

LEGISLATIVE COUNCIL BRIEF

Freight Containers (Safety) Ordinance
(Chapter 506)

FREIGHT CONTAINERS (SAFETY) (AMENDMENT) BILL 2019

INTRODUCTION

At the meeting of the Executive Council on 16 April 2019, the Council ADVISED and the Chief Executive ORDERED that the Freight Containers (Safety) (Amendment) Bill 2019 (“the Bill”), at Annex, should be introduced into the Legislative Council (“LegCo”).

Annex

JUSTIFICATIONS

Background of the Convention

2. To facilitate the international transport of containers, the International Convention for Safe Containers (“the Convention”) was promulgated by the International Maritime Organization (“IMO”) to standardise the requirements for testing and inspecting containers, as well as to prescribe the procedures of their maintenance, examination and control for safe transportation.

3. In accordance with the Convention, any container used for international transport must be affixed with a valid safety approval plate (“SAP”) issued by a Contracting Party to the Convention or its Recognised Organisations (“ROs”)¹. Each SAP contains a required set of information relating to the container, including the country of approval, the container’s manufacturing date and its maximum weight-carrying capability.

¹ Recognised Organisations (“ROs”) are international bodies specialised in the technical areas of ships, such as ship construction, equipment, operation and surveys, etc. At present, the Marine Department entrusts ROs through contractual agreements to carry out certain services including ships survey and certification.

4. The Convention came into force in 1977 and is implemented in Hong Kong through the Freight Containers (Safety) Ordinance (Cap. 506) (“the Ordinance”) and its four pieces of subsidiary legislation. In Hong Kong, the Director of Marine (“DM”) is empowered to appoint ROs to examine, test and approve containers, while the Marine Department (“MD”) monitors compliance in general, including by conducting inspections of containers on board vessels. The DM could declare in writing that an approval is no longer valid if the container does not comply with any of the requirements of the Ordinance.

Latest amendments to the Convention

5. The current exercise seeks to incorporate into our local legislation the requirements of two latest IMO resolutions² on the Convention, outlined in paragraphs 6 and 7 below.

6. The first resolution was adopted in December 2010 and came into force on 1 January 2012. In the resolution, IMO introduced new requirements on information to be marked on the SAPs of containers (e.g. marking of containers with limited stacking capacity), prescribed new safety test procedures for containers (e.g. specific tests for containers approved for operation with one door open or removed), as well as new control measures and specific guidelines for the examination and assessment of the structural safety and integrity of a container.

7. The second resolution was adopted in June 2013 and came into force on 1 July 2014. In the resolution, IMO standardised the terms and units of physical measurement to be used on the SAP of containers and amended the detailed testing procedures for examining the structural safety of containers to enhance the safety in the stacking, loading and lifting of containers.

Legislative Proposals

8. The salient new and revised requirements to be incorporated in the Ordinance to implement the amendments adopted by the two resolutions are summarised below –

- (a) *Specifications for containers with limited stacking capacity* - to prevent containers from collapsing or being damaged during transport,

² The two resolutions are Resolutions MSC.310(88) and MSC.355(92).

the Bill requires that the SAPs of containers with limited stacking or racking capacity be conspicuously marked in a standardised manner, so that these containers can be easily identified and arranged at the top of a stack of containers.

- (b) ***Testing procedures and specifications for containers approved for operation with one door open or removed*** - in certain special cases, containers may be loaded, stacked and transported with one of its door opened or removed in order to improve ventilation and air circulation inside the container. To ensure the operational and structural safety of these modified containers, the Bill prescribes new testing procedures and marking requirements on the SAPs of such containers.
- (c) ***Alignment of terms and units of physical measurement to be used on SAPs*** - to ensure that a uniform set of terms, dimensions and units are used so as to facilitate the international transport of containers, the Bill requires that the physical dimensions and units marked on the SAPs of containers be aligned with the International System of Units³. Such changes include replacing the term “weight” with “mass”.

9. Given that the requirements in the Convention are technical in nature and will be updated from time to time by the IMO, and that future amendments to the Convention are not anticipated to carry significant policy implications on maintaining container safety, to allow our local legislation to be up-to-date with the new requirements as far as practicable, we propose adopting a direct reference approach⁴ wherever applicable in the Bill.

³ The International System of Units is the most widely used system of measurement which defines the universal meaning of seven basic units of measurement for common physical quantities, such as metre for length and kilogram for mass.

⁴ The adoption of the “direct reference approach” (“DRA”) means the direct reference to provisions of international agreements in local laws so as to apply such provisions locally. With many marine-related international agreements being technical in nature, clear and specific in their requirements, widely applicable to contracting parties internationally and of interest to only a specific group of people, we have adopted DRA in quite a number of local legislation when implementing marine-related international requirements.

