

## **LOCAL VESSELS ADVISORY COMMITTEE**

### **Proposed Legislation to Require that Children wear a Lifejacket at all times and a Passenger and Crew List be kept on board a Spectator Vessel during a Major Event at Sea**

#### **Purpose**

This paper seeks members' support for a proposal to legislate safety measures requiring that in any major event at sea, a lifejacket be worn by a child at all times and a passenger and crew list be kept on board a spectator vessel.

#### **Background**

2. In the incident on 1 October 2012 in which the ferry "Sea Smooth" collided with the launch "Lamma IV" ("the Lamma IV Incident"), 39 passengers (eight children included) on board the latter lost their lives and 87 others were injured. Among those who lost their lives many were found to have been drowned and without wearing a lifejacket. Also, in the absence of a passenger and crew list, the uncertainty in the number of passengers on board "Lamma IV" caused immense difficulties to the rescue operations. The public was concerned about the safety of Hong Kong waters in the aftermath of the incident.

3. The Marine Department (MD) has been advising owners, operators and coxswains of spectator vessels on safety measures in relation to participation in fireworks display, ever since the fatal collision on 16 February 1991 between a ferry and a spectator vessel, which occurred when vessels were dispersing after viewing a fireworks display. Among the safety measures are the requirements for all children on board a spectator vessel to wear a lifejacket at all times and the keeping of a

passenger and crew list by the coxswain for emergency purposes. Unfortunately, as observed from the Lamma IV Incident, the advice had not been heeded.

4. To enhance the safety of the passengers on board spectator vessels in major event at sea, therefore, the MD proposes legislating the lifejacket and passenger and crew list requirements as mentioned in paragraph 3 above. The proposed legislative requirements as set out in the ensuing paragraphs have had the support of the Joint Sub-committee on Class I and Class IV Vessels.

### **The Proposed Legislative Requirements**

5. The proposed legislative requirements are set out below:

- (i) A child, aged two or above, must be wearing a lifejacket at all times while on board a spectator vessel.
- (ii) A passenger and crew list with the required particulars\* must be kept on board a spectator vessel for emergency purposes.
- (iii) For the purpose of Requirement (ii) above, the coxswain of a spectator vessel must obtain the required particulars from all of his or her passengers; and passengers must furnish the coxswain with the required particulars.
- (iv) For the purpose of Requirement (ii) above, a tourist guide<sup>1</sup> must furnish the coxswain of a spectator vessel with the required particulars of the travellers who are under his or her care and intend to get on board the spectator vessel to view a major event at sea.
- (v) For the purpose of Requirement (ii) above, a person in charge of a local tour must furnish the coxswain of a spectator vessel with

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<sup>1</sup> Tourist guides in Hong Kong are required to be accredited by the Travel Industry Council of Hong Kong.

the required particulars of the members of the tour who will get on board the spectator vessel to view a major event at sea.

\*The required particulars are “name” and “gender” for an adult; and “name”, “gender” and “age” for a child. A form will be specified for the passenger and crew list in a Marine Department Notice and the Web site of the Marine Department (a downloadable version in this case). A sample of the form is at *Annex*.

## **Definitions**

6. Below are the meanings of terms for the purpose of the proposal:
- (i) “major event at sea”: It means an event, such as fireworks display, pyrotechnic display, etc. which (a) is promulgated by Marine Department Notice as such event, (b) requires the closure of an area at sea and (c) attracts a number of vessels to gather in the immediate vicinity of the event for viewing.
  - (ii) “child”: It means a person under the age of 12.

## **Application**

7. The proposed Requirements apply to a Class I, Class II transportation boat or Class IV vessel<sup>2</sup> that is on a trip immediately before, and proceeding directly to and from the venue of, a major event at sea, and for the sole purpose of conveying passengers to view the event. The aforesaid trip is deemed to begin when the first passenger gets on board the vessel and end when the last passenger disembarks from the vessel immediately after the event.

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<sup>2</sup> A Class I, Class II transportation boat or Class IV is a vessel so classed under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, Cap. 548D.

## **Liability**

8. The proposed liabilities for not meeting the proposed Requirements detailed in paragraph 5 above are set out below:

### Requirement (i)

- (i) If Requirement (i) is not met, the coxswain of the spectator vessel or the parent or guardian who accompanies and has the responsibility to take care of the child found not wearing a lifejacket may be guilty of an offence, only if the violation is a result of negligence of any of them, and is liable on conviction to a fine at level 2<sup>3</sup>.

### Requirement (ii)

- (ii) If Requirement (ii) is not met, the coxswain of the spectator vessel may be guilty of an offence and is liable on conviction to a fine at level 2.

### Requirement (iii)

- (iii) If Requirement (iii) is not met, the coxswain of the vessel who fails to obtain the required particulars from all of his or her passengers, or the passenger who refuses to provide his or her particulars or the particulars of a child under his or her care to the coxswain, may be guilty of an offence and are liable on conviction to a fine at level 2.

If a passenger knowingly provides the coxswain with false or inaccurate particulars, the passenger may be guilty of an offence and is liable on conviction to a fine at level 2.

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<sup>3</sup> \$5,000

#### Requirement (iv)

- (iv) If Requirement (iv) is not met, or a tourist guide knowingly provides the coxswain with false or inaccurate particulars of the travellers, the tourist guide may be guilty of an offence and is liable on conviction to a fine at level 2.

