

LOCAL VESSELS ADVISORY COMMITTEE

Proposed Legislation against Drink and Drug Boating

Purpose

This paper sets out a proposal of the Marine Department (“the MD”) to introduce new legislation against drink and drug boating in the waters of Hong Kong.

Background

2. After the collision of two local passenger vessels near Lamma Island on 1 October 2012, a Commission of Inquiry (“the COI”) was appointed by the Chief Executive in Council to inquire into the facts and circumstances leading to and surrounding the said collision; and to make recommendations on measures aiming at preventing similar incidents in future.

3. Captain Nigel R Pryke, one of the expert witnesses appointed by the COI, recommended the consideration of “*whether legislation should permit the harbour [marine] police to randomly test for drug and alcohol consumption*”¹ (“the Recommendation”).

4. Currently, the law does not make drink or drug boating a specific offence. Nor does the law empower law enforcement authorities to conduct compulsory tests for alcohol or drug after a marine traffic accident.²

5. While in the last two decades there were only a few cases in which alcohol was suspected to have been an aggravating factor, in a recent court case³ relating to a marine incident, the judge expressed that he had “no clue as

¹ Vide para. 443(7) of “Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 (The Redacted Version)” retrievable at <http://www.legco.gov.hk/yr12-13/english/panels/edev/papers/edev0527-rpt20130430-e.pdf>

² Vide para. 26 of Discussion Paper No. CB(4)1034/14-15(04) presented for Legislative Council Panel on Economic Development held on 27 May 2015 on update of follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 (hereafter ‘Discussion Paper for LegCo ED Panel held on 27 May 2015’), retrievable at <http://www.legco.gov.hk/yr14-15/english/panels/edev/papers/edev20150527cb4-1034-4-e.pdf>

³ Vide para. 32 in *HKSAR v Cheung Ming-wai* [2015] DCCC 1060/2014, retrievable at http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=98954&QS=%2B&TP=RS

to any valid and good reasons for not taking similar screening breath test against the coxswain [as against the driver in motor vehicle accident] when incidents or accidents happen at sea". Besides, control measures on drink and drug boating are in place by many other jurisdictions in the world, as well as the International Maritime Organisation ("the IMO"). It is proposed that Hong Kong should introduce measures to control drink or drug boating.

6. The Government formed an inter-departmental working group led by the MD to take forward the Recommendation.⁴ The working group had studied the legislation and control measures in relation to drink or drug driving on land and boating at sea in Hong Kong and other jurisdictions.

The Proposal

7. On the basis of the conclusions of the working group, the MD proposes that for safety of navigation and life at sea, a control regime should be in place to control boating under the influence of alcohol or drugs in Hong Kong.

8. Many jurisdictions in the world have already had controls on the use of alcohol and drug on board vessels within their territorial waters. Being a major port in the world with thousands of local, river-trade and ocean-going vessels operating daily in its confined water space, Hong Kong should put in place a control regime on boating under the influence of alcohol or drugs within its waters by introducing a new legislation.

9. The new legislation on controlling boating under the influence of alcohol or drugs should apply to all vessels within the waters of Hong Kong, including locally licensed vessels, river-trade vessels and ocean-going vessels. The new legislation should model on the relevant provisions on driving a motor vehicle under the influence of alcohol or drugs under the Road Traffic Ordinance (Cap 374)("the RTO"), including the prescribed alcohol limits and the specified illicit drugs as follows:

- (i) Prescribed limits of alcohol specified in section 2 of the RTO:
 - (a) 22 micrograms of alcohol in 100 millilitres (0.022 mg/100 ml) of breath;
 - (b) 50 milligrams of alcohol in 100 millilitres of blood (50 mg/100 ml); or

⁴ Vide para. 27 of Discussion Paper for LegCo ED Panel held on 27 May 2015.

- (c) 67 milligrams of alcohol in 100 millilitres (67 mg/100 ml) of urine.
- (ii) Specified illicit drugs given in Schedule 1A of the RTO:
 - (a) Heroin or any metabolite derived from heroin
 - (b) Ketamine
 - (c) Methamphetamine (methamphetamine) (aka “ice”)
 - (d) Cannabis or any active ingredient of cannabis
 - (e) Cocaine or any metabolite derived from cocaine
 - (f) 3, 4-methylenedioxymethamphetamine (MDMA) (aka “ecstasy”).

Way Forward

10. A new Government inter-departmental working group will be formed shortly to follow up the formulation of the legislative proposal.

Advice Sought

11. Members are invited to comment on MD’s initiative to introduce legislation to control boating under the influence of alcohol or drugs in the waters of Hong Kong.

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