

立法會
Legislative Council

LC Paper No. CB(1)2331/03-04
(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 Sixth meeting
held on Tuesday, 8 June 2004, at 4:12 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 H B CHAN
Acting 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)2078/03-04(01) - Revised marked-up
(*replacement sheet tabled and amendments proposed by the*
subsequently issued on 9.6.2004) Administration to the Bill
- LC Paper No. CB(1)2055/03-04(03) - Amendments proposed by the
Administration to the Bill (as
at 4 June 2004) (English
version only)
- LC Paper No. CB(1)2078/03-04(02) - Marked-up amendments
(*Chinese version tabled and proposed by the*
subsequently issued on 9.6. 2004) Administration to the
Merchant Shipping (Security
of Ships and Port Facilities)
Rules
- 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
(in English)
- LC Paper No. CB(1)2020/03-04(01) - Draft Merchant Shipping
(Security of Ships and Port
Facilities) Rules provided by
the Administration (in
English)

- 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 dated 1 June 2004 to issues raised at the meeting on 28 May 2004
(*Chinese version issued on 14.6.2004*)
- 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 dated 4 June 2004 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
(*Chinese version issued on 14.6. 2004*)
- LC Paper No. CB(1)2057/03-04(01) - The powers which might be 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 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

LC Paper No CB(1) 2095/03-04(01) - The Administration's response
(*English version tabled and issued dated 8 June 2004 to issues
on 9.6.2004, Chinese version issued raised at past meetings
on 14.6.2004*)

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
(*Chinese version issued on 14.6.
2004*) from the Administration to
ALA's letter of 20 May 2004

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).

2. The Chairman recapped that due to the lack of a quorum, the fifth meeting of the Bills Committee scheduled to be held at 2:30 pm on the same day had been cancelled. Some members of the Bills Committee and the Assistant Legal Adviser 2 (ALA2) had exchanged views with the Administration on the Bill informally. As all members of the Bills Committee were present at the venue after 4 pm and the public officers were still available, with the agreement of all members, the Chairman decided to call the sixth meeting of the Bills Committee to be held at 4:12 pm. The written notice of the meeting was issued by the Clerk to members thereat. The Bills Committee noted that during the informal discussion, some members had exchanged views with the Administration on its proposed amendments to the Bill. Members agreed that it would not be necessary for the Bills Committee to re-visit the clauses covered in the informal discussion.

(*Post-meeting note: Members may refer to the attached "Checklist on issues which require further consideration/follow-up action" for the issues covered in the informal discussion (paras 1 to 10).)*)

3. Miss Margaret NG requested to put on record her strong protest against the Administration for putting forward an unreasonably tight timeframe for members to scrutinize a complex Bill and its draft subsidiary legislation. Miss NG considered it undesirable that under such a tight schedule, the Bills Committee had to adopt an exceptional arrangement on this occasion to help expedite the scrutiny of the legislative proposals.

Revised marked-up amendments proposed by the Administration to the Bill (CB(1) 2078/03-04(01))

Clause 13 - Further provisions as to powers of inspection

4. The Administration agreed to amend Clause 13(5)(b) to provide clearly that if a person produced or gave to an authorized officer any document or information that was false in a material particular, being reckless as to the truth or falsity of such document or information, the person committed an offence.

Marked-up amendments proposed by the Administration to Merchant Shipping (Security of Ships and Port Facilities) Rules (CB(1)2078/03-04(02))

Rule 2 - Setting of security levels

5. The Administration agreed to delete "and promulgate such security levels".

Rule 5 - Declaration of closed area

6. To improve the drafting, the Administration agreed to re-position the phrase "without reasonable excuse" under Rule 5(2).

Rule 13 - Certificates for Hong Kong ships

7. The Administration was requested to amend Rule 13(2) to provide that the master of a Hong Kong ship shall ensure that the ship had on board either of the certificates referred to in subrule(1) while the ship was engaged on an international voyage.

Rule 19 - Ships in Hong Kong waters to comply with requirements of security levels

8. To delineate the liability of the company and the master of a ship, the Administration agreed to re-draft the penal provision to provide that if the company or the master of a ship, without reasonable excuse, failed to comply with subrule (1), the company or the master, as the case may be, committed an offence.

