

立法會
Legislative Council

LC Paper No. CB(1)2011/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/10/04

Bills Committee on Merchant Shipping
(Local Vessels and Miscellaneous Amendments) Bill 2005

Meeting on
Tuesday, 28 June 2005, at 10:45 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon WONG Yung-kan, JP
- Public Officers Attending** : Miss Janice TSE
Deputy Secretary for Economic Development and Labour
(Economic Development)
- Mr R F TUPPER
Deputy Director of Marine
- Ms Alice LAU
Principal Assistant Secretary for Economic Development
and Labour (Port, Maritime and Logistics)
- Mr Y N CHAN
Senior Marine Officer (Legislation and Prosecution)
Marine Department
- Ms Marie SIU
Senior Government Counsel
Department of Justice
- Ms Amy CHAN
Government Counsel
Department of Justice

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Anita SIT
Senior Council Secretary (1)9

Action

I Election of Chairman

Ms Miriam LAU was elected as the Chairman of the Bills Committee.

II Meeting with the Administration

(— the Bill;

- the Legislative Council Brief issued by the Economic Development and Labour Bureau on 4 May 2005 (Ref: MA 70/20);
- the Legal Service Division Report under LC Paper No. LS68/04-05 dated 17 May 2005;
- letter from Hon WONG Yung-kan dated 23 June 2005 to the Administration ((LC Paper No. CB(1)1922/04-05(01));
- letter from Assistant Legal Adviser 2 dated 24 June 2005 to the Administration ((LC Paper No. CB(1)1922/04-05(02));
- consultation list of the Merchant Shipping (Local Vessels and Miscellaneous Amendments) Bill 2005 (LC Paper No. CB(1)1922/04-05(03)); and
- marked-up copy of the Bill (LC Paper No. CB(1)1922/04-05(04)).

2. Members noted the following papers tabled at the meeting –

- (a) The Administration's letter dated 28 June 2005 responding to the letter of Mr WONG Yung-kan dated 23 June 2005; and
- (b) The Administration's letter dated 27 June 2005 responding to the letter of the Assistant Legal Adviser dated 24 June 2005.

(Post-meeting note: The above papers were issued vide LC Paper No. CB(1)1942/04-05 dated 30 June 2005.)

3. The Bills Committee deliberated (index of proceedings attached at **Annex A**).

Action

4. The Administration was requested to take follow-up actions as follows –
 - (a) to provide the number of registered professional engineers (Marine & Naval Architecture) who were qualified for authorization under section 7 of Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (“LVO”) to be a surveyor for the purposes of LVO;
 - (b) regarding the conditions of authorization/recognition attached by the Director of Marine (the Director) that might restrict the scope of services which an authorized person or a recognized government authority could provide in relation to survey for local vessels, the Administration should consider whether the imposition of such conditions should be reflected in the legislation; and
 - (c) to provide marine accident records involving any third party for the past five years.

III Any other business

Public consultation

5. The Bills Committee agreed that the public should be invited to give views on the Bill and for this purpose, an invitation notice should be posted on the website of the Legislative Council and a press release should be issued. Invitation letters would also be sent to the 18 District Councils and other organizations, as to be suggested by members, which might be interested to give views on the Bill.

Date of next meeting

6. The Bills Committee agreed that the next meeting should be held on 13 July 2005 at 10:45 am. The Bills Committee would meet with deputations, if any, at the meeting.

(Post-meeting note: The meeting was subsequently rescheduled to be held on 13 July 2005 at 2:30 pm.)

