

For discussion
29 June 2009

Legislative Council Panel on Security
Amendments to the Import and Export Ordinance (Cap. 60)

PURPOSE

This paper seeks Members' support for the proposal to amend sections 4 and 14(A)(6)(b)(iv) of the Import and Export Ordinance (IEO) (Cap. 60) so as to enhance control over smuggling activities at sea.

BACKGROUND AND JUSTIFICATIONS

To extend authorisation made under section 4 of the IEO to cover all police officers

2. Under section 4 of the IEO (at **Annex**), the Commissioner of Customs and Excise (C of C&E) may authorise in writing any person approved by the Secretary for Security, any public officer and any police officer of the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorised officer by the IEO. In March 1991, in accordance with section 4 of the IEO, the then C of C&E authorised all police officers of the rank of Inspector or above to act as authorised officers so that they can perform relevant enforcement duties under the IEO (e.g. to stop, board and search any vessel, aircraft or vehicle; to arrest and detain person; to seize articles, vessels and vehicle; and to require production and examination of licence, record or document, etc.).

3. The method of operation of smugglers has changed over time. To respond to the changing situation, the Police launched the "Versatile Maritime Policing Response" initiative in 2007 to enhance the policing of the waters of Hong Kong with a view to full implementation by mid-2010. Under this initiative, Marine Police are introducing technologically advanced surveillance systems and high-performance smaller vessels in phases. These smaller vessels will each be under the command of a sergeant or a police constable.

4. While there are police officers at the rank of Inspector or above on patrol at all times at different locations in Hong Kong waters, the Police see a need for officers below the rank of Inspector policing the waters of Hong Kong on smaller vessels to be able to exercise the powers authorised under section 4 of the IEO as well so as to allow Marine Police more flexibility in manpower deployment in combating smuggling at sea. This would help

enhance the effectiveness and efficiency of the Police's anti-smuggling efforts. The Administration, therefore, proposes to amend section 4 of the IEO to the effect that C of C&E may authorise any police officer, irrespective of rank, to exercise any of the powers and perform any of the duties conferred or imposed on an authorised officer by the IEO.

To reduce the number and the total power of the engines of a vessel of less than 250 gross tons that may be presumed to be constructed or used for the purpose of smuggling under section 14(A)(6)(b)(iv) of the IEO

5. 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 speed and often in a reckless and dangerous manner.

6. Section 14A of the IEO (at **Annex**) 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;
- (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.

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).

7. The IEO provisions set out in paragraph 6 above were enacted in 1991, when smuggling activities at sea were commonly undertaken by “Dai Fei” (「大飛」) equipped with four or five high-powered engines. 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 speedboat 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 ¹	7	8	4	19
Total	27	20	11	58

8. 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 law 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 purpose. This has hampered the effectiveness of the fight against smuggling.

9. Having reviewed the modus operandi of smuggling activities at sea in recent years and to enhance the effectiveness of law enforcement actions against smuggling by speedboat, we see a need to amend section 14(A)(6)(b)(iv) of the IEO to reduce the number and the total power of the engines of a vessel of less than 250 that may be presumed to be constructed or used for the purpose of smuggling to one or more engine where the total power of the engines could exceed 168 kilowatts (225 horsepower), so as to better target the prevailing types of speedboat constructed or used for smuggling purpose.

10. We should emphasise that 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

¹ 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.

engaged in bona fide purposes, even if outfitted with outboard engines the total power of which exceeds 168 kilowatts (225 horsepower).

Consultation with the local vessel industry

11. In April and May 2009, we consulted the local vessel industry, including various fishermen associations and pleasure craft clubs, as well as the statutory Local Vessels Advisory Committee, which comprises a cross-section of industry representatives, on the proposed amendments to section 14(A)(6)(b)(iv) of the IEO. The industry had no objection to the proposal.

WAY FORWARD

12. Subject to Members' views on the proposal to amend sections 4 and 14(A)(6)(b)(iv) of the IEO, we plan to introduce an amendment Bill to amend the Import and Export Ordinance into the Legislative Council in the 2009-10 legislative session.

Security Bureau
June 2009

Extracts of the Import and Export Ordinance (Cap. 60)

Section 4 – Power of Commissioner¹ to appoint authorized officers

The Commissioner may authorize in writing any person approved by the Secretary for Security, any public officer and any police officer of the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this 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.

¹ "Commissioner" (關長) is defined in section 2 of the Import and Export Ordinance as meaning the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise.

(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.