

立法會
Legislative Council

LC Paper No. LS2/19-20

**Legal Service Division Report on
Freight Containers (Safety) (Amendment) Bill 2019**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Freight Containers (Safety) Ordinance (Cap. 506) primarily to:

 - (a) implement the latest requirements of the International Convention for Safe Containers adopted by the International Maritime Organization relating to the manufacture, use and examination of freight containers and the marking and fixing of safety approval plates; and
 - (b) enable the adoption of a direct reference approach in making regulations to give effect to an international agreement relating to the safety of freight containers as amended from time to time.
- 2. Public Consultation**

According to the Administration, the Hong Kong Fleet Operation Advisory Committee, Shipping Consultative Committee and Port Operations Committee of the Marine Department were consulted between December 2016 and May 2018. They supported the legislative proposal.
- 3. Consultation with LegCo Panel**

As advised by the Clerk to the Panel on Economic Development, the Administration briefed the Panel on 26 November 2018 on the legislative proposal to incorporate into local legislation the latest requirements of the International Convention for Safe Containers. Members were generally supportive of the proposal.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 23 October 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: THB(T)PML CR 8/10/130/2) issued by the Transport and Housing Bureau ("THB") in October 2019 for further details.

Object of the Bill

2. The Bill seeks to amend the Freight Containers (Safety) Ordinance (Cap. 506) to:

- (a) implement the latest requirements of the International Convention for Safe Containers ("the Convention") relating to the manufacture, use and examination of freight containers and the marking and fixing of safety approval plates ("SAP");
- (b) enable the adoption of a direct reference approach ("DRA") in making regulations to give effect to an international agreement relating to the safety of freight containers as revised or amended from time to time; and
- (c) make minor textual amendments, and provide for related matters.

Background

3. The Convention was adopted by the International Maritime Organization ("IMO") in 1972 to prescribe safety standards and procedures for the use of freight containers. The Convention is implemented in Hong Kong through Cap. 506 which came into operation on 10 November 2006 (L.N. 216 of 2006). Under section 4 of Cap. 506, it is an offence for the owner (and, in certain situations, the bailee or lessee) of a container to use it or permit it to be used without complying with the SAP, maintenance, examination or markings requirements under Cap. 506. The offence is punishable by a fine at level 4 (\$25,000) and one year's imprisonment.

4. In December 2010 and June 2013, the Maritime Safety Committee of IMO adopted Resolutions MSC.310(88) and MSC.355(92) ("the Resolutions") to amend, among others, Annex I and Annex II to the Convention with regard to the testing, inspection, approval, maintenance and structural safety of containers.

Provisions of the Bill

5. The primary purpose of the Bill is to amend Cap. 506 to implement the latest requirements of the Convention as amended by the Resolutions. The salient amendments are set out below.

Proposed amendments to implement the Resolutions

6. Clause 3 proposes repealing the existing definitions of "maximum operating gross weight", "maximum permissible payload" and "tare weight" under section 2 of Cap. 506 and substituting new definitions of "maximum operating gross mass", "maximum permissible payload" and "tare" respectively to reflect the latest terminology adopted in the Convention as amended by the Resolutions.

7. Schedule 1 to Cap. 506 currently provides for the structural safety and tests of containers. Clause 11 proposes repealing Schedule 1. Consequentially, clauses 5, 6, 8 and 9 seek to amend sections 5, 6, 10A and 14 of Cap. 506 by repealing all references to the "structural safety requirements and test standards specified in Schedule 1" and making direct reference to the latest requirements and standards specified in Annex II to the Convention as amended by the Resolutions.

8. Under section 10 of Cap. 506, SAP must be marked and fixed to containers in accordance with the requirements currently set out in Schedule 2 to Cap. 506. Clause 12 seeks to replace the existing Schedule 2 with a new Schedule 2 to provide for the marking and fixing of SAP in accordance with Annex I to the Convention as amended by the Resolutions, including additional marking requirements for containers with limited stacking or racking capacity¹.

9. Clause 7 seeks to amend section 10 to the effect that for a container whose construction was completed before 1 July 2014 without subsequent structural modification, the existing requirements with regard to SAP would continue to apply.

Proposed amendments relating to DRA

10. Section 27 of Cap. 506 at present empowers the Secretary for Transport and Housing ("STH") to make regulations for the purpose of Cap. 506 and for giving effect to any provision of the Convention applicable to Hong Kong. Clause 10 proposes amending section 27 to empower STH to make regulations to give effect to an international agreement relating to the safety of freight containers adopted by IMO, as from time to time revised or amended by any revision or amendment that applies to Hong Kong. Clause 10 further proposes that the regulations may set out, or refer directly to, the whole or a part of any such international agreement subject to any amendments, modifications or adaptations as may be specified in the regulations.

Proposed textual amendments

11. Clause 4(1), (3), (5) and (6) seeks to make textual amendments to section 4 to replace the references to "weight" by "mass" to align with the International System of Units and to correct certain ungrammatical expressions in that section.

¹ The additional marking requirements would apply to a container with a stacking value of less than 192 000 kg or a racking value of less than 150 kN: paragraph 2 of the proposed Schedule 2.

Commencement

12. The Bill, if passed, would come into operation on a day to be appointed by STH by notice published in the Gazette.

Public Consultation

13. According to THB, the Hong Kong Fleet Operation Advisory Committee, the Shipping Consultative Committee and the Port Operations Committee of Marine Department ("MD") were consulted on the legislative proposal between December 2016 and May 2018. They supported the proposal.

Consultation with LegCo Panel

14. As advised by the Clerk to the Panel on Economic Development, the Administration briefed the Panel on 26 November 2018 on the legislative proposal to incorporate into local legislation the latest requirements of the Convention. Members were generally supportive of the proposal. Members noted from the Administration that containers used for international transport should have already complied with the related requirements, and that the shipping industry had no adverse views on the proposal. On a member's enquiry whether DRA proposed by the Administration would deprive the shipping industry's right to review any new marine-related proposals before IMO adopted them, the Administration assured members that MD would duly consult the local shipping industry through various shipping associations before taking forward any marine-related legislative exercises.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill and will report further, if necessary. In view of the concerns expressed by the Panel, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

Prepared by

LOO Chi-pong, Bonny
Assistant Legal Adviser
Legislative Council Secretariat
29 October 2019