Rule 27 - Withdrawal of approval of port facility

9. The Administration was requested to note that "rule 27" under Rule 27(1)(a) should be "rule 26".

Legislative timetable

10. Members noted that the Administration would resume Second Reading debate on the Bill on 23 June 2004. If enacted, the Bill would be gazetted on 25 June 2004. The Secretary for Economic Development and Labour (SEDL) would then make and publish the Rules in an extraordinary issue of the Gazette before 30 June 2004. The Administration planned to table the Rules at the Council meeting on 30 June 2004.

Other issues

11. The Administration was requested to make available the revised marked-up version of the amendments proposed by the Administration to the Bill by the close of play on 9 June 2004 for onward consideration by members and ALA2. The Clerk should circulate the revised marked-up version to the Bills Committee and if necessary, the Bills Committee would hold a further meeting to consider the amendments. The Committee Stage amendments in conventional format should also be sent to the Secretariat in time for appending to the report of the Bills Committee to the House Committee.

12. Miss Margaret NG requested that SEDL gave the following undertakings at the Second Reading debate on the Bill:

- (a) that the Rules to be gazetted and tabled at the Council would be the finalized version of the set examined and agreed to by the Bills Committee; and
- (b) that the way of handling the Bill and the draft subsidiary legislation and the need to scrutinize legislative proposals of such complexity in such a tight timeframe should not be taken as a precedent and should not happen again.

II Any other business

13. There being no other business, the meeting ended at 5:25 pm.

**Proceedings of the meeting of the
Bills Committee on Merchant Shipping (Security of Ships and Port Facilities) Bill
on Tuesday, 8 June 2004, at 4:12 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000-000422	The Chairman Mr SIN Chung-kai Mr David CHU Miss Margaret NG	(a) Introductory remarks. (b) The Bills Committee agreed that it would not be necessary for the Bills Committee to revisit the clauses considered in the informal discussion held earlier. (c) Miss Margaret NG requested to put on record her strong protest against the Administration for not allowing reasonable time for the Bills Committee to scrutinize the Bill and the draft subsidiary legislation.	The Administration to note as per paragraph 3 of the minutes.
000423-000850	The Chairman The Administration Miss Margaret NG Assistant Legal Adviser 2 (ALA2)	<u>Revised marked-up amendments proposed by the Administration to the Bill (CB(1)2078/03-04(01))</u> <u>Clause 15</u> Members noted and raised no query. <u>Clause 16 - Duty to avoid undue detention or delay</u> The Chinese translation of the word "control".	
000851-001123	The Chairman Miss Margaret NG The Administration	<u>Clause 17 - Cooperation with other Contracting Governments (proposed to be deleted)</u> (a) Members noted that two replacement sheets (CB(1)2078/03-04(02)) with correct numberings from Clause 17 onward were tabled at the meeting. (b) The Administration confirmed that the Government could still perform the functions under the clause even if it was deleted.	

Time Marker	Speaker	Subject(s)	Action Required
001124-001319	The Chairman Miss Margaret NG The Administration	<p><u>Clause 18 - Access to Convention and Code (became Clause 17 after the deletion of the preceding clause)</u></p> <p>The Administration had obtained the consent of the International Maritime Organization (IMO) to display on its website the texts of the relevant documents of the IMO Conference, which contained the resolutions relating to the amendments to the Convention and the Code. This could still be done notwithstanding the deletion of clause 18(1).</p> <p><u>Clause 19 - Schedule amended (became Clause 18)</u></p> <p>Members raised no query.</p>	
001320-001738	The Chairman The Administration Miss Margaret NG ALA2	<p><u>Marked-up amendments by the Administration to Merchant Shipping (Security of Ships and Port Facilities) Rules (CB(1)2078/03-04(02))</u></p> <p><u>Rule 1</u></p> <p>The Chinese translation of the "officer" under the proposed definitions of "port facility security officer" and "ship security officer".</p>	
001739-002122	The Chairman The Administration Miss Margaret NG ALA2	<p><u>Rule 2</u></p> <p>The phrase "and promulgate such security levels" to be deleted.</p>	The Administration to follow up as per paragraph 5 of the minutes.
002123-002618	The Chairman The Administration Miss Margaret NG	<p><u>Rules 3 to 5</u></p> <p>The phrase "without reasonable excuse" to be re-positioned under Rule 5(2).</p>	The Administration to follow up as per paragraph 6 of the minutes.
002619-002920	The Chairman Miss Margaret NG ALA2 The Administration	<p><u>Rules 6 to 11</u></p> <p>Members raised no query.</p>	

