

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

CB(1)2095/03-04(02)

**Checklist on issues which require further consideration/follow-up action  
(Position as at 8 June 2004)**

Date of meeting	Issues	Outcome
28.5.2004	<p><b><u>Draft Merchant Shipping (Security of Ships and Port Facilities) Regulation</u></b></p> <p>1. The Deputy Law Draftsman said that the final draft of the Merchant Shipping (Security of Ships and Port Facilities) Regulation (the Regulation) would be ready by the early part of the following week.</p> <p><b><u>Clause-by-clause examination of the Bill</u></b></p> <p><u>Long Title</u></p> <p>2. The Administration would move a Committee Stage amendment (CSA) to re-arrange the long title to read "To implement the December 2002 amendments to the International Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Security Code and related provisions in the Convention for enhancing security of ships and port facilities; and to provide for incidental or related matters."</p> <p><u>Clause 1 – Short title and commencement</u></p> <p>3. The Administration explained that clause 1(2), (3) and (4) sought to provide the legal basis for certain work to be performed prior to the enactment of the Bill. These proposed retrospective provisions could be deleted if the Bill could be enacted before 1 July 2004 when the new provisions of the International Convention for the Safety of Life at Sea, 1974 (the Convention) and the International Ship and Port Facility Security Code (the Code) adopted by the International Maritime Organization (IMO) came into operation. If the Bill could not be enacted on or before 1 July 2004, the retrospective provisions would allow the Director of Marine (D of M) to have bare minimum power to carry out control on ships visiting and staying in Hong Kong, such as the power to inspect and deny entry of ships, and detain non-compliance ships. Members agreed to</p>	<p>CB(1)2020/03-04(01) and CB(1)2032/03-04(01) issued on 2 and 3 June 2004</p> <p>Admin to move CSA</p> <p>Sub-clauses (2), (3) and (4) deleted</p>

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	<p>defer the deliberation of this clause and would re-visit this clause later.</p> <p>4. The Administration would provide a list of proposed recognized security organizations as referred under clause 1(4).</p> <p><u>Clause 3 - Interpretation</u></p> <p>5. The Assistant Legal Adviser 2 (ALA2) would consider the Administration's proposed definition on "an Administration".</p> <p>6. The Administration agreed to amend the definitions of "authorized officer", "high-speed craft" and "international voyage" as proposed by ALA2.</p> <p>7. The Administration would amend the definition of "port facility" to be in line with that in the Convention and consequentially to amend clause 7(1)(a) of the Bill.</p> <p>8. The Administration would consider in consultation with ALA2 the revised definition of "ship" under the Bill.</p> <p>9. Members noted that substantive provisions on "security levels" and "security instructions" were proposed to be contained in the Regulation made under the Bill. However, members considered it necessary to define "security levels" and "security instructions" in the principal legislation in order to suitably limit the power conferred on D of M under clause 6(2)(g) of the Bill. The Administration would consider members' request.</p> <p><u>Clause 4 – Application to ships</u></p> <p>10. As the term "ship" was narrowly defined in the Bill and in exceptional circumstances, D of M might need to extend application of the Bill to other vessels (such as when it was necessary to declare an "exclusion zone"), the Administration would consider improving the drafting of clause 4(1) and (2) and if necessary, revise the heading for the section.</p>	<p>CB(1)2015/03-04(01) issued on 1 June 2004</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to revert to members</p> <p>Admin to move CSA</p> <p>Revised definitions of "security levels" and "security instructions" provided in the Rules</p> <p>Admin to move CSA</p>

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	<p>11. On the rationale for clause 4(3)(c), the Administration explained that pursuant to the Protocol of 1988 relating to the Convention, ships and vessels of non-contracting governments should receive equal treatment as far as the exemption was concerned. At the request of the Chairman, the Administration would provide a copy of the Protocol of 1988 for members' reference.</p> <p><u>Clause 5 – Extent of application to certain port facilities</u></p> <p>12. The Administration agreed to delete the phrase "in his opinion".</p> <p>13. Members also noted that after D of M had decided on the extent of application to certain port facilities, such information would be posted on the IMO website as well as specified in the relevant certificate to be issued by D of M to operators of port facilities. The Administration was requested to improve the drafting of the clause to reflect more clearly that the discretion of D of M would be exercised on a case by case basis and to consider whether the extent of relaxation should be explicitly stipulated in the Regulation. At the Chairman's request, the Administration would provide a paper on the justifications for conferring the discretionary power on D of M and on how D of M might specify the extent of application, (for example, whether by Notice in the Gazette).</p> <p><u>Clause 6 - Regulation</u></p> <p>14. The Chairman requested the Administration to ensure consistency on the use of the term "regulation" and "regulations".</p> <p>15. In response to the concern raised by members and ALA2 about clause 6(2)(b) which exceeded the limitation provided in section 28(1)(e) of the Interpretation and General Clauses Ordinance (Cap 1) that subsidiary legislation might create offences punishable on summary conviction by a fine of not exceeding \$5,000 or by a term of imprisonment not exceeding 6 months, the Chairman requested the Administration to provide a paper explaining the justification for expanding the power under the proposed Regulation and details of similar precedent cases.</p> <p>16. The Administration would improve the drafting of clause 6(2)(d) to the effect that the Regulation might make provision on procedures for recognition under section 8.</p>	<p>CB(1)2015/03-04(02) issued on 1 June 2004</p> <p>Admin to move CSA</p> <p>CB(1)2020/03-04(02) issued on 2 June 2004. Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p>

