

For discussion
on 16 December 2003

Legislative Council Panel on Economic Services

Merchant Shipping (Security of Ships and Port Facilities) Bill 2004

INTRODUCTION

This paper briefs Members on the proposed Merchant Shipping (Security of Ships and Port Facilities) Bill 2004 (“the Bill”).

BACKGROUND

2. Subsequent to the terrorist attacks on 11 September 2001, the International Maritime Organization (IMO) has established an international framework on maritime security, through which government agencies and the shipping and port industries can co-operate to detect and deter acts that threaten security in the maritime transport sector.

3. In December 2002, the IMO adopted new provisions in the International Convention for the Safety of Life at Sea, 1974 (SOLAS) and the International Ship and Port Facility Security (ISPS) Code. These new provisions will enter into force internationally on 1 July 2004 and will be applicable to ships engaged in international voyage as well as port facilities serving such ships.

Amendments to SOLAS

4. The new provisions are introduced by adding a new chapter (Chapter XI-2) to SOLAS which sets out the respective roles and responsibilities of Contracting Governments, shipping companies, ships and port facilities in enhancing maritime security, and makes reference to the ISPS Code which stipulates the detailed requirements for each concerned party.

5. In brief, ships engaged in international voyage and port facilities serving such ships are required to conduct security assessments for developing security plans and procedures to react to different security levels.

6. A Contracting Government is required to assess the degree of risk that a security incident may occur, set security level accordingly, and provide information on such security level to ships entitled to fly its flag and port facilities under its jurisdiction. The Contracting Government is also required to appoint a “Designated Authority” within its Government for ensuring the implementation of those provisions pertaining to port facility security and the ship/port interface and to exercise control on foreign ships entering its territorial waters or port areas.

7. The security assessment and security plan of a ship need to be approved by the ship’s flag administration or its authorized Recognized Security Organization. An International Ship Security Certificate will be issued to the ship upon verifying its compliance. Ships failing to comply with the requirements may be subject to refusal of entry into a port, detention or expulsion from a port. Similar requirements are applied to port facilities except the port facility security plans must be approved by the Designated Authority and certification is not required. However, the Contracting Government is required to provide the IMO with a list of port facilities under its jurisdiction that meet the new security requirements.

JUSTIFICATIONS

8. It is an obligation of a Contracting Government to enact the required legislation to give effect to an international convention. The appropriate authorities will need to be empowered by the legislation to ensure compliance by Hong Kong registered ships and port facilities in Hong Kong and to impose security control measures on foreign ships entering and whilst staying in the port of Hong Kong.

9. Besides legal considerations, there is also a need to enhance the level of security on Hong Kong ships and port facilities in Hong Kong to an agreed international standard. Since enhancing maritime security is a priority issue perceived by many countries, for instance, USA and the EU, which are our major trading partners, failure to legislate in Hong Kong will not only project a negative image but also jeopardize the trading relationship with these countries if Hong Kong is perceived as a weak-link in ensuring the security of the supply chain.

10. At present, provisions of the SOLAS concerning ship safety are mainly implemented through the Merchant Shipping (Safety) Ordinance, Cap. 369 and its subsidiary regulations whereas provisions on the control of ships in port are enshrined in the Shipping and Port Control Ordinance, Cap. 313 and its subsidiary regulations. However, these two ordinances focus on maritime safety and they do not deal with security issues nor cover any port facilities that are located on land. Since the security provisions will be applicable to ships as well as port facilities engaged in ship/port interface activities, a new piece of legislation encompassing security requirements for both ships and port facilities is considered more appropriate to ensure effective and consistent implementation.

IMPLEMENTATION

11. As the Director of Marine is responsible for the administration of Hong Kong registered ships and control of ships visiting the port of Hong Kong, he would be the authority to implement the security requirements in respect of ships. Since the application of the security requirements on port facilities is focused on ship/port interface, we, in consultation with the Security Bureau, have agreed that the Director of Marine is the appropriate authority to assume the role of “Designated Authority” to implement the requirements for port facilities. The Hong Kong Police Force will provide expert advice, in particular, in the setting of security levels and approval of security assessments and plans for port facilities.

THE BILL

12. To implement the international requirements, we propose to introduce a new piece of legislation namely the “Merchant Shipping (Security of Ships and Port Facilities) Bill” with one subsidiary regulation titled the “Merchant Shipping (Security of Ships and Port Facilities) Regulation” (“the Regulation”). The main purpose of the Bill is to empower the Secretary for Economic Development and Labour to make regulations and to empower the Director of Marine to implement the requirements. The Regulation will stipulate in detail the specific requirements for ships and port facilities, offences and penalties, and appeal procedures. Where appropriate, reference is made to SOLAS Chapter XI-2 and the ISPS Code without repeating the provisions in the Bill or the Regulation. The main provisions of the Bill and the Regulation are set out in **Annex 1** and **Annex 2**.

