

**PORT OPERATIONS COMMITTEE**

**Proposed Legislation Against Drink and Drug Boating**

**PURPOSE**

Marine Department (“MD”) plans to introduce new legislation against drink and drug boating in the waters of Hong Kong. This paper seeks members’ comments on the legislative proposal.

**BACKGROUND**

2. In response to a recommendation made by one of the expert witnesses of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012, MD has formed an inter-departmental working group (“Working Group”) to study issues regarding drink and drug boating in the waters of Hong Kong. The Working Group has proposed that in order to promote the safety of navigation and life at sea, a control regime should be in place in Hong Kong to control the operation of vessels under the influence of alcohol or drugs.

3. At the meeting of the Local Vessels Advisory Committee (“LVAC”) held on 18 August 2015, MD proposed via LVAC Paper No. 13/2015 (“the Paper”)<sup>1</sup> to introduce new legislation against drink and drug boating in the waters of Hong Kong. LVAC members agreed to the proposal in principle and endorsed the Paper. The Working Group then discussed the details, coverage and penalty of the legislative proposal. MD, after deliberation, makes a legislative proposal as set out in paragraphs 5 to 10.

4. The International Maritime Organization also requires its members to introduce legislation for the enforcement of prescribed limits in blood or breath allowed for masters,

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<sup>1</sup> [http://www.mardep.gov.hk/en/aboutus/pdf/lvacp13\\_15.pdf](http://www.mardep.gov.hk/en/aboutus/pdf/lvacp13_15.pdf)

officers and other seafarers working on ocean-going vessels. The requirement came into operation internationally from 1 January 2017. In Hong Kong, these limits have been incorporated into the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478C) (“the Regulation”) under the Merchant Shipping (Seafarers) Ordinance (Cap. 478), which came into operation from 1 December 2016. Nonetheless, the Regulation is applicable to ocean-going vessels only.

## **LEGISLATIVE PROPOSAL**

5. MD proposes to introduce legislation to impose control on the operation of a vessel under the influence of alcohol or drugs by making reference to the Road Traffic Ordinance (Cap. 374) for the safety of navigation and life at sea. The new legislation applies to **all vessels underway** within Hong Kong waters, including locally licensed vessels, river trade vessels and ocean-going vessels.

6. Under the proposed new legislation, vessel operators commit an offence if they are under the influence of alcohol or drugs that renders them incapable of operating any vessels properly, or have alcohol exceeding the prescribed limit in their blood, urine or breath, or have any specified illicit drug in their blood or urine. The proposed prescribed upper limits on alcohol concentration and types of illicit drugs are the same as in the existing relevant requirements<sup>2</sup> on road traffic in Hong Kong. The details are as follows:

### ***Upper limits on alcohol concentration:***

- (a) 22 micrograms of alcohol in 100 millilitres (0.022 mg/100 ml) of breath;
- (b) 50 milligrams of alcohol in 100 millilitres (50 mg/100 ml) of blood;
- (c) 67 milligrams of alcohol in 100 millilitres (67 mg/100 ml) of urine.

### ***Specified illicit drugs include:***

- (a) Heroin or any metabolite derived from heroin (aka “white powder”);
- (b) Ketamine (aka “K”);

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<sup>2</sup> Section 2 and Schedule 1A of the Road Traffic Ordinance (Cap. 374)

- (c) Methamphetamine (methamphetamine) (aka “ice”);
- (d) Cannabis or any active ingredient of cannabis (aka “grass”);
- (e) Cocaine or any metabolite derived from cocaine; and
- (f) 3, 4-methylenedioxymethamphetamine (MDMA) (aka “ecstasy”).

7. The proposed new legislation imposes control on any person who operates a vessel under the influence of alcohol, illicit drugs or non-illicit drugs in Hong Kong waters, including masters, coxswains, pilots, watchkeeping personnel of the deck and machinery spaces, and crew members who are responsible for taking care of passengers as stated in the muster list.

