 32 - Appeals

20. The Administration was requested to advise whether the aggrieved parties could seek judicial review directly without first lodging an appeal to a court of survey against the decision of the Director to refuse to issue or endorse an International Ship Security Certificate under Rule 15.

Date of next meeting

21. Members noted that the next meeting of the Bills Committee would be held on Friday, 4 June 2004 from 3:30 pm to 6:00 pm.

II Any other business

22. There being no other business, the meeting ended at 2:15 pm.

Council Business Division 1
Legislative Council Secretariat
9 July 2004

**Proceedings of the meeting of the
Bills Committee on Merchant Shipping (Security of Ships and Port Facilities) Bill
on Wednesday, 2 June 2004, at 10:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000-001254	The Chairman Mr SIN Chung-kai Mr David CHU Ms Margaret NG The Administration	(a) Introductory remarks. (b) Date of fifth meeting. (c) Members noted that the Administration intended to resume Second Reading debate on the Bill on 23 June 2004 and agreed that the Administration could give the notice for resumption on 7 June 2004. (d) Miss Margaret NG requested to put on record her strong request that the Administration should provide an explanation on the urgency of the legislative proposals and the tight time frame put before members. (e) The Administration tabled the following documents: (i) Marked-up copy of the Merchant Shipping (Security of Ships and Port Facilities) Rules provided by the Administration (CB(1)2032/03-04(01)). (ii) Examples of localizing international conventions into domestic merchant-shipping legislation (CB(1)2032/03-04(02))	
001255-001325	The Chairman	<u>Clause 16</u> Members raised no query.	
001326-001939	The Chairman Assistant Legal Adviser 2 The Administration Mr SIN Chung-kai Ms Margaret NG	<u>Clause 17</u> The clause concerned the co-operation with other Contracting Governments under the Convention and the Code.	The Administration to delete Clause 17 as per paragraph 5 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
001940-002224	The Chairman The Administration Mr SIN Chung-kai Ms Margaret NG	<u>Clause 18</u> (a) Copyright of the Convention and the Code. (b) The need to make available the texts of the Convention and the Code for public access to increase transparency and certainty.	The Administration to note and act accordingly as per paragraph 6 of the minutes.
002225-002319	The Chairman Mr SIN Chung-kai Ms Margaret NG	<u>Clause 19</u> Effect of consequential amendments.	
002320-012918	The Chairman The Administration Ms Margaret NG Assistant Legal Adviser 2 Ms SIN Chung-kai	<u>Draft Merchant Shipping (Security of Ships and Port Facilities) Rules (the Rules)</u> <u>Rule 2</u> (a) To adopt the definition of "company" under the Convention. (b) To improve the drafting of the definitions of "company security officer" and "ship security officer" and Rule 10(1); and make similar changes to the definition of "port facility security plan" and Rule 25. (c) Members raised no query on the definitions of "Declaration of security", "International Safety Management Code", "management", and "ship security plan". (d) Extent and ways of incorporating the Convention and the Code into the Rules. (e) Whether to import section 19.4 of part A of the Code into Rule 17. (f) Consistency in the use of the term "International Ship Security Certificate" and "Security Certificate".	The Administration to follow-up as per paragraphs 7 to 10 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
012919-013313	The Chairman Miss Margaret NG The Administration	<u>Rule 2A</u> Specific powers exercisable under the Convention and the Code should be provided for explicitly.	The Administration to delete Rule 2A as per paragraph 11 of the minutes.
013314-014837	The Chairman Miss Margaret NG The Administration	<u>Rule 3</u> The need for the Director of Marine (the Director) to promulgate the security levels set with reference or having regard to the Code.	The Administration to amend Rule 3 as per paragraph 12 of the minutes.
014838-020421	The Chairman Miss Margaret NG The Administration	<u>Rule 4</u> (a) Ways by which the Director would promulgate security instructions when security levels 3 was set. (b) The ingredients for the offence under Rule 4(4) and the drafting of Rule 4(5).	The Administration to follow-up the drafting of Rule 4 as per paragraphs 13 and 14 of the minutes.
020422-021456	The Chairman Miss Margaret NG Assistant Legal Adviser 2 The Administration	<u>Rule 5</u> Director's powers under the Rules to authorize/delegate should derive from the Ordinance.	The Administration to amend Clause 6(2)(c) of the Bill and to follow-up as per paragraph 15 of the minutes.
021457-023244	BREAK		
023245-025031	The Chairman Miss Margaret NG Assistant Legal Adviser 2 The Administration	<u>Rule 5</u> Difference between "delegation" and "authorization".	
025032-025610	The Chairman Miss Margaret NG Assistant Legal Adviser 2 The Administration	<u>Rule 6</u> (a) Ways by which the Director would promulgate the declaration of closed area. (b) The need to set out the circumstances in which the person who was in control of the vessel would commit an offence.	The Administration to follow-up as per paragraphs 16 and 17 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
025611-030516	The Chairman Miss Margaret NG Assistant Legal Adviser 2 The Administration	<u>Rule 7 and Rule 8</u> The Administration advised that ships which failed to comply with the Convention and the Code might result in cancellation of their Security Certificates.	
030517-030706	The Chairman	<u>Rule 9 and Rule 10</u> Members raised no query.	
030707-031901	The Chairman Miss Margaret NG Assistant Legal Adviser 2 The Administration	<u>Rule 11 and Rule 12</u> Control measures to be imposed by the Director.	
031902-032036	The Chairman Assistant Legal Adviser 2 The Administration	<u>Rule 13</u> The Administration advised that there was no penal provision under the Rule.	
032037-032940	The Chairman Miss Margaret NG Assistant Legal Adviser 2 Mr SIN Chung-kai The Administration	<u>Rule 14</u> (a) Circumstances under which the master of a ship would commit an offence. (b) Definition of "yacht".	The Administration to re-draft Rule 14(2) and (3) as per paragraph 19 of the minutes.
032941-033619	The Chairman Miss Margaret NG The Administration	<u>Rule 15 and Rule 32</u> Whether the aggrieved parties could seek judicial review directly without first lodging an appeal to a court of survey against the decision of the Director to refuse to issue or endorse an International Ship Security Certificate.	The Administration to advise as per paragraph 20 of the minutes.
033620-033742	The Chairman Members The Administration	Dates of next two meetings.	