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Miss Polly Yeung
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

BY FAX (2121 0420) ONLY
(Total 2 pages)

Dear Miss Yeung,

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

We would like to supplement our reply to the issues raised by Members at the past meetings as follows:

Clause 6(4) of the Bill

- a) Our policy intent to provide for the Rule to amend the Schedule to the Administrative Appeals Board Ordinance (Cap 442) is to provide appeal channel against the Director's decision made under the Rules. In the present drafting, the management of a designated port facility could lodge an appeal against the Director's decision to withdraw the approval of its port facility security plan under rule 27.

Clause 18 of the Bill

- b) As all International Maritime Organization (IMO) publications are protected by the term of the Universal Copyright Convention on intellectual property, our proposal to attach the relevant extract from the Convention and the Code to loose-leaf edition of the Laws of Hong Kong will not resolve the copyright issue.

- c) However, in the course of legislative process, we have in fact sought and received consent from the IMO for us to display the texts of IMO's Conference Documents which contain the Conference resolutions relating to the amendments to the Convention and the Code on the Marine Department's website. As such, the Convention and the Code is available for public access already. It is therefore arguably unnecessary to attach the relevant extract from the Convention and the Code to loose-leaf edition of the Laws of Hong Kong.

Rule 32 – Appeals

- d) In response to Members' queries on whether the aggrieved parties could seek judicial review directly without lodging an appeal to a court of survey, according to the case *R v Epping and Harlow General Commissioners exp Goldstow* [1983] 3 All ER 257, 262, it is a cardinal rule that, save in the most exceptional cases, jurisdiction of judicial review will not be exercised where other remedies exist and have not been used. The courts will normally insist on exhausting an available right of appeal before hearing an application for leave for judicial review.

Yours sincerely,

(H B Chan)

for Secretary for Economic Development and Labour

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