

立法會
Legislative Council

LC Paper No. CB(4)951/14-15
(These minutes have been
seen by the Administration)

Ref : CB4/SS/9/14

**Subcommittee on Merchant Shipping (Control of Harmful
Anti-Fouling Systems on Ships) Regulation and Merchant Shipping
(Prevention and Control of Pollution) (Fees) (Amendment)
Regulation 2015**

**Minutes of the first meeting held on
Tuesday, 21 April 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Frankie YICK Chi-ming (Chairman)
Hon Cyd HO Sau-lan, JP
Hon Albert CHAN Wai-yip
Hon WU Chi-wai, MH
Dr Hon Kenneth CHAN Ka-lok
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon Tony TSE Wai-chuen, BBS

Member absent : Hon Steven HO Chun-yin

Public Officers attending : Agenda item II

Ms Jenny CHAN
Principal Assistant Secretary for Transport and
Housing (Transport)10

Miss Joyce CHAN
Assistant Secretary for Transport and Housing
(Transport)10C

Mr LAI Ying-keung
Chief, Maritime Policy
Marine Department

Mr FONG Chung-yee
Senior Surveyor of Ships/Maritime Policy
Marine Department

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Mr Jonathan LUK
Senior Government Counsel (Ag.)
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Miss Mandy NG
Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

Action

I. Election of Chairman

Ms Cyd HO, the member with the highest precedence among those present at the meeting, presided over the election of the Chairman of the Subcommittee. She invited nominations for the chairmanship of the Subcommittee.

2. Mr Frankie YICK was nominated by Mr POON Siu-ping and the nomination was seconded by Dr Kenneth CHAN. Mr Frankie YICK accepted the nomination. There being no other nomination, Mr YICK was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

Action

II. Meeting with the Administration

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|---------------------------------|---|
| (L.N. 53 of 2015 | -- Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2015 |
| L.N. 54 of 2015 | -- Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation |
| File Ref: THB(1)PML R 8/10/70/3 | -- Legislative Council ("LegCo") Brief issued by the Transport and Housing Bureau |
| LC Paper No. LS54/14-15 | -- Legal Service Division ("LSD") Report on Subsidiary Legislation Gazetted on 20 March 2015 |
| LC Paper No. CB(4)814/14-15(01) | -- Letter from the Assistant Legal Adviser to the Administration dated 27 March 2015 |
| LC Paper No. CB(4)814/14-15(02) | -- Letter from the Administration dated 31 March 2015 in response to the Assistant Legal Adviser's letter |
| LC Paper No. CB(4)814/14-15(03) | -- Marked-up copy of relevant provisions of L.N. 53 of 2015 prepared by LSD (Restricted to members) |
| LC Paper No. CB(4)814/14-15(04) | -- Background brief prepared by the LegCo Secretariat) |

4. The Subcommittee deliberated (index of proceedings attached at the **Annex**).

Action

Follow-up actions to be taken by the Administration

Admin 5. To facilitate further discussion, the Administration was requested to provide a written response on the following issues –

(a) in respect of the Merchant Shipping (Control of Harmful Anti-fouling Systems on Ships) Regulation ("the AFS Regulation") which sought to implement the International Convention on Control of Harmful Anti-Fouling Systems on Ships, 2001 ("the Convention")

(i) the definitions of "warship", "naval auxiliary" and "ship owned or operated by a government and used only on government non-commercial service" ("collectively known as exempted ships") referred to in section 3(2) of the AFS Regulation;

(ii) whether the anti-fouling paints used by exempted ships in Hong Kong contained organotin compounds or otherwise;

(iii) internal guidelines promulgated or measures adopted by the governments of Parties to the Convention, including those of Hong Kong Special Administrative Region ("HKSAR"), the People's Republic of China and the United States of America, on the use of anti-fouling paints by the exempted ships, and actions to be taken by the HKSAR Government to ensure exempted ships flying non-Hong Kong flags, including those under the Hong Kong Garrison, would follow the internal guidelines or take the adopted measures at the time or before entering Hong Kong waters;

(iv) whether the following provision in paragraph (2) of Article 3 of the Convention would be appended to section 3(2) of the AFS Regulation to ensure that the HKSAR Government would monitor the exempted ships complying with the Convention –

"[H]owever, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention."

(v) detailed procedures involved in the inspection, examination and investigation of (a) Hong Kong ships and (b) non-Hong

Action

Kong ships for the purpose of ascertaining whether the AFS Regulation had been or was being complied with, with references to paper work and/or in-situ inspections involved in each step, as well as the actions to be taken for those ships which was found to be non-compliant; and

- (vi) the administrative procedures involved if a holder of an International Anti-Fouling System Certificate complained against the decision of the Director of Marine for cancelling his/her Certificate under section 9 of the AFS Regulation; and
- (b) given that there were different approaches to implement international conventions or agreements in local legislation, viz., making direct reference to provisions under the international convention/agreement in local legislation, appending the international convention/agreement in a schedule to the local legislation, or including only certain provisions of the international convention/agreement in the local legislation, whether consideration would be given to adopting the same approach and drafting practice for the sake of consistency.