13. We plan to introduce the Bill into the Legislative Council in March 2004.

IMPLICATION OF THE PROPOSAL

14. The proposal arises from an international convention which is applicable to Hong Kong. Failure to comply with the new requirements will not only undermine the security standard for our ships and port facilities but also cause serious adverse effect on the commercial operations of the shipping and port industries of Hong Kong. On the other hand, the ability to implement the requirements effectively and efficiently will be an advantage over other competitors, as shippers would prefer those carriers and port facilities that can provide a secured and smooth service to move their cargo.

15. The Bill and the Regulation address the preventive security measures to be taken on ships and port facilities. The new provisions will establish a security management framework which may assist those government security agencies responsible for the overall security of the HKSAR.

CONSULTATION

16. During the development of the maritime security provisions at the IMO since early 2002, relevant government bureaux/departments and stakeholders of the local shipping and port industries were fully consulted through a Working Group on Maritime Security. Upon adoption of the provisions by the IMO, we have consulted the following Committees on the requirements of the proposed Bill:

- (a) Shipping Consultative Committee in January and September 2003;
- (b) Port Operations Committee in December 2002 and March 2003;
and
- (c) Port Area Security Advisory Committee in July and September 2003.

Members of these Committees supported the legislative proposal.

ADVICE SOUGHT

17. Members are invited to give their views and support the above proposal.

Economic Development and Labour Bureau
December 2003

**Main Provisions in the
Merchant Shipping (Security of Ships and Port Facilities) Bill**

(i) *Interpretation*

The provision will provide for the definitions of the terms used in the Bill, based on those given in SOLAS Chapter XI-2 and the ISPS Code.

(ii) *Application*

The provision will provide for the application of the Bill to Hong Kong registered ships, non-Hong Kong ships entering and staying in Hong Kong waters, and port facilities serving such ships in Hong Kong taking into account Regulation 2 of SOLAS Chapter XI-2. It will also allow the Director of Marine to decide on the application of the Bill on certain port facilities which only serve ships engaged on international voyage occasionally.

(iii) *Commencement*

The provision will provide for SEDL to specify the enforcement date for the Bill by notice in gazette.

(iv) *Power of SEDL to make regulations*

This provision will provide for SEDL to have the power to make regulations to: –

- (a) stipulate the security requirements under SOLAS Chapter XI-2 and the ISPS Code, including any future amendments that may be adopted by IMO;
- (b) charge fees for services provided by public officers authorized by the Director of Marine for the purpose of implementing the requirements under the Bill and its subsidiary regulations; and
- (c) create offences and prescribe penalties in case of contravention of the requirements under the Bill and its subsidiary regulation.

(v) ***Power of Director***

The provision will provide for the Director of Marine to have the necessary power to implement the security requirements under SOLAS Chapter XI-2 and the ISPS Code. Such power shall enable the Director of Marine to:—

- (a) authorize Recognized Security Organizations to approve Ship Security Plan, carry out shipboard verification, and issue International Ship Security Certificate (ISSC) or Interim ISSC in respect of Hong Kong ships;
- (b) set security levels for and issue security instructions to all ships and port facilities to which the Bill applies;
- (c) require a port facility to submit security information or to conduct a security assessment for the purpose of deciding whether this port facility should comply with the security requirements;
- (d) decide which port facilities in Hong Kong shall comply with the security requirements;
- (e) authorize Recognized Security Organizations to conduct security assessments on port facilities in Hong Kong;
- (f) approve Port Facility Security Assessments and Port Facility Security Plans and any amendments thereto;
- (g) decide when a Declaration of Security is required to be signed between a port facility in Hong Kong and ships interfacing with that facility;
- (h) inspect port facilities to verify compliance with the approved Port Facility Security Plan;
- (i) control persons boarding ships within Hong Kong waters; and
- (j) carry out control measures on ships entering and staying within Hong Kong waters, including inspection of a ship, requiring a ship to rectify non-compliance, requiring a ship to proceed to a specific location, detention of a ship in Hong Kong, and denial of entry of a ship into Hong Kong waters.

(vi) *Designated Authority*

The provision will specify that any reference to the “Designated Authority” in SOLAS Chapter XI-2 and the ISPS Code shall be the Director of Marine for the purpose of the Bill and its subsidiary regulations.