THE BILL

10. The main provisions of the Bill⁵ are as follows –
- (a) Clause 1 sets out the short title and provides for commencement.
 - (b) Clause 3 amends the interpretation section of the Ordinance to reflect the latest terminology adopted in the Convention.
 - (c) Clause 4 amends section 4 of the Ordinance to replace the references to “weight” by “mass”.
 - (d) Clauses 5, 6, 8 and 9 amend sections 5, 6, 10A and 14 of the Ordinance respectively to make direct references to Annex II to the Convention (see paragraph 10 (g) below).
 - (e) Clause 7 amends section 10 of the Ordinance so that the SAP of a container which did not undergo structural modifications and whose construction was completed before 1 July 2014 would not be subject to the new requirements of SAPs as provided in Schedule 2 to the Ordinance.
 - (f) Clause 10 amends section 27 of the Ordinance so that regulations made under the Ordinance may directly refer to international agreements as revised or amended from time to time.
 - (g) Clause 11 repeals Schedule 1 to the Ordinance, which provides for the structural safety requirements and test standards of containers. Instead, Annex II to the Convention would be directly referred to where appropriate in the Ordinance (see paragraph 10 (d) above).
 - (h) Clause 12 amends Schedule 2 to the Ordinance to provide for the latest requirements for the marking and fixing of SAPs, including the additional marking requirements for SAPs of containers with limited stacking or racking capacity.

⁵ While section 28 of the Ordinance empowers DM to, by order published in the Gazette, amend the Schedules to the Ordinance for the purpose of giving effect to any amendment to the Convention as applied to Hong Kong, for easier comprehension and clarity in implementation, all amendments required in the current exercise, whether to the main body or the Schedules to the Ordinance, are included in the Bill.

LEGISLATIVE TIMETABLE

11. The Bill will be published in the Gazette on 11 October 2019 and introduced into LegCo on 23 October 2019.

IMPLICATIONS OF THE PROPOSAL

12. The Bill is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the current binding effect of the relevant Ordinance and the existing regulations. The proposal has no financial, civil service, economic, productivity, environmental, sustainability, gender or family implications.

PUBLIC CONSULTATION

13. We consulted the LegCo Panel on Economic Development on 26 November 2018, as well as the Hong Kong Fleet Operation Advisory Committee and the Port Operations Committee of the MD in May 2018. Members supported our proposal.

PUBLICITY

14. A press release will be issued on 11 October 2019. A spokesperson will be available to handle enquires.

ENQUIRIES

15. Any enquiries on this brief can be addressed to Ms Louisa YAN, Principal Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8162), or Mr CHOI Chi Chuen, Assistant Director (Multi-lateral Policy), Marine Department (Tel: 2852 4408).

**Transport and Housing Bureau
Marine Department
October 2019**

Freight Containers (Safety) (Amendment) Bill 2019

Contents

Clause		Page
1.	Short title and commencement	1
2.	Freight Containers (Safety) Ordinance amended.....	1
3.	Section 2 amended (interpretation).....	1
4.	Section 4 amended (conditions of use).....	2
5.	Section 5 amended (approval of containers individually).....	3
6.	Section 6 amended (approval by design type).....	4
7.	Section 10 amended (fixing of safety approval plate)	4
8.	Section 10A amended (removal of safety approval plate).....	4
9.	Section 14 amended (containers which have no safety approval plate or which have an incorrectly completed plate)	5
10.	Section 27 amended (regulations).....	5
11.	Schedule 1 repealed (structural safety requirements and tests)	6
12.	Schedule 2 substituted	6
	Schedule 2 Safety Approval Plate	6

A BILL

To

Amend the Freight Containers (Safety) Ordinance to implement the latest requirements of the International Convention for Safe Containers relating to the manufacture, use and examination of freight containers; to make minor textual amendments; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Freight Containers (Safety) (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Freight Containers (Safety) Ordinance amended

The Freight Containers (Safety) Ordinance (Cap. 506) is amended as set out in sections 3 to 12.

3. Section 2 amended (interpretation)

- (1) Section 2(1)—
 - (a) definition of *maximum operating gross weight* or *rating* or *R*;
 - (b) definition of *maximum permissible payload* or *P*;
 - (c) definition of *tare weight*—

Repeal the definitions.

- (2) Section 2(1)—

Add in alphabetical order

“*Annex II* (《附則 II》) means Annex II to the Convention;

maximum operating gross mass (最大操作總質量), in relation to a container, means the maximum sum of the tare and the mass of the cargo in the container, allowed under Annex II;

maximum permissible payload (最大允許載荷) means the difference between the maximum operating gross mass and the tare;

tare (皮重), in relation to a container, means the mass of the container when empty and includes the mass of any permanently affixed ancillary equipment of the container.”.

4. Section 4 amended (conditions of use)

- (1) Section 4(1)—

Repeal

“use or”

Substitute

“use the container or”.

- (2) Section 4(1)(e)—

Repeal

“weight” (wherever appearing)

Substitute

“mass”.

- (3) Section 4(2)(a), (b) and (c)—

Repeal

“use or”

Substitute

“use the container or”.

- (4) Section 4(2)(d)—

Repeal

“weight” (wherever appearing)

Substitute

“mass”.

- (5) Section 4(2)(d)—

Repeal

“use or”

Substitute

“use the container or”.