6. The Chairman concluded that the Subcommittee had completed scrutiny of both regulations. Members noted that the Chairman would give a verbal report to the House Committee at its meeting on 24 April 2015. Members and the Administration noted that the scrutiny period had been extended, and the deadline for giving notice to move amendments to both regulations was 6 May 2015.

III. Any other business

7. There being no other business, the meeting ended at 13:06 pm.

Council Business Division 4
Legislative Council Secretariat
8 May 2015

**Proceedings of the first meeting of the Subcommittee on
Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation and
Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2015
on Tuesday, 21 April 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000340 – 000710	Ms Cyd HO Mr POON Siu-ping Mr Frankie YICK Dr Kenneth CHAN	Election of Chairman	
Agenda item II – Meeting with the Administration			
000711 – 000930	Chairman Administration	Briefing by the Administration on the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation ("the AFS Regulation") and Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation ("the Fees Amendment Regulation").	
000931 – 002230	Chairman Dr Kenneth CHAN Administration	<p><u>Application of AFS Regulation</u></p> <p>In reply to Dr CHAN, the Administration advised that section 3(2) of the AFS Regulation was modeled on Article 3 of the International Convention of the Control of Harmful Anti-Fouling Systems on Ships, 2001 ("the Convention"). The ships stipulated under section 3(2) of the AFS Regulation were warships, naval auxiliaries for training, exploration and rescue purposes, and government-owned vessels engaged in non-commercial services such as fireboats ("the exempted ships"). Although the Convention did not apply to the exempted ships, vessels owned or operated by the HKSAR Government had complied with the Convention by not bearing any organotin compounds that acted as biocides in the anti-fouling systems of the ships.</p> <p>In reply to the Chairman's enquiry, the Administration advised that –</p> <p>(a) since early 1990s, the Marine Department ("MD") had issued circulars to local ships advising them not to use any anti-fouling paints containing organotin compounds; and</p> <p>(b) the Director of Agriculture, Fisheries and Conservation had stopped issuing permit for the import, supply and sales of anti-fouling paints containing organotin compounds since 2004.</p>	The Administration to follow up as per paragraph 5(a)(i) of the minutes

Time marker	Speaker	Subject(s)	Action required
002231 – 002608	Chairman Mr POON Siu-ping Administration	Discussion on the delay in implementing the Convention in Hong Kong. Discussion on the fees imposed in relation to survey of ships and issue of an IAFS Certificate which were charged on a cost-recovery basis.	
002609 – 003242	Chairman Ms Cyd HO Administration	Noting that members of the Hong Kong Garrison should abide by Hong Kong laws under the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region, Ms HO considered it self-contradictory if the AFS Regulation did not apply to warships or naval auxiliaries. She enquired whether the AFS Regulation would apply to a ship if it was outside the establishment of the navy but wholly deployed to provide services for it. The Administration advised that – (a) the provisions of the Convention were worked out by all Parties of the International Maritime Organization ("IMO"). The exemption in section 3(2) of the AFS Regulation applied to warships and naval auxiliaries of all the Parties; (b) the AFS Regulation applied to all Hong Kong ships wherever they might be and non-Hong Kong ships within the waters of Hong Kong. Ships providing services for the navy were privately-owned and should have complied with the AFS Regulation in order to be certificated as fit for operation in Hong Kong waters; and (c) the Transport and Housing Bureau ("THB") would make an enquiry via the Security Bureau about the anti-fouling paints used by the warships and naval auxiliaries under the Hong Kong Garrison.	The Administration to follow up as per paragraph 5(a)(ii) of the minutes
003243 – 003744	Chairman Mr Albert CHAN Administration	Discussion on internal guidelines promulgated by governments of Parties to the Convention for exempted ships not to use anti-fouling paints containing any organotin compounds and ways for Hong Kong to ensure the exempted ships from other flag states would follow the internal guidelines.	The Administration to follow up as per paragraph 5(a)(iii) of the minutes
003745 – 004248	Chairman Dr Kenneth CHAN Administration	Dr CHAN noted that according to Article 3 of the Convention concerning the application to warships, naval auxiliaries, or other ships owned or operated by a Party to the Convention , it was provided that –	The Administration to follow up as per paragraph

Time marker	Speaker	Subject(s)	Action required
		<p>"[H]owever, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention."</p> <p>Dr CHAN was concerned why this provision was not included in local legislation. The Chairman supported adding the provision in the AFS Regulation.</p> <p>The Administration responded that the said provision was to bind each Party to the Convention. It was the obligation for each Party to the Convention to exercise self-monitoring but not for the Parties to monitor each other.</p>	5(a)(iv) of the minutes
004249 – 005130	Chairman Ms Cyd HO Dr Kenneth CHAN Administration	<p>Ms HO noted that there were different approaches to implement international conventions or agreements in local legislation, viz., making direct reference to provisions under the international convention/agreement in local legislation, appending the international convention/agreement in a schedule to the local legislation, or including only certain provisions of the international convention/agreement in the local legislation. She expressed concern on the need to adopt the same approach and drafting practice for the sake of consistency.</p> <p>The Administration advised that the approach used to implement international conventions/agreements in local legislation would depend on the nature of the convention/agreement. Generally speaking, direct reference approach would be used for those that were technical in nature or they would be appended in a schedule to the local legislation. Some others would be adapted locally and the AFS Regulation was a case in point.</p> <p>Dr CHAN reiterated the need to make reference to the said provision of Article 3 in the AFS Regulation to ensure that the Government would monitor the exempted ships accordingly.</p>	The Administration to follow up as per paragraph 5(a)(iv) and (b) of the minutes
005130 – 010234	Chairman Administration Ms Cyd HO	<u>Examination of the provisions</u> <u>AFS Regulation</u>	