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	<p>17. The Administration would consider introducing a CSA to clause 6(2)(f) to provide that a decision made by the D of M pursuant to the Ordinance might be subject to appeal and if appropriate, to specify the scope of such decisions. It would also consider the suggestion of stipulating details of the procedures for appeal in the Regulation.</p> <p>18. The Administration was requested to advise in writing the powers which might be exercised under Chapter XI-2 of the Convention or the Code by a Contracting Government, an Administration or any person who was authorized by a Contracting Government as stated in clause 6(2)(j). The Administration would consider whether the reference of "the Secretary " in the clause could be deleted.</p> <p>19. The Administration agreed to amend clause 6(1), 6(2)(b), (k), (m) and 6(5), as suggested by ALA2.</p> <p>20. The Administration would consider members' view that clause 6(3) should make reference to clause 4 so that the extra-territorial effect of the Regulation would not exceed that of the Ordinance.</p> <p>21. At the request of members, the Administration would clarify the intention under clause 6(4) which provided for the Regulation to amend the Schedule to the Administrative Appeals Board Ordinance (Cap 442).</p> <p>22. On clause 6(5), ALA2 pointed out that making reference to the provisions of the Convention and the Code did not mean that they could be incorporated as part of Hong Kong law. On the drafting approach adopted to give effect to international conventions by way of domestic legislation, the Chairman asked the Administration to provide information on the past and present arrangements of localizing international conventions into domestic merchant-shiping legislation.</p>	<p>Admin to move CSA</p> <p>CB(1)2057/03-04(01) issued on 4 June 2004. Admin to move CSA to delete "the Secretary".</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Para a) of LC Paper No. CB(1)2095/03-04(01) issued on 8 June 2004</p> <p>Precedents given in CB(1)2020/03-04(02) (paras (n) and (o) issued on 2 June 2004 and CB(1)2032/03-04(02) issued on 3 June 2004.</p>

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1.6.2004	<p><b><u>Clause-by-clause examination of the Bill</u></b></p> <p><u>Clause 7 - Declaration of port facility</u></p> <p>1. The Administration agreed to re-draft the definition of "port facility" under clause 3 incorporating clause 7(1)(a), and to empower the Director who might by notice published in the Gazette to vary the particulars of such port facility under clause 7(1). Such "particulars", which should include the delineation of boundary, hours of operation and the names of facilities, should also be included in the definition under clause 3. Subject to the revised definition of "port facility" in clause 3, members would have no objection to clause 7(2) that the notice published under clause 7(1) was not subsidiary legislation.</p> <p>2. The Administration agreed to add "to declare or" at the start of clause 7(3)(b) so that consistency could be achieved between clause 7(3)(a) and (b).</p> <p>3. Miss Margaret NG pointed out the discrepancy between clause 7(4) and 8(5) in that the scope of the former clause was much wider. To avoid unintended consequences, the Administration agreed to bring clause 7(4) in line with clause 8(5) by limiting the scope of clause 7(4) to the decisions of D of M. To avoid any possible interpretation that the result of an appeal, instead of the lodging of an appeal, against a decision of D of M would continue to prevent the decision from taking effect, the Administration agreed to specify "The lodging of an appeal" for the purpose of both clauses 7(4) and 8(5).</p> <p><u>Clause 8 - Recognized security organization</u></p> <p>4. The Administration agreed to add "or an organization" after "person" under clause 8(1) to improve clarity.</p> <p><u>Clause 9 - Authorized Officers</u></p> <p>5. Members considered the scope of "any function" under clause 9(2) too wide. The Administration was requested to tighten up the scope of this clause so that only those functions which could be delegated by D of M would be covered.</p>	<p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p>

