

立法會
Legislative Council

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**Report of the Bills Committee on
Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Bill (“the Bills Committee”).

Background

2. The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (“Convention”) was developed by the International Maritime Organization (“IMO”) in cooperation with the International Labour Organization and the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which aims to ensure that ship recycling does not pose any unnecessary risk to human health, safety or the environment. According to the Administration, ship recycling facilities (“SRFs”) have been phased out in Hong Kong since the 1970s due to high labour and land costs with low demand for recycled materials. Nevertheless, given that the Convention applies to both SRFs and ships, and taking into account Hong Kong’s status as the fourth largest shipping register in the world with more than 2 300 registered ships, the Administration considers it important to ensure the compliance of applicable Hong Kong registered ships with the Convention regardless of their locations, so as to minimize the risks associated with their ship recycling activities even if they are conducted outside Hong Kong.

3. According to paragraphs 2 to 3 of the [Legislative Council \(“LegCo”\) Brief](#), the Convention will enter into force globally on 26 June 2025, and the Central People’s Government (“CPG”) is actively considering ratifying the Convention. When the Convention is applied to the Hong Kong Special Administrative Region (“HKSAR”), the Convention will apply to all Hong Kong registered ships that have been engaged in international voyages and

non-Hong Kong registered ships engaged in international voyages while within the waters of Hong Kong.¹

4. While some objectives of the Convention are covered by existing local legislation, they do not fully tally with the requirements of the Convention. In order to ensure the full implementation of the Convention, the Administration proposes to enact a new Ordinance with a new Regulation.² Noting the global entry-into-force date of the Convention, the Administration proposes enacting the new Ordinance first before seeking to enact the new Regulation, with a view to completing the legislative work for the Ordinance before the application of the Convention to HKSAR.

Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Bill

5. The Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Bill (“the Bill”) was published in the Gazette on 21 March 2025 and received its First Reading at the LegCo meeting of 26 March 2025. The Bill seeks to:

- (a) provide for the safe and environmentally sound recycling of ships; and
- (b) provide for related matters.

6. The details of the main provisions of the Bill are set out in paragraph 11 of the [LegCo Brief](#) and paragraphs 4 to 13 of the [Legal Service Division Report](#). The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Transport and Logistics (“Secretary”) by notice published in the Gazette.

Bills Committee

7. At its meeting on 28 March 2025, the House Committee agreed to form a Bills Committee to scrutinize the Bill. The membership list of the Bills Committee is in [Appendix 1](#).

8. Under the chairmanship of Mr YIM Kong, the Bills Committee has held one meeting with the Administration. The Bills Committee has also received one written submission. A list of the organization which has made written

¹ The Convention would not be applicable to warships, naval auxiliary, or other ships owned or operated by a Party to the Convention and used solely for Government non-commercial service, or ships of less than 500 gross tonnage.

² The Regulation would be subsidiary legislation subject to the negative vetting procedure of LegCo.

submission to the Bills Committee is in [Appendix 2](#). The Administration has provided a [response](#) (LC Paper No. CB(3)595/2025(01)) to the written submission.

Deliberations of the Bills Committee

9. The Bills Committee generally supports the Bill and considers that Hong Kong, given its status as the fourth largest shipping register in the world and an associate member of IMO, is obliged to ensure the effective implementation of the Convention in Hong Kong. The Bill will also bring Hong Kong's marine legislation in line with international standards and consolidate Hong Kong's position as an international maritime centre. The deliberations of the Bills Committee are summarized in the ensuing paragraphs.

Commencement date and implementation of the Bill

10. Clause 4 of the Bill empowers the Secretary to make regulations in the form of subsidiary legislation to give effect to the Convention and to provide for matters relating to the safe and environmentally sound recycling of ships. The regulations require, among others, compliance by the relevant persons with any international agreement and any of its referenced international instruments as revised or amended from time to time that relate to the safe and environmentally sound recycling of ships. For that purpose, clause 4(3) of the Bill proposes to adopt the direct reference approach, under which the regulations to be made by the Secretary could set out or refer directly to a Convention provision, and specify amendments, modifications or adaptations subject to which such Convention provision is to have effect ("direct reference approach"). Considering that the Convention will enter into force globally on 26 June 2025, members have enquired about the Administration's time frame for implementing the regulations, and the impact on Hong Kong registered ships in the event that the Bill and the regulations to be made thereafter cannot come into operation in Hong Kong before the relevant date.

