

立法會
Legislative Council

LC Paper No. CB(1)2330/03-04
(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 fourth meeting
held on Friday, 4 June 2004, at 3:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, JP (Chairman)
Hon Margaret NG
Hon SIN Chung-kai
- Members absent** : Dr Hon David CHU Yu-lin, JP
- 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

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

- 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)
- (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(02) - Examples of localizing international conventions into domestic merchant-shipping legislation (English version only)
- LC Paper No. CB(1)2055/03-04(02) - The Administration's reply to members' concerns on the urgency in scrutinizing the Bill and the outcome of consultation with the industry raised at the meeting on 28 May 2004
(tabled and subsequently issued on 7 June 2004)

- LC Paper No. CB(1)2055/03-04(03) - Committee Stage Amendments
(*tabled and subsequently issued on 7 June 2004*) proposed by the Administration to the Bill (as at 4 June 2004) (English version only)
- LC Paper No. CB(1)2057/03-04(01) - The powers which might be
(*issued on 4.6.2004*) exercised under Chapter XI-2 of the SOLAS Convention or the ISPS Code as stated in clause 6(2)(j) of the Bill (English version only)
- LC Paper No. CB(1)2057/03-04(02) - Details of three similar
(*issued on 4.6.2004*) precedents of recklessness referred to under clause 13(5)(b), namely Dogs and Cats Ordinance (Cap 167) Section 8, Civil Aviation (Insurance) Order (Cap 448F) Section 14 and United Nations Sanctions (Afghanistan) Regulation (Cap 537K) Section 3J

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 (in English, Chinese version to follow)
- LC Paper No. CB(1)2055/03-04(01) - Letter dated 3 June 2004 from the ALA to the Administration with marked-up comments on the Draft Merchant Shipping (Security of Ships and Port Facilities) Rules (English version only)

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

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

Rule 17 - Interim International Ship Security Certificates

2. Members agreed to include the reference to sections of 19.4.1 and 19.4.2 of the Code under Rule 17.

Rule 18 – Cancellation of certificates

3. The Administration would delete the reference of “under rule 15” and “under rule 17” in Rule 18(1) and (2) respectively; and to delete "referred to in subrule (1) or (2)" in Rule 18(3).

Rule 19 – Hong Kong ships outside Hong Kong to comply with requirement of security levels

Rule 20 – Ships in Hong Kong waters to comply with requirements of security levels

4. The Administration agreed to replace “under rule 3” with “by the Director” under Rule 19(1) and (2) and Rule 20(1) and (2).

5. Members noted that during the recent consultation on the draft Rules, the industry requested to change “without delay” to “without undue delay” in Rules 27, 29(1) and 30 which were provisions related to port facility. At members' request for consistency and there being no policy objection, the Administration agreed to amend all the relevant provisions accordingly in the draft Rules where applicable.

6. Miss Margaret NG pointed out that “security level” was defined as security level set by the Director of Marine (the Director). Hence, the term “security level” should not be used to refer to security level set by another Contracting Government as provided for under Rule 19(2) and Rule 20(2). The Administration was requested to re-examine the drafting.

7. Miss Margaret NG pointed out that the Rules were meant to implement the Code and it was necessary to state clearly in the penal provisions the conditions of non-compliance and the parties (normally an individual/person but not the object such as a vessel/ship or a port facility) to be held criminally liable.

8. In response to the request of the shipping industry and with members' agreement, the Administration would re-draft Rule 20(3) to the effect that the company and the master of a ship shall commit an offence if they had failed to comply with the requirements of security levels under Rule 20(1) and (2) without reasonable excuse.

Rule 21 - Duty to notify the Director of non-compliance

9. The Administration was requested to consider re-drafting Rule 21(2) to start with the obligation on the master of the ship, followed by the three

circumstances in Rule 21(1)(a), (b) and (c).

10. Since the penal provision under Rule 21(2) only applied to non-Hong Kong ships, the Administration was requested to consider whether it was necessary to reflect clearly that if a Hong Kong ship on high seas failed to notify the Director of non-compliance under Rule 19, it might be subject to the penalty imposed by the designated authority of its next port of call.

Rule 22 - Ships to complete and keep Declarations of Security

11. The Administration agreed to state the "Declaration of Security" in full as proposed by the Assistant Legal Adviser 2.

Rule 23 - Duty to keep information and records

12. The Administration clarified that the regulation of Chapter XI-2 of the Convention referred to under Rule 23(1)(b) should be "9.2.1".

Rule 29 - Port facilities to comply with requirements of security levels

13. The Administration would replace "under rule 3" in Rule 29(1) with "by the Director". The Administration would re-draft the penal provision in Rule 29(2) along the lines of Rule 20(3).

Rule 31- Rectification of non-compliance

14. Having regard to members' concern, the Administration agreed to re-draft Rule 31(2) to spell out the ingredients of the offence more clearly and to provide that the management of the port facility would commit an offence if it had failed to rectify non-compliance without reasonable excuse.