Time Marker	Speaker	Subject(s)	Action Required
002921-002946	The Chairman Miss Margaret NG The Administration	<u>Rule 12</u> Members noted that the term "security system" had been added to the heading of the Rule.	
002947-003306	The Chairman The Administration Miss Margaret NG	<u>Rule 13</u> The need to ensure that a Hong Kong ship should have on board either of the certificates referred to in subrule (1) while the ship was engaged on an international voyage.	The Administration to follow up as per paragraph 7 of the minutes.
003307-003535	The Chairman Miss Margaret NG	<u>Rules 14 to 18</u> Members raised no query.	
003536-004514	The Chairman The Administration Miss Margaret NG	<u>Rule 19</u> The need to delineate the criminal liability of the company and the master of a ship under Rule 19(3).	The Administration to follow up as per paragraph 8 of the minutes.
004515-004927	The Chairman Miss Margaret NG ALA2 The Administration	<u>Rules 20 - 30</u> "rule 27" under Rule 27(1)(a) should be "rule 26".	The Administration to follow up as per paragraph 9 of the minutes.
004928-005314	The Chairman The Administration Miss Margaret NG	<u>Rule 31</u> The Administration confirmed that decisions which could be appealed against under the Rule referred to decisions of the Director of Marine to refuse to issue or to cancel an International Ship Security Certificate/ Interim Ship Security Certificate.	
005315-005358	The Chairman The Administration Miss Margaret NG	<u>Rules 32 to 33</u> Members raised no query.	
005359-010407	The Chairman The Administration Miss Margaret NG	<u>Clause 13</u> The need to re-draft the offence clause to provide more clearly that a person would commit an offence if he produced or gave any document or information to an authorized	The Administration to follow up as per paragraph 4 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		officer that was false in a material particular, being reckless as to its truth of falsity.	
005329-011112	The Chairman The Administration Miss Margaret NG The Clerk	(a) Legislative timetable. (b) Timelines for the Administration to provide the Bills Committee the revised marked-up version of its proposed amendments to the Bill and the Committee Stage amendments in conventional format. (c) Undertakings to be given by the Administration at the Second Reading debate on the Bill.	The Administration to follow up as per paragraphs 10 and 12 of the minutes.

Council Business Division 1
Legislative Council Secretariat
9 July 2004

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

**Checklist on issues which require further consideration/follow-up action
(Position as at 9 July 2004)**

Date of meeting	Issues	Outcome
8.6.2004	<p><u>Marked-up version of the Committee Stage amendments proposed by the Administration to the Bill (CB(1) 2078/03-04(01))</u></p> <p><u>Long Title</u></p> <p>1. The Administration was requested to add "to enhance security of ships and port facilities" after " ... related provisions in the Convention" in the long title.</p> <p><u>Clause 3 - Interpretation</u></p> <p>2. Members noted that both the terms "Code" and "Rules" were translated as "規則". To differentiate the two, the Administration agreed to amend the Chinese translation of the "Code" to read as "國際規則".</p> <p>3. On the definition of "ship/port interface", the Administration was requested to change "provisions" to "provision" to reflect that the interface was where the provision of port services took place.</p> <p><u>Clause 6 - Rules</u></p> <p>4. The Administration was requested to consider putting the phrase "subject to exceptions specified in section 4.3 of part A of the Code" at the beginning or at the end of Rule 6(2)(c).</p>	<p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin has subsequently moved CSA to put the phrase at the end of Rule 6(2)(c).</p>

Date of meeting	Issues	Outcome
	<p>5. The Administration agreed to change the translation of "procedural provision" under Rule 6(d) from "程序條文" to "與程序有關的條文".</p> <p>6. The Administration was requested to switch the sequence of Rule 6(f) and (g).</p> <p>7. The Administration agreed to add the article "the" at the appropriate places in Rule 6(k)(i) and (ii).</p> <p>8. Members considered that Rule 6(5) would not give rise to any implication on the legal effect or otherwise of the provisions in the Convention and the Code.</p> <p><u>Clause 9 - Authorized Officers</u></p> <p>9. The Administration agreed to amend Clause 9(2) to provide that an authorized officer might exercise such powers or perform such duties as might be conferred or imposed on him pursuant to this Ordinance, the Convention and the Code.</p> <p><u>Clause 10 - Inspections and control of ships</u></p> <p>10. The Administration proposed and members agreed to amend the first part of Clause 10(f) to read "if a direction made under paragraph (e) is not complied with, to detain the ship until the direction is complied with".</p>	<p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>The Administration subsequently advised that Rule 6(5) would be deleted.</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p>