11. The Administration has responded that the Bill and its subsidiary legislation to be enacted will require applicable Hong Kong registered ships to be issued with an "International Certificate on Inventory of Hazardous Materials" ("IHM") after an initial or renewal survey by the Marine Department ("MD") (or its recognized organizations ("ROs")) with a validity of up to five years to ensure that IHM correctly reflects the hazardous materials on the ship. The Bill and its subsidiary legislation will also require an applicable Hong Kong registered ship prior to the commencement of the recycling to be issued with an "International Ready for Recycling Certificate" by MD (or by its Ros) following a final survey to confirm the validity of IHM. The Administration will endeavour to complete the legislative work for the Bill the soonest and is also drawing up the regulations in parallel, with a view to introducing the regulations into LegCo for scrutiny before

the summer break this year, so that once CPG has decided that the Convention applies to HKSAR, the relevant requirements of the Convention can enter into force immediately. To allow for the implementation of the Convention in the light of the actual situation, the new legislation will come into operation on a day to be appointed by the Secretary by notice published in the Gazette. Nevertheless, even if the Convention cannot enter into force in Hong Kong before its global entry-into-force date, relevant measures will be taken to ensure the compliance of Hong Kong registered ships with the requirements of the Convention, and where necessary, MD will request ROs (i.e. classification societies) to survey Hong Kong registered ships and issue relevant certificates in compliance with the requirements of the Convention, so as to facilitate safe and environmentally sound ship recycling activities.

12. Concerns have been raised that rectification may need to be carried out by Hong Kong registered ships as they may not be able to comply with the requirements of the Convention following its entry into force in Hong Kong, thereby increasing the operating costs of the industry. Members have urged the Administration to enhance communication with stakeholders to ensure the industry's thorough understanding of the details of the Convention, and to provide the industry with a list of eligible SRFs and charging information.

13. The Administration has pointed out that ships registered in Hong Kong are mostly large merchant ships which are renowned for their safety and high quality around the world. Taking the year 2024 as an example, the Port State Control detention rate of Hong Kong ships was 0.69% (i.e. 6.9 per 1 000 ships requiring detention for rectification of deficiencies following port state control inspection), which was lower than the world average (3.3%). The Administration believes that the risk of Hong Kong registered ships being involved in unsafe ship recycling activities is remote. Moreover, the fees for ship surveys and issuance of relevant certificates are limited, without exerting cost pressure on the industry.

Powers conferred on the Director of Marine by the regulations

14. Under clause 5(1)(b) of the Bill, the regulations made under clause 4(1) of the Bill by the Secretary may empower the Director of Marine ("Director") to recognize "any organization" to perform the functions relating to ships and ship recycling facilities that may be performed by the Director under the Bill. Some members consider the meaning of the term "any organization" too broad. For instance, "any organization" may also refer to political parties, societies, etc. that are irrelevant to ship recycling activities. Members have suggested that the Administration consider defining "organization" more clearly, for example, by stipulating that the organization should be a professional organization.

15. The Administration has explained that the performance of the functions relating to ships and ship recycling is a highly professional act. Hence, the

“organization” referred to in clause 5(1)(b) of the Bill must possess the relevant professional knowledge or technique in order to be recognized by the Director. As a matter of fact, the organizations currently recognized by MD are classification societies. Once a classification society is recognized under the regulations made by the Secretary, it will become a “recognized organization” (認可機構). The Administration therefore considers that the relevant provision of the Bill is clear enough and there is no need to define the term “organization” in clause 5(1)(b) of the Bill.