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	<p><u>Clause 10 - Inspections and control of ships</u></p> <p>6. The Administration would replace "recordings" under clause 10(d) with "records".</p> <p>7. Members noted that section 205 of the Maritime Transport Security Act 2003 of Australia enacted to implement the Convention provided for the payment of a reasonable amount of compensation for unnecessary delay of a foreign ship. However, the Bill did not contain any explicit provision relating to payment of compensation. The Administration agreed to look into the issue with reference to the Maritime Transport Security Act 2003 of Australia and revert to members.</p> <p><u>Clause 12 - Magistrate's warrants</u></p> <p>8. The Administration agreed to add "by information" before "on oath" under clause 12(2).</p> <p><u>Clause 13 - Further provisions as to powers of inspection</u></p> <p>9. The Administration agreed to delete the phrase "As far as it is practicable" under clause 13(1) as proposed by the Assistant Legal Adviser 2 (ALA2).</p> <p>10. As regards situations referred to under clause 13(5)(b) whereby a person who recklessly provided document or information that was false in a material particular would commit an offence, the Administration was requested to provide details of similar precedents of such recklessness for members' further consideration.</p> <p><u>Clause 14 - Exemption</u></p> <p>11. The Administration agreed to change "ship" under clause 14(2) to "ships" as proposed by ALA2.</p> <p>12. Members agreed to revisit "a class of port facility" under clause 14(3) in the light of the re-drafted definition of "port facility".</p>	<p>Admin to move CSA</p> <p>No such provision added</p> <p>Admin to move CSA</p> <p>Admin to move CSA</p> <p>CB(1)2057/03-04(02) issued on 4 June 2004</p> <p>Admin to move CSA</p> <p>Definition of "port facility" revised under Clause 3</p>

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	<p data-bbox="389 164 1205 196"><u>Clause 15 - Master's discretion for ship safety and security</u></p> <p data-bbox="389 244 1496 276">13. The Administration would delete "made in good faith" under clause 15.</p> <p data-bbox="389 323 1760 483">14. Miss Margaret NG questioned whether clause 15, which exonerated the master of a ship from any duty owed by him under any contract, was sufficient to encapsulate Regulation 8 of the Convention which was of a wider scope. The Administration would consider the matter. Members agreed to re-visit the clause again.</p> <p data-bbox="389 531 1361 563"><u>Draft Merchant Shipping (Security of Ships and Port Facilities) Rules</u></p> <p data-bbox="389 611 1760 675">15. The Administration was requested to consider annotating the Rules with reference to the Code and be prepared to codify or incorporate some of the provisions into the Rules.</p> <p data-bbox="389 722 1760 914">16. The Administration had checked with the International Maritime Organization that the copyright of the Convention and the Code had to be cleared before the texts could be uploaded onto the relevant website of a Contracting Government. The Administration undertook to attach the relevant extract from the Convention or Code to the loose-leaf edition of the Laws of Hong Kong, which would contain the Bill after its enactment.</p>	<p data-bbox="1771 244 2074 276">Admin to move CSA</p> <p data-bbox="1771 323 2074 355">Members to consider</p> <p data-bbox="1771 611 2101 1121">Admin's report that IMO has consented to the display of relevant IMO resolutions which contain amendments to the Convention and the Code on Marine Department's website (paras b) and c) of LC Paper No. CB(1)2095/03-04(01) issued on 8 June 2004)</p>

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2.6.2004	<p>1. 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.</p> <p><b><u>Clause-by-clause examination of the Bill</u></b></p> <p><u>Clause 17 - Co-operation with other Contracting Governments</u></p> <p>2. The Administration agreed to delete the clause to avoid unnecessary confusion.</p> <p><u>Clause 18 - Access to Convention and Code</u></p> <p>3. 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.</p>	<p>CB(1)2055/03-04(02) issued on 7 June 2004</p> <p>Admin to move CSA</p> <p>Admin's report that IMO has consented to the display of relevant IMO resolutions which contain amendments to the Convention and the Code on Marine Department's website (paras b) and c) of LC Paper No. CB(1)2095/03-04(01) issued on 8 June 2004)</p>