(vii) *Exemption*

The provision will provide for the Director of Marine to exempt ships or port facilities from the provisions in the legislation since SOLAS Chapter XI-2 permit Contracting Governments to enter into bilateral/multilateral security agreements and accept alternative arrangements.

**Main Provisions in the
Merchant Shipping (Security of Ships and Port Facilities) Regulation**

(i) *Interpretation*

The provision will provide for the definitions of the terms used in the Regulation.

(ii) *Application*

The provision will provide for the application of the Regulation on Hong Kong registered ships and their companies, non-Hong Kong ships calling the Hong Kong port and port facilities in Hong Kong.

(iii) *Commencement*

The provision will provide for SEDL to specify a commencement date for the regulation by a gazette notice.

(iv) *Application of Chapter XI-2 of the Convention and the Code*

The provision will specify that Hong Kong registered ships and their companies, non-Hong Kong ships intending to enter or staying within Hong Kong waters, and port facilities as determined by the Director of Marine are required to comply with the relevant requirements of SOLAS Chapter XI-2 and the ISPS Code.

(v) *International Ship Security Certificate*

The provision will provide for the certification requirement and issuing arrangements for Hong Kong registered ships, making reference to the ISPS Code.

(vi) *Interim International Ship Security Certificate*

The provision will provide for the conditions under which an interim certificate may be issued in respect of a Hong Kong registered ship and the validity of the interim certificate in accordance with the ISPS Code.

(vii) Cancellation of International Ship Security Certificate or Interim International Ship Security Certificate

The provision will empower the Director of Marine to cancel a certificate or interim certificate issued in respect of a Hong Kong registered ship, and specify the conditions under which he may do so.

(viii) Ships and Port Facilities to act upon security levels and security instructions

The provision will stipulate that ships and port facilities should act upon the security levels set by the Director of Marine and follow as appropriate the security instructions that the Director of Marine may issue.

(ix) Ships to be subject to Control Measures

The provision will stipulate that a ship intending to enter or whilst staying within Hong Kong waters is subject to control measures imposed by the Director of Marine according to SOLAS XI-2, Regulation 9.

(x) Port facilities to be subject to verification

The provision will stipulate that port facilities are subject to verification by the Director of Marine that the port facilities are operating its security system according to its approved Port Facility Security Plan. If non-compliance is identified by such verification, the concerned port facility is obliged to carry out rectification measures and report such measures to the Director of Marine.

(xi) Reporting of changes on port facilities and withdrawal of approval of Port Facility Security Plan

The provision will provide for a port facility to report to the Director of Marine on any major changes affecting the implementation of the Port Facility Security Plan and to submit a revised plan for approval. It also provide for the Director of Marine to withdraw the approval of the Port Facility Security Plan if the plan is deemed no longer appropriate due to changed circumstances.

(xii) *Keeping of Declaration of Security and Security Records*

The provision will provide for a Hong Kong registered ship to keep on board any Declaration of Security signed between the ship and port facilities or other ships for the last 10 port calls, and maintain records of the ship's security activities for 3 years. It also provide for a port facility to keep any Declaration of Survey signed with the ships it served for a minimum period of 1 year.

(xiii) *Fees*

The provision will specify the fee levels for services provided by public officers for the purpose of implementing the regulation using the hourly rate specified in Regulation 7 of the Merchant Shipping (Fees) Regulation, Cap. 281F. These services include:

- (a) any services required for the issue of an International Ship Security Certificate or an Interim International Ship Security Certificate;
- (b) any services required for the approval of a Port Facility Security Plan; and
- (c) conducting re-inspection for granting of port clearance to a ship within Hong Kong waters.

(xiv) *Offences and Penalties*

The provision will stipulate that it would be an offence if

- (a) a Hong Kong registered ship is operating without a valid certificate;
- (b) a non-Hong Kong ship within Hong Kong waters does not act upon the security level set by the Director of Marine and operate its security system according to the approved security plan, or such ship does not follow any specific instructions issued by the Director of Marine; or
- (c) a port facility does not comply with the security requirements of SOLAS and the ISPS Code, fails to act upon the security level set or follow the instructions issued by the Director of Marine and operate its security system according to the approved security plans, or fails to rectify any non-compliance identified by the Director of Marine.

The provision will also provide for the levels of fine in respect of the above contraventions, which are commensurate with similar offences under Cap. 369 and Cap. 313.

(xv) Appeal

The provision will provide for the appeal arrangements if a Hong Kong registered ship is aggrieved by the decision of the Director of Marine to refuse issuing a certificate or cancel a certificate, or if a port facility is aggrieved by the decision or action taken by the Director of Marine relating to the implementation of the security requirements on that port facility.