Time marker	Speaker	Subject(s)	Action required
	Dr Kenneth CHAN	<p><u>Part 1</u></p> <p>Discussion on the commencement date, the extension of the Convention to Hong Kong, the meaning of "international voyage" and the Chinese renditions of "unwanted organisms" in different documents.</p>	
010235 – 014637	Chairman Administration Mr SIN Chung-kai	<p><u>Part 2</u> <u>Part 3 – sections 5 - 7</u></p> <p>Discussion on organotin and other compounds used in anti-fouling paints, the coating that formed a barrier to the compounds, application of Part 3 to a ship of 400 gross tonnage or above, and procedures involved in –</p> <p>(a) the control on anti-fouling systems for Hong Kong as well as non-Hong Kong ships; and</p> <p>(b) issue of IAFS Certificate.</p> <p>Discussion on section 3.</p> <p>On the delay in implementing the Convention, the Administration explained that marine-related legislative tasks to be made were frequent and voluminous, and considerable time and efforts were required for the deliberations and preparation of detailed proposals for them. To expedite the relevant work, the Administration had obtained the approval of Finance Committee on 7 February 2014 the establishment of a dedicated legal team in the Department of Justice, comprising, amongst others, one Deputy Principal Government Counsel and five Senior Government Counsels for about 28 months from February 2014, to support THB and MD in taking forward the outstanding marine-related legislative exercises for the relevant international conventions.</p>	The Administration to follow up as per paragraph 5(a)(v) of the minutes
014638 – 015024	Chairman Ms Cyd HO Administration	<p><u>Part 3 – section 8</u></p> <p>In response to Ms HO's enquiry on how to assess 25% or more of a ship's anti-fouling system had been changed or affected by a repair, the Administration advised that 25% referred to the surface area of the system and that the surveyors would make their professional judgment by visual inspections.</p>	
015025 – 020119	Chairman Dr Kenneth CHAN	<p><u>Part 3 – section 9</u></p>	The Administration

Time marker	Speaker	Subject(s)	Action required
	Administration	<p>Discussion on cancellation of International Anti-Fouling System Certificates (LC Paper Nos. CB(4)814/14-15(01) and (02)).</p> <p>In reply to further enquiries of Dr CHAN and the Chairman, the Administration advised that –</p> <p>(a) the ship concerned would be banned from engaging all voyages once the International Anti-Fouling System Certificate was cancelled. Besides, the owner or master of the ship concerned who contravened section 14(1)(b) committed an offence and was liable to a fine at level 6;</p> <p>(b) as the Director of Marine would only cancel the International Anti-Fouling System Certificate in respect of a Hong Kong ship, it was not necessary to notify other flag states and IMO; and</p> <p>(c) if non-Hong Kong ships were found to be in breach of the AFS Regulation, the Administration could inform relevant flag state.</p>	to follow up as per paragraph 5(a)(vi) of the minutes
020120 – 021410	Chairman Ms Cyd HO Administration	<p><u>Part 3 – sections 10 and 11</u> <u>Part 4 – sections 12 and 13</u></p> <p>Ms HO noted that under section 13(h), the Government surveyor would require that the ship was to be left undisturbed for so long as was necessary for the inspection, examination or investigation. In response to the concerns of Ms HO and the Chairman, the Administration advised that –</p> <p>(a) it was a common practice to require that the ship concerned was to be left undisturbed during inspections/investigation. It normally took a few hours to conduct investigation or take samples;</p> <p>(b) there were established guidelines and procedures by the IMO about sample taking. Usually, surveyors reached the hull by a small boat and took samples above the water level;</p> <p>(c) as it usually took about a week to obtain the test results, the ship concerned would not be detained and would be permitted to continue its operation or voyages pending the test results; and</p>	The Administration to follow up as per paragraph 5(a)(v) of the minutes

Time marker	Speaker	Subject(s)	Action required
		(d) in case the ship concerned which had already left Hong Kong was found to be incompliant with the requirements, the Administration would record this in the database and take necessary actions when it entered Hong Kong waters again.	
021411 – 022010	Chairman Dr Kenneth CHAN Administration Ms Cyd HO	<u>Part 4 – sections 14 to 19</u> Discussion on endorsement of International Anti-Fouling System Certificates Certificate (LC Paper Nos. CB(4) 814/14-15(01) and (02)). <u>The Fees Amendment Regulation</u>	
Agenda item III – Any other business			
022011 – 022150	Chairman	Legislative timetable Closing remarks	