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	<p><b><u>Draft Merchant Shipping (Security of Ships and Port Facilities) Rules</u></b></p> <p><u>Rule 2 - Interpretation</u></p> <p>4. The Administration agreed to adopt the definition of "company" in the Convention with minor modification.</p> <p>5. 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.</p> <p>6. 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.</p> <p>7. The Chairman requested the Administration to be consistent in the use of the term "International Ship Security Certificate" and "Security Certificate".</p> <p><u>Rule 2A - Director may exercise power under the Convention or the Code</u></p> <p>8. 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.</p> <p><u>Rule 3 - Setting of security levels</u></p> <p>9. 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</p>	<p>Admin to amend</p> <p>Admin to amend</p> <p>Reference made to section 19.4.1 in Rule 16</p> <p>Admin to note</p> <p>Admin to amend</p> <p>Admin to amend</p>

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	<p>section 4.1 of part A of the Code.</p> <p><u>Rule 4 - Security instructions</u></p> <p>10. 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)".</p> <p>11. 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).</p> <p><u>Rule 5 - Delegation of powers to recognized security organizations</u></p> <p>12. 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.</p> <p><u>Rule 6 - Declaration of closed area</u></p> <p>13. 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).</p> <p>14. 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.</p>	<p>Admin to amend</p> <p>Admin to amend</p> <p>Admin to move CSA to Clause 6(2)(c)</p> <p>Admin to amend</p> <p>Admin to amend</p>

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	<p><u>Rule 11 - Control of ships in Hong Kong</u>  <u>Rule 12 - Control of ships intending to enter Hong Kong</u></p> <p>15. 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.</p> <p><u>Rule 14 - Certificates for Hong Kong ships</u></p> <p>16. 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.</p> <p><u>Rule 15 - International Ship Security Certificates</u>  <u>Rule 32 - Appeals</u></p> <p>17. 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.</p>	<p>Admin to note</p> <p>Admin to amend</p> <p>Para d) of LC Paper No. CB(1)2095/03-04(01) issued on 8 June 2004</p>

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4.6.2004	<p><b><u>Draft Merchant Shipping (Security of Ships and Port Facilities) Rules</u></b></p> <p><u>Rule 17 - Interim International Ship Security Certificates</u></p> <p>1. Members agreed to include the reference to sections of 19.4.1 and 19.4.2 of the Code under Rule 17.</p> <p><u>Rule 18 – Cancellation of certificates</u></p> <p>2. 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).</p> <p><u>Rule 19 – Hong Kong ships outside Hong Kong to comply with requirement of security levels</u>  <u>Rule 20 – Ships in Hong Kong waters to comply with requirements of security levels</u></p> <p>3. The Administration agreed to replace "under rule 3" with "by the Director" under Rule 19(1) and (2) and Rule 20(1) and (2).</p> <p>4. 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.</p> <p>5. 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.</p> <p>6. 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</p>	<p>Admin to amend</p> <p>Admin to amend</p> <p>Admin to amend</p> <p>Admin to amend</p> <p>Admin to amend</p> <p>No amendment for this purpose proposed</p> <p>Noted by Admin</p>

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	<p>parties (normally an individual/person but not the object such as a vessel/ship or a port facility) to be held criminally liable.</p> <p>7. 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.</p> <p><u>Rule 21 - Duty to notify the Director of non-compliance</u></p> <p>8. The Administration was requested to consider re-drafting Rule 21(1) to start with the obligation on the master of the ship, followed by the three circumstances in Rule 21(1)(a), (b) and (c).</p> <p>9. 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.</p> <p><u>Rule 22 - Ships to complete and keep Declarations of Security</u></p> <p>10. The Administration agreed to state the "Declaration of Security" in full as proposed by the Assistant Legal Adviser 2.</p> <p><u>Rule 23 - Duty to keep information and records</u></p> <p>11. 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".</p> <p><u>Rule 29 - Port facilities to comply with requirements of security levels</u></p> <p>12. 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).</p>	<p>Admin to amend</p> <p>Admin to amend</p> <p>No amendment for this purpose proposed</p> <p>Admin to amend</p> <p>Admin to amend</p> <p>Admin to amend</p>

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	<p><u>Rule 31- Rectification of non-compliance</u></p> <p>13. 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.</p> <p><u>Rule 32 - Appeals</u></p> <p>14. The Administration reported that the missing information in square brackets under Rule 32(2) was "appeal to the Administrative Appeals Board against the decision".</p> <p>15. 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.</p> <p>16. 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.</p> <p><u>Rule 33 - Fees</u></p> <p>17. Members noted that the industry was concerned about the high level of fees as prescribed in Rule 33.</p>	<p>Admin to amend</p> <p>Admin to amend</p> <p>Information included</p> <p>Admin to amend</p> <p>Noted by Admin</p>