

**Bills Committee on Road Traffic (Amendment) Bill 2010**

**Information requested by the Bills Committee**

At the Bills Committee on Road Traffic (Amendment) Bill 2010 ('Bill') held on 3 June 2010, the Committee requested information on the application of sections 39 and 39A of the Road Traffic Ordinance (Cap. 374) and the scenarios leading to the use of these sections; the rationale for not setting the proposed minimum driving disqualification period on second/subsequent conviction for tier 3 level at life disqualification; the penalty in terms of fine and / or imprisonment / driving disqualification period on convicted cases related to drink driving offences over the past three years; and penalty terms for similar offences in overseas jurisdictions such as Australia and the United Kingdom.

**Application of sections 39 and 39A of the RTO and the scenarios leading to the use of these sections**

2. Section 39 and section 39A are supplementary to each other in the enforcement of drink driving.
3. For an offence under section 39, the court shall satisfy itself that the driver is at the time under the influence of drink to the extent as to be incapable of having a proper control of a motor vehicle. There is no need to establish the proportion of alcohol in the driver's breath, blood or urine.
4. Under section 39A, it will be an offence for a person who drives or attempts to drive or is in charge of a motor vehicle on any road with the proportion of alcohol in his breath, blood or urine exceeding the prescribed limit<sup>1</sup>. There is no need to prove any adverse effect of alcohol on the driver's driving capability.

---

<sup>1</sup> Under section 2 of Road Traffic Ordinance, the prescribed limit means  
(a) 22 micrograms of alcohol in 100 millilitres of breath;  
(b) 50 milligrams of alcohol in 100 millilitres of blood; or  
(c) 67 milligrams of alcohol in 100 millilitres of urine.

5. At present, the Police mainly rely on section 39A to prosecute drink driving cases because the prescribed limits have provided for objective criteria for enforcement. However, section 39 will also be invoked if circumstances so warrant. Four drink drivers in 2008 and one in 2009 were prosecuted under section 39. In most of these cases, the drivers were grossly impaired by drinks. Some of them collapsed and either the doctors found that they were unfit or they refused to provide specimens for analysis. Prosecutions rely on evidence of opinions of police officers and / or other witnesses on the driver's incapability to properly control the vehicle.

6. It should also be noted that people react differently to alcohol and some people may become incapable of properly controlling a vehicle even if the amount of alcohol they have consumed is below the prescribed limit. Section 39 may be applied in such cases.

7. Under the Bill, we have proposed that the minimum disqualification periods for contraventions of section 39 should be pitched at tier 3 level. This is appropriate because drivers to be prosecuted under section 39 are influenced by drinks to the extent as to be incapable of having a proper control of a motor vehicle.

8. If drink drivers are observed to be incapable of having a proper control of a motor vehicle under section 39, they are not necessarily posing lesser safety hazards to other road users than drivers with alcohol concentration in their bodies exceeding tier 3. In order to achieve adequate deterrent effect to prevent drivers from causing serious safety hazard to road users, it is appropriate to align the disqualification periods under section 39 with those under section 39A at tier 3.

**Not setting the minimum disqualification period on second or subsequent conviction under tier 3 at life disqualification**

9. Hong Kong is one of the jurisdictions which imposes the heaviest penalties on drink driving offences. The proposed disqualification period on second or subsequent conviction under tier 3 is 5 years, which is in line with the Australian (New South Wales) legislation. The proposal is stringent when compared with UK and Singapore. This should have sufficient deterrent effect bearing in mind that drink driving cases may not involve any injuries or traffic accidents.

10. A summary of penalty terms for drink driving offences in overseas jurisdictions including Australia and the United Kingdom is attached at **Annex A** for reference.

11. The proposed disqualification period only sets out the minimum; the court has discretion to disqualify a driver for a period much longer than the minimum should individual circumstances so warrant. In 2009, there were 51 drivers committed drink driving offences<sup>2</sup> again within 5 years after their previous convictions. Out of these 51 repeat offenders, 6 drivers were disqualified for a period over the two-year minimum disqualification period.

12. Apart from driving disqualification, the Bill has introduced other proposals which will result in taking drink drivers away from the road for a longer period of time. For example, if a repeat drink driver is ordered to serve imprisonment term, the court must order that the disqualification period should commence at the conclusion of the imprisonment sentence unless the court sees fit not to do so.