## **ENFORCEMENT**

8. We propose to empower police officers and authorised officers of MD to require vessel operators to undergo alcohol and drug tests under the following circumstances for collection of evidence and prosecution:

- (a) improper operation of a vessel which leads to marine traffic offences, such as over-speeding, unauthorised entry to restricted areas and contravention of the International Regulations for Preventing Collisions at Sea;
- (b) on the occurrence of a marine traffic accident; and
- (c) on a random basis (similar to the random tests conducted by the Police during road checks).

9. The proposed legislation will empower enforcement officers to conduct alcohol or drug tests. This is similar to the arrangement<sup>3</sup> for road traffic, but it will be fine-tuned so

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<sup>3</sup> Regarding the test for drink boating, the proposed legislation is similar to the provisions for road traffic, which empower an enforcement officer to check whether or not the proportion of alcohol in a person’s breath is likely to exceed the prescribed limit using approved pre-screening devices and screening devices, and to collect evidence using approved breath analysing instruments. Regarding the test for drug boating, the enforcement officer will require the person being tested to undergo a Drug Influence Recognition Observation and a Rapid Oral Fluid Test as preliminary drug tests. The enforcement officer will carry out an Impairment Test to form an opinion as to whether or not the person’s ability to operate a vessel properly is impaired by drug consumption or drug use. Similar to the relevant existing provisions for road traffic, the proposed legislation will empower an enforcement officer to require the person being tested to provide specimens of urine or blood for testing his / her alcohol or drug level.

as to suit the environment at sea.

## **PENALTIES**

10. We propose that the conviction for contravening the legislation will depend on the type, seriousness and facts of the case. The penalties are summarised as follows:

- (a) a vessel operator who is convicted of an offence by criminal procedures<sup>4</sup> is liable to a fine at level 1 (\$2,000) to level 4 (\$25,000) and to imprisonment for 3 months to 3 years;
- (b) if a court is of the opinion that the vessel operator convicted of the offence should not continue to be allowed to operate a vessel, the court may order that person be disqualified from operating vessels for a period of 6 months to 5 years. If the person is convicted of operating vessels under the influence of alcohol or drugs again, the court may order life disqualification from operating vessels; and
- (c) similar to the provisions for road traffic, a vessel operator who refuses with no reasonable cause to undergo an alcohol breath test or a drug test as required by an enforcement officer is liable on conviction by criminal procedures to a fine at level 4 (\$25,000) and to imprisonment for 3 years.

## **CONSULTATION WITH THE INDUSTRY**

11. MD has consulted the Sub-committees on Class I, II, III and IV Vessels under the LVAC and members of these LVAC sub-committees agree in principle to the above legislative proposal. Some members are of the view that the scope regulated by the proposed legislation should not be too extensive but rather be confined to the coxswain who actually operates the vessel. Besides, there are views indicating that at the initial stage of implementation of the legislation, MD must conduct sufficient publicity and education work.

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<sup>4</sup> Criminal procedures include proceedings on indictment and summary proceedings.

12. If the people listed in paragraph 7 are under the influence of alcohol or drugs that renders them incapable of operating any vessels properly or performing their duties, marine safety and people's lives will be endangered. Therefore, after considering the comments of the sub-committees, MD is of the view that it is necessary to retain the arrangement set out in paragraph 7. In addition, MD will undertake publicity and education work when the new legislation is implemented to ensure the industry understands clearly the requirements of the legislation.

### **WAY FORWARD**

13. We are in parallel consulting LVAC, Pilotage Advisory Committee and High Speed Craft Consultative Committee.

14. Subject to the comments of the Committee and the committees mentioned in paragraph 13, MD will consult the Legislative Council Panel on Economic Development on the above legislative proposal and seek its support for the proposal.

### **ADVICE SOUGHT**

15. Members are invited to comment on the above legislative proposal.

**Port Control Division**

**Marine Department**

**March 2017**