Rule 32 - Appeals

15. The Administration reported that the missing information in square brackets under Rule 32(2) was "appeal to the Administrative Appeals Board against the decision".

16. Members agreed that the proposed information in the square brackets under Rule 32(3), i.e. "or (2)" and "14 days" should be included in this Rule.

17. The Administration proposed to delete the phrase "unless the court of survey or [], as the case may be, otherwise orders" for the sake of certainty.

Rule 33 - Fees

18. Members noted that the industry was concerned about the high level of fees as prescribed in Rule 33.

Date of next meeting

19. Members noted that the next meeting of the Bills Committee would be held on Tuesday, 8 June 2004 to consider the amendments proposed by the Administration to the Bill and draft Rules, and the Administration's response to issues raised at past meetings.

II Any other business

20. There being no other business, the meeting ended at 5:50 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 Friday, 4 June 2004, at 3:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000-000009	The Chairman	(a) Introductory remarks. (b) Members noted that the Administration tabled the following documents: (i) Letter dated 3 June 2004 from the ALA to the Administration with marked-up comments on the Draft Merchant Shipping (Security of Ships and Port Facilities) Rules (CB(1) 2055/03-04(01)). (ii) The Administration's reply to members' concerns on the urgency in scrutinizing the Bill and the outcome of consultation with the industry raised at the meeting on 28 May 2004 (CB(1) 2055/03-04(02)). (iii) Committee Stage Amendments proposed by the Administration to the Bill (as at 4 June 2004) (CB(1) 2055/03-04(02)).	
000010-000736	The Chairman The Administration Miss Margaret NG Assistant Legal Adviser 2	<u>Rule 15</u> International Ship Security Certificates could be issued by another Contracting Government.	
000737-000933	The Chairman Miss Margaret NG Assistant Legal Adviser 2	<u>Rule 16</u> The Administration advised that the reference of the Code in italics were listed to facilitate discussion only. They were not part of the Rules.	
000934-001528	The Chairman The Administration Ms Margaret NG Assistant Legal Adviser 2	<u>Rule 17</u> To include the reference to sections 19.4.1 and 19.4.2 of the Code for the sake of consistency.	The Administration to take action as per paragraph 2 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
001529-002012	The Chairman The Administration Assistant Legal Adviser 2 Miss Margaret NG	<u>Rule 18</u> To improve the drafting of the Rule.	The Administration to take action as per paragraph 3 of the minutes.
002013-004708	The Chairman The Administration Miss Margaret NG Assistant Legal Adviser 2	<u>Rule 19 & Rule 20</u> (a) To consider re-drafting Rule 19(2) and 20(2) and to sort out the use of "security level" under the Rules. (b) Whether the Rules were meant to implement or to interpret the Code.	The Administration to follow-up as per paragraphs 4 to 8 of the minutes.
004709-010705	The Chairman The Administration Mr SIN Chung-kai Ms Margaret NG Assistant Legal Adviser 2	<u>Rule 21</u> Drafting of Rule 21(1) and (2).	The Administration to take action as per paragraphs 9 and 10 of the minutes.
010706-011635	The Chairman The Administration Ms Margaret NG Assistant Legal Adviser 2	<u>Rule 22</u> (a) Consequences of non-compliance of Rule 22. (b) Control measures to be imposed by the Director were under Rule 11.	The Administration to follow-up as per paragraph 11 of the minutes.
011636-012205	The Chairman Miss Margaret NG	<u>Rules 23, 24 & 25</u> (a) Members noted that Rule 24 and Rule 25 mirrored Rule 9 and Rule 10 respectively. (b) Reference to section 9.2.1 of the Convention under Rule 23(1)(b).	The Administration to follow-up as per paragraph 12 of the minutes.
012206-012526	The Chairman Miss Margaret NG Assistant Legal Adviser 2	<u>Rules 26, 27 and 28</u> Members raised no query.	
012527-012813	The Chairman The Administration Miss Margaret NG	<u>Rule 29</u> To re-draft the penal provision under the Rule.	The Administration to follow-up as per paragraph 13 of the minutes.
012814-012820	The Chairman Miss Margaret NG	<u>Rule 30</u> Members raised no query.	

Time Marker	Speaker	Subject(s)	Action Required
012821-013245	The Chairman The Administration Miss Margaret NG	<u>Rule 31</u> (a) The ingredients of the offence. (b) To add in element of "without reasonable excuse".	The Administration to follow-up as per paragraph 14 of the minutes.
013246-020932	The Chairman The Administration Miss Margaret NG Assistant Legal Adviser 2	<u>Rule 32</u> The reason why the aggrieved company of a ship could only appeal against the Director's decision to refuse to issue or endorse a security certificate but not his decision not to approve a ship security plan.	The Administration to follow-up as per paragraphs 15 to 17 of the minutes.
020933-021230	The Chairman The Administration Mr SIN Chung-kai Miss Margaret NG	<u>Rule 33</u> The charging fees to recover costs.	
021231-021616	The Chairman The Administration Mr SIN Chung-kai Miss Margaret NG	Date of next meeting.	