13. The Bill also proposes that a Blood Alcohol Concentration (BAC) level of tier 3 should be made a circumstance of aggravation in all dangerous driving offences. Hence, if a drink driver commits a dangerous driving offence in such a circumstance, the maximum penalties in terms of fine and imprisonment, and the minimum disqualification period for the offence concerned are each increased by 50%. If the driver is also a repeat offender, he or she will also be subject to the consecutive implementation of disqualification and imprisonment as mentioned in paragraph 12 above. Therefore, the total effect of the Bill will result in debarring repeat drink drivers from the road for a much prolonged period. The total effects of the consecutive implementation of imprisonment and disqualification terms, and the circumstances of aggravation is at **Annex B**.

---

<sup>2</sup> The drink driving offences include:

- Driving under the influence of drink and drugs (s.39 of Cap.374)
- Driving with alcohol concentration above prescribed limit (s.39A of Cap. 374)
- Refuse to take screening breath tests (s.39B of Cap. 374), and
- Refuse to provide specimens for analysis (s.39C of Cap. 374)

14. In summary, the total effect of the Bill has significantly enhanced the deterrent effect against drink driving.

**The penalty related to drink driving offences over the past three years**

15. The numbers of drivers convicted of drink driving in 2007, 2008 and 2009 were 1,071, 1,185 and 856 respectively. From January to April 2010, the number was 142. The highest and lowest penalties imposed on drivers convicted of drink driving are listed at **Annex C**.

**Transport and Housing Bureau**  
**15 June 2010**

**Penalties Terms for Drink Driving Offences in Other Jurisdictions & in Hong Kong**

Country/State /Province & Prescribed Limits	Penalties for First Offence				Penalties for Subsequent Offence			
	Fine		Imprisonment	Driving Disqualification	Fine		Imprisonment	Driving Disqualification
	Local Currency	HKD			Local Currency	HKD		
<b>Hong Kong</b>								
BAC: 50 mg to <80 mg/100 ml	<u>Summary</u> Max. HK\$10,000		<u>Summary</u> Max. 6 months	Min. 3 months [Min. <b>6</b> months]	<u>Summary</u> Max. \$25,000		<u>Summary</u> Max. 12 months	Min. 2 years [Min. <b>2</b> years]
BAC: 80 mg to <150 mg/100 ml	<u>Indictment</u> Max. HK\$25,000			Min. 3 months [Min. <b>1</b> year]				Min. 2 years [Min. <b>3</b> years]
BAC: ≥150 mg/100 ml				Min. 3 months [Min. <b>2</b> years]				Min. 2 years [Min. <b>5</b> years]
<b>New South Wales (Australia)</b>								
BAC: 50 mg to <80 mg/100 ml	Max. AUD1,100	Max. HK\$7,400	N.A.	6 months	Max. AUD2,200	Max. HK\$14,700	N.A.	12 months
BAC: 80 mg to <150 mg/100 ml	Max. AUD2,200	Max. HK\$14,700	Max. 9 months	12 months	Max. AUD3,300	Max. HK\$22,000	Max. 1 year	3 years
BAC: ≥150 mg/100 ml	Max. AUD3,300	Max. HK\$22,000	Max. 18 months	3 years	Max. AUD5,500	Max. HK\$36,800	Max. 2 years	5 years

“BAC” stands for “blood alcohol concentration”, referring to the proportion of alcohol in milligram per 100 millilitres of blood.

[ ] Proposed disqualification periods for different levels of BAC under the Bill.

Country/State /Province & Prescribed Limits	Penalties for First Offence				Penalties for Subsequent Offence			
	Fine		Imprisonment	Driving Disqualification	Fine		Imprisonment	Driving Disqualification
	Local Currency	HKD			Local Currency	HKD		
<b>Mainland China</b>								
BAC: 20 mg to <80 mg/100 ml	RMB 200-500	HK\$ 228-570	-	>1 month to < 3 months	RMB 200-500	HK\$ 228-570	-	>1 month to < 3 months*
BAC: ≥ 80 mg/100 ml	RMB 500-2,000	HK\$ 570-2,280	Max.15 days' retention	>3 months to <6 months	RMB 500-2,000	HK\$ 570-2,280	Max.15 days' retention	>3 months to < 6 months*
<b>United Kingdom</b>								
BAC: ≥80 mg/100 ml	Max 5,000 pounds	Max. HK\$57,500	Max 6 months	Min. 1 year	Max 5,000 pounds	Max. HK\$57,500	Max 6 months	Min. 3 years
<b>Singapore</b>								
BAC: >80 mg/100 ml	>SGD1,000 to <SGD5,000	>HK\$5,500 to <HK\$27,500	Max. 6 months#	Min. 1 year	>SGD3,000 to <SGD10,000	>HK\$16,500 to <HK\$55,000	Max. 1 year	Min. 1 year