Power to enter premises used as ship recycling facilities

16. Members note that clauses 9 to 11 of the Bill empower an authorized officer to enter premises used as SRFs under different circumstances to ascertain whether the Bill is being or has been complied with. Concerns have been raised as to whether the relevant power conferred on an authorized officer under clause 9 of the Bill to enter the premises without warrant at any reasonable time and exercise the powers specified in clause 12(1) of the Bill other than in emergencies is excessive. The Legal Adviser has also asked the Administration to clarify what are the operational needs which would require the authorized officers to have the same set of powers in respect of all circumstances where the power to enter premises is exercised (e.g. under clause 9 (for purposes other than in emergencies), clause 10 (entering a premises without a warrant in an emergency) and clause 11 (entering a premises with warrant)), and in respect of enforcement powers, the application of IMO’s guidelines that authorized officers are required to observe in addition to the requirements under the Bill.

17. The Administration has advised that a graded approach has been adopted under clauses 9 to 11 of the Bill to prescribe different thresholds that must be met before authorized officers may enter the premises and exercise the powers under clause 12 of the Bill. For instance, clause 9 is only concerned with the carrying out of routine inspection and spot checks. The power is limited to entry into non-domestic premises over which an authorized officer has reasonable ground to believe that they are being used as SRFs for ships to which the Bill applies. In addition, the authorized officer could only enter the premises at reasonable time. For clause 10 of the Bill, the exercise of the authorized officer’s warrantless entry power is limited to non-domestic premises in case of emergencies where it is not reasonably practicable to obtain a warrant. On the other hand, clause 11 of the Bill caters for other situations where entry into the premises is relatively more intrusive, for example, entry into domestic premises or entry in the absence of the occupier’s consent, etc. Hence, an authorized officer is required to obtain a warrant from a magistrate before such entry.

18. The Administration has further pointed out that in order for authorized officers to effectively enforce the legislation relating to the implementation of the Convention, it is imperative that they should be able to exercise any of the powers

under clause 12 of the Bill as is appropriate in the circumstances, such as the powers to inspect, conduct examinations, take samples or make queries, whether for the purpose of ascertaining compliance with regulatory standards or in the course of an investigation for suspected contravention of the relevant ordinances. Moreover, the Administration considers that these powers are not particularly intrusive under the Bill and are reasonable given that they are aimed at activities which are highly regulated. For instance, where an authorized officer lawfully enters the premises, it is reasonable to provide that the authorized officer may immediately seize an article in respect of which the officer suspects on reasonable grounds that an offence under the Bill has been committed, otherwise there is a risk of loss or destruction of key evidence. In addition, IMO has developed and issued six sets of guidelines to supplement the implementation of the Convention. These guidelines provide instructions on areas that cover inspection, survey and certification of ships and authorization of SRFs, development of the Ship Recycling Plan and IHM, etc. When exercising their power, MD's authorized officers will duly observe the requirements under the Bill as well as IMO's guidelines (including some new guidelines that may be issued in future implementation), and exercise caution when entering premises to ensure that any powers conferred on them are exercised only when necessary.

Defining the matters that constitute "deficiency"

19. Clauses 13(1) and 14(1) of the Bill state that if the exercise of a power in relation to any ship or any premises used as a SRF under section 12(1) of the Bill reveals a deficiency, the Director may give a direction to the owner/master of the ship or the operator of an SRF to rectify the deficiency. Members have expressed concern that the term "deficiency" is not defined in the Bill. Rather, a deficiency as referred to in clauses 13(1) and 14(1) of the Bill will be provided for in the regulations to be made by the Secretary as stated in clause 5(e) of the Bill. As failure to comply with the Director's direction to rectify a deficiency will constitute an offence punishable by a fine and imprisonment, members consider that the Administration should clearly define the term "deficiency" in the Bill to ensure industry vigilance. Taking into account the seriousness of the offence, members and the Legal Adviser have also enquired whether a mechanism for appeal or contest will be put in place for the persons concerned to apply for a review of the directions given by the Director.

20. The Administration has explained that while the term "deficiency" is not specifically defined in Hong Kong's marine legislation, it has been the long-standing practice that the subsidiary legislation will specify acts or omissions that constitute such deficiencies in accordance with different provisions of the international conventions. Accordingly, the Administration will prescribe in the regulations the maximum penalties for deficiencies revealed under clauses 13(1) and 14(1) of the Bill and illustrate which acts or omissions are regarded as deficiencies, including but not limited to: recycling ships at unauthorized SRFs;

failure to equip onboard an International Certificate on Inventory of Hazardous Materials or the International Ready for Recycling Certificate; failure to update Part I of the Inventory following repairs or alterations to a ship, removal or replacement of any machinery or equipment, or the renewal of hull coatings; failure to obtain valid Document of Authorization to conduct ship recycling; conducting ship recycling for ships that do not comply with the Convention's requirements, and failure of a recycling company/operator to effectively implement a Ship Recycling Facility Plan.