7. There being no other business, the meeting ended at 12:10 pm.

**Proceedings of the first meeting of Bills Committee on
Merchant Shipping (Local Vessels and Miscellaneous Amendments) Bill 2005
Tuesday, 28 June 2005, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Election of Chairman</i>			
000000 – 000009	Mr CHAN Kam-lam Mr WONG Yung-kan Mr SIN Chung-kai Ms Miriam LAU	- Election of Chairman	
<i>Agenda Item II – Meeting with the Administration</i>			
000010 – 000244	Chairman	- Opening remarks	
000245 – 000531	Administration	- Briefing on the Bill	
000532 – 001314	Mr WONG Yung-kan Chairman Administration	<ul style="list-style-type: none"> - Letter from Mr WONG dated 23 June 2005 and the Administration's reply dated 28 June 2005 - Recognition of government authorities for the purposes of carrying out any survey and approving any plan for any local vessel under proposed new section 7A of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (LVO) - Authorization of surveyors under existing section 7 of LVO 	Administration to take follow-up action as set out in paragraph 4(a) above
001315 – 002700	Chairman Administration Mr CHAN Kam-lam	<ul style="list-style-type: none"> - Noting that some authorized persons or recognized government authorities might be competent to carry out surveys and approve plans in respect of certain types but not all types of vessels, the Chairman enquired if any mechanism was or would be in place to ensure that the persons authorized and the government authorities recognized would be permitted to carry out surveys and approve plans only in respect of the types of vessels for which they possessed the required competence. - The Administration advised that in granting authorization or recognition under section 7(1) or proposed section 7A(1), the Director would ensure that the person authorized or government authority recognized possessed the required qualification, training, skills and experience to carry out surveys and approve plans in respect of different types 	Administration to take follow-up action as set out in paragraph 4(b) above

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		<p>of vessels. The phrase “subject to such conditions” in section 7(1) and proposed section 7A(1) would enable the Director to qualify the relevant authorization or recognition by specifying the types of vessels to which the authorization or recognition applied. The information would be made available to all users, i.e. all local vessels.</p> <ul style="list-style-type: none"> - The Chairman pointed out that the provisions in section 7 and proposed section 7A of LVO did not require the Director to qualify, where appropriate, its authorization or recognition having regard to the competence of the person authorized or government authority recognized. It would be preferable to set out this arrangement clearly in the legislation. - The Administration agreed to consider how the aforesaid arrangement could be suitably reflected in the legislation. 	
002230 – 003708	Mr WONG Yung-kan Administration Mr CHAN Kam-lam	<ul style="list-style-type: none"> - The Administration’s clarification on the application of section 7 and proposed 7A of LVO - In reply to Mr CHAN’s enquiry, the Administration advised that the Marine Department (MD) was well aware of the operation and standards of some government authorities including the Register of Fishing Vessel of Guangdong and classification societies including the China Classification Society. The same standard of scrutiny would apply to any government authority or organization that might be recognized or authorized under section 7 and proposed section 7A of the LVO. - Mr CHAN remarked that the vessel safety survey system in Guangdong was well established and well known to the trade. - In reply to the Chairman’s enquiry, the Administration confirmed that when MD was required by law to carry out a safety survey on a vessel, the department would deploy officers who possessed the required competence to carry out the survey. As such surveys covered two main aspects of marine engineering and naval architecture, MD might deploy more than one surveyor 	

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		<p>to carry out a survey.</p> <ul style="list-style-type: none"> - In response to Mr WONG's enquiry, the Administration confirmed that at present and in future when the LVO came into force, as long as a vessel had been fully surveyed by an authorized person or recognized government authority, MD would not require the the vessel to be surveyed by MD again. However, as a monitoring mechanism for the authorization system, MD carried out random monitoring inspections with authorized persons from time to time to ensure that the authorized persons continuously met the required standards for authorization. Such monitoring work was carried out at the cost of MD and was one of the conditions of authorization. This practice, which was also common among reputable flag states, would continue after the LVO came into force. 	
003709 – 004039	Mr WONG Yung-kan Administration	<ul style="list-style-type: none"> - Rationale for the provision under proposed section 23B(2)(b) that Part VA should not apply to non-mechanically propelled vessels which did not exceed 4 metres in length overall - Meaning of “use” in proposed section 23C 	
004040 – 004642	Mr WONG Yung-kan Administration Chairman	<ul style="list-style-type: none"> - Legal protection for third parties before and after the proposed new Part VA “Compulsory third party risks insurance” came into force - The Administration advised that lack of financial means to pay for an insurance policy was unlikely to be relied on as a defence since the person concerned could prevent the vessel from being used in order to comply with the law. - On the circumstances to which the defence provision under proposed section 23C(3) might apply, the Administration cited an example where the owner of a laid-up vessel, for which third party risks insurance would not be required, had taken all reasonable precautions and exercised all due diligence to prevent the vessel from being used, but was used without the owner's permission, the owner might rely on the fact that he had taken reasonable precautions and exercised due diligence as 	

