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1 June 2004

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Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
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Central
Hong Kong

BY FAX (2121 0420) ONLY
(Total 4 pages)

Dear Miss Yeung,

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

As discussed at the first meeting, we would like to respond to the issues raised as follows:

Clause 3

- a) We propose to add (“Administration”(主管機關), in relation to a ship, means the government of the state whose flag the ship is entitled to fly.)
- b) We will revert the definition “port facility” in line with the Convention and consequential amendment to clause 7(1)(a) of the Bill.
- c) We propose to add “(c) a mobile offshore drilling unit” in the definition of “ship” and add a definition for “mobile offshore drilling unit” in line with the Convention.
- d) We will define “security levels” and “security instructions”.

Clause 4 (1) & (2)

e) We propose to amend to:

“(1) This Ordinance applies –

- (i) to a Hong Kong ship, whether or not it is in Hong Kong;
- (ii) to a non-Hong Kong ship intending to enter Hong Kong or in Hong Kong;
- (iii) for the purpose of imposing restriction for abating or containing any security threat, to any vessel in Hong Kong.”

Clause 5

f) This clause would only apply to port facilities primarily used by vessels not engaged on international voyages. At present, no such port facilities are identified. In case in future a port facility which has not been used by ocean-going wishes to extent its business to serve ocean-going ships occasionally, subject to the application of the port facilities, the following scope of extent of application generally falls within the following:

- (i) The port facility needs to appoint a Port Facility Security Officer in accordance with the Code;
 - (ii) The port facility needs to have security assessment conducted, and a security plan developed for interfacing with ships engaged in international voyages, which shall be approved by the Director;
 - (iii) The security measures in the security plan in response to the security level set by the Director would need to be implemented [1 day] prior to interfacing with a ship engaged in international voyage, until the ship departs from the port facility;
 - (iv) Advance notice should be given to the Director on any schedule to interface with ships engaged on international voyages.
- g) The above may vary depending on the actual situation. The extent of application will need to be considered case by case.

Clause 6(2)(b)

- h) There are 5 precedents for provisions empowering the making of subsidiary legislation with high level of penalty, namely United Nations Sanctions Ordinance (Cap 537) Section 3(3), Estate Agents Ordinance (Cap 511) Section 56(3), Securities and Future Ordinance (Cap 571) Section 398(6), Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap 413) Section 3(5)(g) and Broadcasting Ordinance (Cap 562) Section 42(5)&(6).

Clause 6(2)(d)

- i) We will amend to:

“(d) make procedural provision for –

- (i) the recognition under section 8; and
- (ii) the authorization of any recognized security organization pursuant to paragraph (c);”

Clause 6(2)(f)

- j) We propose to amend to:

“(f) make provision for appeal against a decision made by the Direct or under this Ordinance;”

Clause 6(2)(j)

- k) We agree to delete “the Secretary” as proposed. We will revert the power that may exercised by a Contracting Government; an Administration or any person who is authorized by a Contracting Government.

Clause 6(3)

- l) We propose to amend to:

“(3) The rules made under this section may, to the extent required for the operation of section 4, have effect outside Hong Kong.”

Clause 6(4)

m) We will revert our policy intent.

Clause 6(5)

n) Reference could be made to the:

- (i) Merchant Shipping (Safety)(High Speed Craft) Regulation, Cap 369AW and
 - (ii) Merchant Shipping (Safety)(Safety Management) Regulation, Cap 369AX
- o) Cap 369AW requires high speed craft to comply with the IMO High Speed Craft (HSC) Code while Cap 369AX requires ships to comply with the IMO International Safety Management (ISM) Code without setting out the codes in the regulations. For Cap 369AW, non-compliance with the provisions of HSC Code will constitute offence and will be subject to penalty.

Yours sincerely,

(H B Chan)

for Secretary for Economic Development and Labour

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