#### Requirement (v)

- (v) If Requirement (v) is not met, or a person in charge of a local tour knowingly provides the coxswain with false or inaccurate particulars of the members of the tour, that person may be guilty of an offence and is liable on conviction to a fine at level 2.

### **Refusal to Boarding of Passengers**

9. The coxswain of a spectator vessel may refuse the boarding of a child and his or her accompanying parent or guardian if Requirement (i) is defied and the boarding of a passenger if Requirement (iii) is defied.

10. If any passenger defying Requirement (i) or (iii) resists the coxswain's demand to leave the vessel, the coxswain may report to Marine Department or Marine Police, and wait at a safe place for the arrival of the enforcement officers coming to his or her assistance.

### **Negligence under Requirement (i)**

11. With respect to Requirement (i), set out below are the circumstances under which the coxswain, parent or guardian may be considered having exercised due diligence to avoid violation of the requirement, and therefore, not be held liable for an act of negligence:

- (a) In the case of a coxswain, he or she may not be blamed for negligence if he or she had taken adequate precautions, which may consist of, but not limited to, the following -

- (i) alert passengers to Requirement (i) by making announcement at the beginning of the trip and displaying a notice for it;
  - (ii) provide sufficient lifejackets on board the spectator vessel as required by the law;
  - (iii) provide clear indication as to the locations of lifejackets onboard;
  - (iv) provide lifejacket wearing instructions through demonstration by members of the crew, video playback or posters displayed at conspicuous locations; and
  - (v) organise his or her crew to check and remind passengers for compliance with the Requirement before the vessel departs for the event and from time to time during the event.
- (b) In the case of a parent or guardian, he or she may not be blamed for negligence under, but not limited to, the following circumstances -
- (i) owing to reasonable cause, he or she was not aware of Requirement (i) at the time it is violated; or
  - (ii) for reasons beyond his or her control, he or she had not been able to put a lifejacket on the child or to persuade the child to put it on.

12. Prosecution against violation of Requirement (i) will only be initiated if evidence is sufficient to prove that the violation is a result of negligence on the part of the parent, guardian or coxswain, and the burden of proof will lie with the enforcement officers.

## **Implication**

13. In subsequent major events at sea following the Lamma IV Incident, MD's patrol officers inspected a large number of vessels involved: 120 vessels (29 Class I and 91 Class IV) in the 2012 New Year's Eve Countdown; 84 vessels (26 Class I and 58 Class IV) in the 2013 Lunar New Year Fireworks Display; 98 vessels (27 Class I and 71 Class IV) in the 2014 Lunar New Year Fireworks Display. All the children were found wearing a lifejacket, and all coxswains keeping a passenger and crew list on board. No verbal warning had been issued as a result of these inspections. It is anticipated that the proposed legislative requirements could be met by the trade and the passengers without major problems.

## **Consultation**

14. The legislative proposal was first tabled at the 4<sup>th</sup> Joint Sub-committee on Class I and Class IV Vessels (Sub-committee) meeting held on 1 March 2013. Having held a total of nine rounds of meetings to discuss this matter, the above proposed legislative requirements incorporated with comments from the Sub-committee members and legal advice from the Department of Justice were finally endorsed at the 12<sup>th</sup> Sub-committee meeting held on 15 May 2014.

## **Advice Sought**

15. We invite members to consider and support the proposed legislative requirements.

*Operations Branch  
Port Control Division  
Marine Department  
August 2014*

## 船員及乘客名單 Crew and Passenger List

船隻擁有權證明書號碼 (Certificate of Ownership No.): \_\_\_\_\_

船隻名稱 (Name of Vessel): \_\_\_\_\_

船東/代理 姓名 (Name of Vessel Owner / Agent): \_\_\_\_\_

聯絡電話 (Contact Telephone No.): \_\_\_\_\_

航程 (Journey): 由 (From) \_\_\_\_\_ 至 (To) \_\_\_\_\_

### 船員 (Crew)

	姓名 Name	性別 Gender	聯絡電話 Contact Telephone No.
1	(船長/Coxswain)		
2			
3			
4			
5			
6			

### 乘客 (Passenger)

	姓名 Name	性別 Gender	年齡* Age*		姓名 Name	性別 Gender	年齡* Age*
1				13			
2				14			
3				15			
4				16			
5				17			
6				18			
7				19			
8				20			
9				21			
10				22			
11				23			
12				24			

\* 只適用於12歲以下人士 (Applicable to person under the age of 12 only)

船上人數 (Number of Person on board)			
船員人數 No. of Crew	乘客 (12歲或以上) 人數 No. of Passenger (12 years old or above)	乘客 (12歲以下) 人數 No. of Passenger (under 12 years old)	總人數 Total No. of Person

日期  
(Date)

船長簽名  
(Name of Coxswain)

**註: 名單內所報個人資料只供政府救援單位作緊急及搜救之用。如名單未用於緊急事件, 一個月後會被銷毀。**  
**Note: The personal data provided in this list shall be used by the Government rescue units for emergency and search & rescue purpose only. The list will be destroyed after a lapse of one month if not used for any emergency incident.**