

Port Operations Committee

Regulating Drink and Drug Boating

PURPOSE

This paper updates Members on the latest development of the proposed legislation to regulate drink and drug boating within the Hong Kong waters since last consultation in 2017.

BACKGROUND

2. At present, there is no dedicated legislation to regulate drink and drug boating in the Hong Kong waters. There is also no law empowering law enforcement authorities to conduct compulsory tests for alcohol or drugs after a marine traffic accident¹. Seafarers who operate a vessel under the influence of alcohol or drugs may only be prosecuted for a general offence of “endangering the safety of others at sea” under the Shipping and Port Control Ordinance (Cap. 313) and the Merchant Shipping (Local Vessels) Ordinance (Cap. 548)². Moreover, for pilots licensed under the Pilotage Ordinance (Cap. 84), working under the influence of drink or drugs is a disciplinary offence³.

¹ That said, as an associate member of the IMO, we have incorporated the alcohol limits in blood and breath allowed for masters, officers and other seafarers working in ocean-going vessels (OGVs) as prescribed under the International Convention on Standards of Training, Certification, and Watchkeeping (the STCW Convention) into the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478C), thereby subjecting seafarers on OGVs carrying out their duties under the influence of alcohol or drugs to criminal offences.

² The offences are provided under section 72 of the Shipping and Port Control Ordinance (Cap. 313) (applicable to OGVs) and section 32 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (applicable to local vessels).

³ Under section 17 of the Pilotage Ordinance (Cap. 84), pilots who pilot a ship under the influence of alcohol or drugs are subject to disciplinary inquiry.

3. The Marine Department (MD) formed an inter-departmental working group (the Working Group) in 2015 comprising the Hong Kong Police Force (HKPF), the Department of Health, the Department of Justice (DoJ), the Hospital Authority and the Government Laboratory to study issues relating to boating under influence of alcohol and drugs with a view to enhancing marine safety. After examining the existing control arrangements in the local context, the international requirements imposed by the International Maritime Organization (IMO), the practices in overseas jurisdictions, as well as the local situation, the Working Group considered that there are merits in enacting a specific legislation in Hong Kong for regulating drink and drug boating.

4. The Panel on Economic Development (ED Panel) of the Legislative Council (LegCo) was consulted on a proposed legislative framework in March 2019. Members generally supported the proposal and offered comments on the scope and coverage of the proposed legislation. Since then, MD has been working closely with DoJ and the HKPF in the drafting of a new specific legislation and devising the enforcement procedures. In 2019, MD also invited the Hong Kong University of Science and Technology to conduct tests on the existing breath screening devices for drink boating to ensure that the devices can accurately detect alcohol in a marine field environment. In 2020, MD engaged a Medical Review Officer⁴ in conducting tests on urine screening test kit⁵ and devising a Marine Field Sobriety Test (MFST)⁶ as a preliminary drug test for drug boating. In 2021, MD further engaged a clinical toxicology specialist⁷ in

⁴ MD sought the Hong Kong Academy of Medicine's (HKAM) advice on nominating a consultant for conducting tests on urine test kits and devising the MFST. The HKAM nominated a Medical Review Officer who is a medical expert to offer advice.

⁵ MD commissioned a medical expert to conduct test on urine screening test kit in the market to ensure that the test kit can accurately and rapidly detect whether the urine specimen contains any specified illicit drugs.

⁶ The Marine Field Sobriety Test (MFST) is a combination of tests which models on the tests used in other jurisdictions and the Drug Influence Recognition Observation and Impairment Test used for drug driving test under the Road Traffic Ordinance (Cap. 374). The MFST mainly requires a person to perform a series of movements according to instructions to determine whether the person is under the influence of drugs. The person will be required to answer specific questions and perform a series of movement related to body coordination. The authorised officer will rate the person according to his ability to perform the movements. If the person fails to obtain sufficient marks, he will be considered as failing the MFST.

⁷ The HKAM nominated a specialist in clinical toxicology from the Hong Kong College of Emergency Medicine to provide professional advice on reviewing the adequacy and effectiveness of the proposed operational procedures regarding offences against boating under the influence of alcohol and drugs.

reviewing the operational procedures regarding offences against boating under the influence of alcohol and drugs.