21. The Administration has further pointed out that in terms of actual issuance of a direction to rectify a deficiency, the attending surveyor will upon completion of a survey or inspection, notify the ship owners or masters on the deficiencies revealed on the spot and then a direction will be issued so that the observation/order/instructions will be acknowledged by the ship owners or masters. Therefore, it is very rare that one needs to contest such directions. In any case, clause 16 of the Bill has already provided an avenue for a person to defend his commission of an offence, of which failure to rectify a deficiency specified in a direction is one, with reasonable excuse. Such practice is in line with that under other existing marine legislation, under which the Director is also empowered to issue directions to rectify the deficiencies revealed.

Proposed new offences under clauses 12, 13 and 14 of the Bill

22. Under clause 12(3) and (4) of the Bill, it would be an offence if a person contravenes a requirement made by an authorized officer under clause 12(1) (for non-compliance with certain requirements, the Bill proposes that there would be a defence of "reasonable excuse"). Further, it would also be an offence if an owner/master of a ship or an operator of an SRF who receives a Direction fails to comply with it, take steps to rectify the "deficiency" or inform the Director once the "deficiency" is rectified without reasonable excuse (clauses 13(3) and 14(3)). The Legal Adviser has written to the Administration to seek clarification on whether the above offences would be strict liability offences (i.e. the prosecution needs not prove the existence of *mens rea* (the mental element) of committing the offence). The Administration has advised that while the above offences may fairly be described as "regulatory offences", and the penalties are relatively minor, the presumption of *mens rea* cannot be displaced. In respect of the offences under clause 12(3) and (4) of the Bill, a person cannot contravene the requirement unless the person "has knowledge of" such requirement. In respect of the offences under clauses 13(3) and 14(3) of the Bill, a person can only be guilty of non-compliance with the direction, failing to rectify the deficiency or to inform the Director of the rectification if the person "has knowledge of" such direction, deficiency or rectification. The above offences are therefore not strict liability offences, i.e. the prosecution has to prove the mental element of the offences.

Exemptions to be granted by the Director

23. Clause 17(1) of the Bill empowers the Director to exempt any ship or class or description of ships, or any SRF, from any of the requirements of the Bill, either absolutely or subject to the conditions that the Director may specify. Members have asked the Administration to clarify whether the Director's power to grant exemptions absolutely is excessive, under what circumstances the Director may exercise the power to grant exemptions absolutely, and whether the Administration will consider providing clearly in the Bill for the specified conditions that the Director must fulfil in exercising the relevant power.

24. The Administration has responded that although clause 17 of the Bill empowers the Director to grant exemptions, in general, the exemptions are subject to conditions specified by the Director. These exemptions are limited to the purpose of effectively implementing the Convention. The current provision of the Bill (i.e. "the Director may exempt ... any of the requirements of this Ordinance ... absolutely ...") is intended to cater for situations where unforeseen special circumstances arise or where novel designs of ships or SRFs create uncertainties in complying with the Convention, rendering the Director unable to specify conditions. Therefore, the current text of the Bill reserves room for the Director to facilitate better implementation and enforcement of the Convention. In addition, when granting exemptions, the Director has to follow the relevant guidelines issued by IMO. Such exemptions would therefore not be granted lightly or wantonly.

Access to the text of the Convention

25. Clause 18 of the Bill provides that the Director would be required to keep a copy of the English and Chinese texts of the Convention at the office of the Director for inspection by the public. Members and the Legal Adviser have asked the Administration to consider publishing the Convention on MD's website to facilitate access by the public.

