

LOCAL VESSELS ADVISORY COMMITTEE

Proposal to Enhance Enforcement against Smuggling Activities at Sea

The Proposal

To effectively combat smuggling activities¹ at sea, there is a need to step up the regulation of vessels that might be used or suspected of being used for smuggling proposes. Specifically, the Government proposes to amend section 14A(6)(b)(iv) of the Import and Export Ordinance (IEO) (Cap. 60) (extract at Annex) to the effect that if relevant enforcement officers reasonably suspect that a vessel of less than 250 gross tons has been used or is intended to be used for the purpose of smuggling and the vessel has a facility to mount *one or more outboard engine where the total power of the engine(s) could exceed 168 kilowatts (225 horsepower)*, the vessel shall be presumed to have been under construction, constructed or used for the purpose of smuggling. This proposal aims to better target the current practice of smuggling syndicates and enhance the effectiveness of the IEO in combating smuggling by speedboat.

Details

Existing Statutory Provisions

2. Smuggling by high-powered speedboat presents a constant law enforcement concern. It is difficult to intercept such speedboats as they are operated at very high speeds and often in a reckless and dangerous manner.
3. Section 14A of the IEO provides that –
 - (a) it is an offence to construct a vessel of less than 250 gross tons for the purpose of smuggling;
 - (b) it is an offence to repair or maintain a vessel of less than 250 gross tons constructed for the purpose of smuggling;

¹ Under section 2 of the Import and Export Ordinance (Cap. 60), "smuggling" means importing, exporting, unshipping, shipping, landing, loading, carrying, conveying or otherwise dealing with any article contrary to the provisions of the Import and Export Ordinance or any other law controlling the import or export of any article.

- (c) it is an offence for being a person found on board a vessel of less than 250 gross tons knowing that that vessel is being used for the purpose of smuggling; and
- (d) it is an offence for being the master or other person in charge of a vessel of less than 250 gross tons used for the purpose of smuggling.

4. Section 14A(6) of the IEO further provides that a vessel shall be presumed to have been under construction, constructed or used for the purpose of smuggling if relevant enforcement officers reasonably suspect that the vessel has been used or is intended to be used for the purpose of smuggling and has a facility to mount *more than two outboard engines the total power of which could exceed 448 kilowatts (600 horsepower)*.

5. The above provisions were enacted in 1991 to combat smuggling activities at sea, which were at that time commonly undertaken by “Dai Fei” (「大飛」) equipped with four or five high-powered engines.

6. In recent years, smuggling syndicates have gradually shifted to the use of single-skin, fibre-glass sampans outfitted with high-powered outboard engine(s). Statistics on the types of speedboats seized in connection with smuggling activities in 2006 to 2008 are set out below –

Speedboat Type	2006	2007	2008	Total
Mounted with one 250-horsepower engine	11	7	0	18
Mounted with two 250-horsepower engines	8	5	7	20
Mounted with two 200-horsepower engines	1	0	0	1
Others ²	7	8	4	19
Total	27	20	11	58

7. Notably, of the 58 speedboats seized, 39 (or 67%) were outfitted with one or more engines the total power of which was above 225 horsepower but below 600 horsepower. Currently, such speedboats are not covered by section 14A(6)(b)(iv) of the IEO. Thus, the enforcement agencies are unable to invoke the said provision against such vessels even if they have reasons to suspect that the vessels concerned have been used or are intended to be used for smuggling

² Of the 19 speedboats under the category of “Others”, six were mounted with one engine the power of which was below 100 horsepower. Statistics on the horsepower of the engines mounted on the remaining 13 speedboats were not available.

purpose.

8. Having reviewed the modus operandi of smuggling activities at sea in recent years and to enhance the effectiveness of enforcement actions against smuggling by speedboat, we see a need to amend section 14A(6)(b)(iv) of the IEO as proposed in paragraph 1 above to better target the prevailing types of speedboats constructed or used for smuggling purpose.

9. Under section 14A(6)(a) of the IEO, enforcement against smuggling vessels requires an authorized officer to have reasonable suspicion that a vessel has been or is intended to be used for the purpose of smuggling. In addition, section 14A(7) of the IEO provides that it shall be a defence for the master or other person in charge of a vessel to prove that he did not know and could not with reasonable diligence have known that the vessel was used for smuggling. Therefore, the proposed amendment to section 14A(6)(b)(iv) would not affect vessels of less than 250 gross tons engaged in bona fide purposes, even if outfitted with outboard engines the total power of which exceeds 168 kilowatts (225 horsepower).

Views Sought

10. Views on the proposal in paragraph 1 above are invited. For enquiry, please contact Mr Chong Wing-wun, Assistant Secretary for Security (tel: 2810 2302; fax: 2524 3762; e-mail: wwchong@sb.gov.hk).

Security Bureau
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Chapter: 60 IMPORT AND EXPORT ORDINANCE

Section: 14A Construction, etc., of vessels for the purpose of smuggling

(1) Any person who constructs a vessel of less than 250 gross tons for the purpose of smuggling is guilty of an offence and liable-

(a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;

(b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years.

(2) Any person who repairs or maintains a vessel of less than 250 gross tons constructed for the purpose of smuggling is guilty of an offence and liable-

(a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;

(b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years.

(3) Any person found on board a vessel of less than 250 gross tons knowing that the vessel is being used for the purpose of smuggling is guilty of an offence and liable-

(a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;

(b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years.

(4) The master or other person in charge of a vessel of less than 250 gross tons used for the purpose of smuggling is guilty of an offence and liable-

(a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;

(b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years.

(5) Any vessel of less than of 250 gross tons that is under construction for the purpose of smuggling is deemed to be a vessel constructed or used for the purpose of smuggling.

(6) In subsection (1), (2), (3), (4) and (5), where-

(a) the Commissioner, and authorized officer or any member of the Customs and Excise Service reasonably suspects that a vessel has been used or is intended to be used for the purpose of smuggling; and

(b) it is a vessel that has-

(i) any false bulkhead, bow, side or bottom;

(ii) any secret or disguised place adapted for the purpose of concealing any article;

(iii) any hole, pipe or other device adapted for the purpose of smuggling;

(iv) **a facility to mount more than 2 outboard engines where the total power of the engines could exceed 448 kilowatts;**

(v) fuel tanks or other on board fuel capacity exceeding 817 litres, such tanks or other capacity holding or suitable for holding fuel for outboard motors; or

(vi) metal plating fitted on the hull of the vessel that could be used for ramming other vessels or for armour protection,

the vessel, or vessel under construction, shall be presumed to have been under construction, constructed or used for the purpose of smuggling in the absence of evidence to the contrary.

(7) It shall be a defence to a charge under subsection (4) for the master or other person in charge of a vessel to prove that he did not know and could not with reasonable diligence have known that the vessel was used for smuggling.