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		<p>a defence to a charge under proposed section 23C(2).</p>	
<p>004643 – 010459</p>	<p>Mr WONG Yung-kan Administration Chairman</p>	<ul style="list-style-type: none"> - On Mr WONG's request for marine accident records involving any third party for the past five years, the Administration advised that it was compiling relevant information, but there might be difficulties in identifying those accidents involving any third party and in obtaining information on the compensation amount involved in claims to which the government was not a party. - The Administration advised that the owner of a vessel should normally be the party responsible for taking out the third party risks insurance. The provisions under proposed section 23C also covered charterer and coxswain as these persons might take an active part in operating the vessel involved in a marine accident. - On the idea of establishing a mechanism similar to the Motor Insurers' Bureau (MIB), the Administration advised that unlike the situation of vehicles, the situation where a vessel involved in a marine accident occurred within the Hong Kong waters could not be identified and traced was rare. When any accident occurred, MD and the Marine Police usually could ascertain the licence number and location of the vessel(s) concerned fairly quickly through investigation with the help of their surveillance systems. Vessels involved in any incident were also required by law to report the incident to MD or the Police. - The Administration further advised that given that there were only some 13 000 local vessels, the amount of contribution required of each vessel for establishing a compensation fund was likely to be fairly high and this might have significant financial implications on the trade. - Members raised the concerns that- <ul style="list-style-type: none"> (a) the present marine surveillance system of MD could not ensure that the vessel(s) involved in a marine accident could be identified and traced at all times; 	

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		<p>(b) certain circumstances that contributed to the need to establish the MIB were also present in the case of local vessels, e.g. the insurance company concerned had wound up, the vessel(s) involved in a marine accident had not been able to secure any third party risks insurance, or that the marine accident fell outside the scope of the insurance policy etc.</p> <ul style="list-style-type: none"> - Members requested the Administration to further examine the matter to ensure that both the interests of third parties and trade operators which had taken out insurance in accordance with the statutory requirements were adequately safeguarded in the event of marine accidents causing injury or death to third parties. - Taking note of members' concerns, the Administration proposed that a review be carried out when new provisions on compulsory third party risks insurance had come into force. In the review, the Administration would consult the trade and take into account the experience of the operation of the new provisions. Options other than a mechanism similar to the MIB would also be examined. 	
010500 – 010951	Chairman Administration	<ul style="list-style-type: none"> - The Administration advised that it was proposed that the compulsory third party risks insurance requirements would be extended to locally certificated vessels (except laid-up vessels and small non-mechanically propelled vessels), and the new statutory levels of insurance cover would apply six months after the commencement of LVO and the Merchant Shipping (Local Vessels) (Compulsory Third Part Risks Insurance) Regulation, which would be introduced after the passage of the Bill. At the same time, river trade vessels in the waters of Hong Kong would also be subject to the compulsory third party risks insurance requirements. Since river trade vessels were not certificated in Hong Kong, the insurance requirements would be imposed on them at their point of entry into Hong Kong waters. 	

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		<ul style="list-style-type: none">- The Administration confirmed that the implementation schedule had been drawn up having regard to the feedback received during the consultation with the relevant trade associations and authorities in Guangdong and Macau. The trade associations and authorities had agreed to the implementation schedule currently proposed.	
010952 – 011509	Mr WONG Yung-kan Administration Mr CHAN Kam-lam	<ul style="list-style-type: none">- Mr WONG raised concern about the unauthorized use of typhoon shelters by vessels which were not “prescribed vessels” as defined under the Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313D).- Members agreed that as the matter fell outside the scope of the Bill, it could be pursued at the Panel on Economic Services or the Provisional Local Vessels Advisory Committee.	
<i>Agenda Item III – Any other business</i>			
011510 – 012033	Chairman	<ul style="list-style-type: none">- Public consultation- Date of next meeting	