- (6) Section 4(3)—

Repeal

“using or”

Substitute

“using a container or”.

5. Section 5 amended (approval of containers individually)

Section 5(3) and (4)(a)—

Repeal

“and test standards specified in Schedule 1”

Substitute

“, and test standards, specified in Annex II”.

6. Section 6 amended (approval by design type)

Section 6(3) and (4)(a)—

Repeal

“and test standards specified in Schedule 1”

Substitute

“, and test standards, specified in Annex II”.

7. Section 10 amended (fixing of safety approval plate)

Section 10(2)—

Repeal paragraph (a)**Substitute**

“(a) the safety approval plate is marked and fixed to the container in accordance with—

(i) if the construction of the container was completed before 1 July 2014 and no structural modification has ever been made to the container—Schedule 2 as in force immediately before the commencement date of the Freight Containers (Safety) (Amendment) Ordinance 2019 (of 2019); or

(ii) otherwise—Schedule 2;”.

8. Section 10A amended (removal of safety approval plate)

Section 10A(1)(a)(i)—

Repeal

“and test standards specified in Schedule 1”

Substitute

“, and test standards, specified in Annex II”.

9. Section 14 amended (containers which have no safety approval plate or which have an incorrectly completed plate)

Section 14(2)(b)(ii)—

Repeal

“and test standards specified in Schedule 1”

Substitute

“, and test standards, specified in Annex II”.

10. Section 27 amended (regulations)

(1) Section 27(1)—

Repeal

everything after “giving effect”

Substitute

“(whether in whole or in part) to an international agreement relating to the safety of freight containers adopted by the International Maritime Organization, as from time to time revised or amended by any revision or amendment that applies to Hong Kong.”.

(2) After section 27(2)—

Add

“(3) Regulations made under this section may—

(a) set out, or refer directly to, the whole or a part of an international agreement referred to in subsection (1); and

(b) specify amendments, modifications or adaptations subject to which the whole or a part of an international agreement referred to in subsection (1) is to have effect.”.

11. Schedule 1 repealed (structural safety requirements and tests)

Schedule 1—

Repeal the Schedule.**12. Schedule 2 substituted**

Schedule 2—

Repeal the Schedule**Substitute****“Schedule 2**

[ss. 2, 10 & 28]

Safety Approval Plate**1. Marking of plates**

- (1) A safety approval plate must be marked in accordance with the requirements set out in the appendix to Annex I to the Convention.
- (2) The markings must be in English or French, whether or not in addition to any other language.
- (3) This section does not prevent also marking the plate by means of a decal for the purposes of an examination scheme or programme under section 10 of the Freight Containers (Safety) (Examination Procedure) Order (Cap. 506 sub. leg. D).

2. Additional marking requirements for plates of containers with limited stacking or racking capacity

- (1) This section applies to a container with—

(a) a stacking value of less than 192 000 kg; or

(b) a racking value of less than 150 kN.

- (2) The safety approval plate of a container must also be marked conspicuously in accordance with the International Standard ISO 6346, Freight containers — Coding, identification and marking published by the International Organization for Standardization in 1995.

3. Fixing of plates

A safety approval plate must be permanently fixed to a container in a position so that it is—

- (a) readily visible;
- (b) adjacent to any other officially approved plate fixed to the container; and
- (c) not likely to be easily damaged.”.

Explanatory Memorandum

The International Convention for Safe Containers (*Convention*) was adopted by the International Maritime Organization (*IMO*) in 1972. The Convention prescribes safety standards and procedures for the use of freight containers. The purpose of this Bill is to amend the Freight Containers (Safety) Ordinance (Cap. 506) (*Ordinance*) to implement the latest technical requirements provided in the Convention (*new requirements*) by giving effect to IMO Resolutions MSC.310(88) and MSC.355(92).

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 amends section 2 of the Ordinance to repeal certain existing definitions and add new definitions used in the Ordinance to reflect the latest terminology adopted in the Convention.
4. Clause 4 amends section 4 of the Ordinance to make minor textual amendments, and to replace the references to “weight” by “mass”, following the change adopted in the Convention to align with the International System of Units.
5. Clause 7 amends section 10 of the Ordinance to provide that if the construction of a container was completed before 1 July 2014 and no structural modification has ever been made to the container, the new requirements do not apply to the valid safety approval plate fixed to the container.
6. Section 27 of the Ordinance empowers the Secretary for Transport and Housing to make regulations under the Ordinance. Clause 10 amends that section to expressly provide that the regulations may adopt a direct reference approach to refer directly to international agreements as revised or amended from time to time.
7. Currently, Schedule 1 to the Ordinance sets out the requirements for the structural safety and tests of containers. Consequential to the repeal of that Schedule, clauses 5, 6, 8 and 9 amend sections 5, 6,

10A and 14 of the Ordinance respectively to make direct references to Annex II to the Convention.

8. Clause 12 replaces the existing Schedule 2 to the Ordinance with a new Schedule 2 to provide for the latest requirements for the marking and fixing of safety approval plates, including the additional marking requirements for plates of containers with limited stacking or racking capacity.