PROPOSED LEGISLATION TO REGULATE DRINK AND DRUG BOATING

Scope of the proposed legislation

Offence

5. Under the proposed legislation, a person involved in operating a vessel or performing designated duty onboard a vessel that is underway will commit an offence if he/she is under the influence of alcohol or drugs to the extent of being incapable of having proper control of the vessel, or has alcohol exceeding the prescribed limits in his/her body (e.g. in his/her breath, urine or blood), or has any specified illicit drugs in his/her body (e.g. in his/her urine or blood). Considering that a vessel which is anchored, made fast to the shore or aground will not be able to navigate even though the engine is turned on, the proposed legislation will apply to a vessel that is underway only, i.e. a vessel that is not at anchor, made fast to the shore or aground.

Application

6. The proposed legislation will be applicable to all vessels within the Hong Kong waters, including locally licensed vessels, river-trade vessels and ocean-going vessels (OGVs). All persons involved in operating a vessel, including those who control, navigate or pilot a vessel (e.g. masters/coxswains, pilots, watchkeeping personnel of the deck and machinery spaces); and performing designated duties, i.e. relating to the safety and the security of the vessel and the protection of the marine environment (e.g. seafarers involved in the embarkation or disembarkation of passengers, or in assisting passengers to escape in emergency) will be covered.

Drink and Drug Boating Tests

Drink boating test

7. MD and HKPF have devised a set of enforcement procedures modelling on the existing procedures used for drink and drug driving on roads. For drink boating, MD and police officers (collectively “authorised officers”) will be empowered to require a person to undergo screening breath test by using the handheld approved screening instrument. If the screening test result indicates that the proportion of alcohol in the person’s breath is likely to exceed the prescribed limit, the authorised officer will require the person to provide another breath specimen and conduct an alcohol analysis by using the approved breath analyzing instrument. The procedure is similar to the drink driving test under the Road Traffic Ordinance (Cap. 374).

Drug boating test

8. The authorised officer will be empowered to require a person to undergo one or more preliminary drug tests, including the MFST, Rapid Oral Fluid Test or urine screening test. If the results of the preliminary drug tests indicate that the person’s ability to operate a vessel properly or to perform a designated duty properly is being impaired, or there is any concentration of any specified illicit drugs in the person’s oral fluid or urine, the authorised officer will require the person to provide urine specimen onboard MD’s launch or provide blood specimen at a hospital, a police station or a designated test centre for drug analysis at the Government Laboratory.

9. A person who refuses to undergo the drink boating test and/or drug boating test or refuse to provide specimen for analysis without reasonable excuse will commit an offence.

Enforcement

10. The authorised officers will be empowered to require a person involved in operating a vessel or performing a designated duty to undergo the approved alcohol and/or drug tests after the occurrence of an accident, as well as during spot checks on vessels. The authorised officers will also be conferred with the power to arrest and remove from a vessel any person

whom the officer has reasonable cause to suspect of having committed an offence. Furthermore, the authorized officers will be vested with power to give direction to the owner, agent or master of the vessel to arrange within a specified period a person who may lawfully operate the vessel or perform the designated duty, and conduct investigation on the vessel.

Penalty

11. Depending on the type and seriousness of the offence and circumstances of the case, the proposed penalties include fines ranging from \$5,000 to \$50,000 and/or imprisonment for a period from six months to three years. Furthermore, the court may order the person be disqualified to operate a vessel or perform designated duties onboard a vessel from six months to five years, and be disqualified for life if the person has been convicted of the same offence previously and, having regard to the circumstances in which the offence was committed and the behavior of the person, the court or magistrate is of the opinion that it is undesirable for the person to continue to be allowed to operate a vessel or perform designated duties onboard a vessel. The proposed penalties are similar to those adopted under Cap. 374 for drink and drug driving offences on road.

WAY FORWARD

12. Members had been consulted on the proposed legislative framework in March 2017, and generally supported the proposals. We aim at introducing the proposed legislation, in the form of a Bill, before end 2023. Members are invited to note the latest development of the above proposed legislation.

**Port Control Division
Marine Department
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