26. The Administration has explained that given that IMO has the copyright of the international marine conventions it publishes, MD cannot provide on its website the full and most updated version of the Convention unless permission is obtained from IMO in accordance with its established mechanism. That said, as a usual practice and obligation, and in view of the adoption of the direct reference approach in the legislation, MD will provide the updated and additional information relevant to the Convention from time to time in the form of Merchant Shipping Information Note on MD's website, together with the copy of the English and Chinese texts of the Convention kept at the office of the Director for access by the public, so as to facilitate understanding of and compliance with the latest requirements by stakeholders, including ship owners, ship managers and masters and ROs of Hong Kong ships.

Views on the drafting aspect of the Bill

27. Members have expressed views on the drafting aspect of the Bill and sought clarification from the Administration on:

- (a) regarding the interpretation of international voyage (國際航程) under clause 2 of the Bill, whether the Administration will consider adding the term “位於” after the term “香港與” to revise the provision to read as “香港與位於中華人民共和國以外的港口之間的航程”, so as to avoid juxtaposing “香港” with “中華人民共和國”;
- (b) whether reference will be drawn from the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) to include in the Bill the interpretations of certain vessels (e.g. dynamically supported craft, junk and boat), so as to ensure consistency between the Bill and the relevant local marine legislation; and
- (c) regarding clause 3(1)(c) of the Bill that reads “...(但不包括僅用於政府非商業服務的船舶)”, whether the Administration will consider adding the term “特區” before the term “政府” to revise the provision to read as “...(但不包括僅用於特區政府非商業服務的船舶)”, so as to distinguish it from the “政府” referred to in clause 3(2)(d) (which refers to the governments of other countries).

28. The Administration’s response is as follows:

- (a) clause 2 sets out the definition of international voyage as “香港與中華人民共和國以外的港口之間的航程”, and the corresponding English text reads “Hong Kong and a port outside the People’s Republic of China”. If one interprets the terms using the English version, the phrase “People’s Republic of China” is quoted in the context to exclude the ports in Mainland China. Therefore, the concept of “People’s Republic of China” in itself is not engaged in the provision. Consequently, the Chinese formulation is simply a direct translation of the English version and conveys essentially the same meaning. Therefore, the current Chinese drafting does not constitute juxtaposition of “香港” with “中華人民共和國”;
- (b) the interpretation of “ship” in the Bill has adopted the definition of “ship” in Article 2 of the Convention. The ship recycling or types of ships referred to in the Convention may be different from the definition of local vessels referred to in other merchant shipping

ordinances in Hong Kong. In addition, “ship” is also broadly defined in paragraph (a), which “means a vessel of any type operating, or having operated, in the marine environment”; and

- (c) the bracketed term “政府非商業服務” in clause 3(1)(c) of the Bill has been adopted in accordance with the Convention to fully reflect the meaning of the Convention. In addition, the beginning of clause 3(1)(c) has clearly referred to “特區政府”. The context of the whole sentence is therefore clear.

Resumption of Second Reading debate on the Bill

29. The Bills Committee has completed the scrutiny of the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the LegCo meeting of 21 May 2025, to which the Bills Committee has no objection.

Amendments

30. Both the Bills Committee and the Administration will not propose any amendments to the Bill.

Consultation with the House Committee

31. The Bills Committee reported its deliberations to the House Committee on 2 May 2025.

Council Business Divisions
Legislative Council Secretariat
15 May 2025

**Bills Committee on Merchant Shipping
(Safe and Environmentally Sound Recycling of Ships) Bill**

Membership list

Chairman Hon YIM Kong, JP

Members Hon Steven HO Chun-yin, BBS, JP
Hon Frankie YICK Chi-ming, GBS, JP
Dr Hon Junius HO Kwan-yiu, BBS, JP
Dr Hon Johnny NG Kit-chong, MH, JP
Hon LAM San-keung, JP
Ir Hon CHAN Siu-hung, JP
Hon Benson LUK Hon-man
Hon TANG Ka-piu, BBS, JP

(Total: 9 members)

Clerk Ms Angela CHU

Legal Adviser Mr Timothy WU

**Bills Committee on Merchant Shipping
(Safe and Environmentally Sound Recycling of Ships) Bill**

**List of the organization which has made written submission
to the Bills Committee**

1. Chinese Dream Think Tank