\* Any person convicted of “drunk driving” when driving or operating motor vehicles on more than two occasions in a year is liable to suspension of his motor vehicle driving licence and prohibition from driving or operating motor vehicles for five years.

# If an offender commits one or more of the following offences on more than two occasions, the court may impose a sentence three times the maximum imprisonment term up to ten years:

- speeding
- dangerous driving
- causing death by dangerous driving
- driving under the influence of alcohol or drugs, or failure to provide samples for alcohol testing

**Effects of the ‘Consecutive Rule’<sup>3</sup> and ‘Circumstances of Aggravation’<sup>4</sup>**

Some of the Driving offences that carry 10 Driving-offence Points on conviction	Maximum Fine (\$)	Maximum imprisonment (A)	Minimum Driving Disqualification period		‘Consecutive Rule’ <sup>5</sup> (A)+(B)	‘Consecutive Rule’ AND if the offence is committed in circumstances of aggravation <sup>5</sup> [(A)+(B)] x (1+50%)
			First Conviction	Second / Subsequent conviction (B)		
Driving with alcohol concentration above prescribed limit (s.39A of Cap.374)	25,000	3 years	3 months [T1 (6 months)] [T2 (1 year)] [T3 (2 years)]	2 years [T1 (2years)] [T2 (3years)] [T3 (5years)]	[T1 (5 years)] [T2 (6 years)] [T3 (8 years)]	Not Applicable
Driving under the influence of drink or drugs (s.39 of Cap.374) Refuse to take screening breath tests (s. 39B of Cap. 374) Refuse to provide specimens for analysis (s.39C of Cap.374)	25,000	3 years	3 months [2 years]	2 years [5 years]	[8 years]	Not Applicable

<sup>3</sup> The court must direct that disqualification commences at the conclusion of the imprisonment sentence, unless for special reasons the court decides not to make such a direction, if the driver is convicted of a second or subsequent 10-Driving-offence Point offence.

<sup>4</sup> If at the time the dangerous driving offence is committed the alcohol concentration of the driver is tier 3, the maximum penalties in terms of fine and imprisonment, and the minimum disqualification period for the offence concerned are each increased by 50%.

<sup>5</sup> This is the period that the driver is prohibited from driving on the road, if the driver is sentenced to maximum imprisonment term and minimum driving disqualification period. (A)+(B) is only one of the many possible combinations of sentences that the court may order. Remission of sentence may be granted for good conduct, and the actual period the driver is prohibited from driving may often be shorter.

Some of the Driving offences that carry 10 Driving-offence Points on conviction	Maximum Fine (\$)	Maximum imprisonment (A)	Minimum Driving Disqualification period		'Consecutive Rule' <sup>5</sup> (A)+(B)	'Consecutive Rule' AND if the offence is committed in circumstances of aggravation <sup>5</sup> [(A)+(B)] x (1+50%)
			First Conviction	Second / Subsequent conviction (B)		
Dangerous driving (s.37 of Cap. 374)	25,000	3 years	6 months	18 months [2 years]	[5 years]	[7.5 years]
[Causing grievous bodily harm by dangerous driving] (new s.36A of Cap. 374)	[50,000]	[7 years]	[2 years]	[5 years]	[12 years]	[18 years]
Causing death by dangerous driving (s.36 of Cap. 374)	50,000	10 years	2 year	3 years [5 years]	[15 years]	[22.5 years]

[ ] Proposed penalty terms or new driving offence under the Road Traffic (Amendment) Bill 2010

**Annex C**

**The penalty on conviction cases related to  
drink driving offences over the past three years**

<b>Year of committing the offence</b>	<b>Sentence</b>	<b>Highest</b>	<b>Lowest</b>
2007	Imprisonment (month)	8	14 days
	Suspended Imprisonment (month)	6	14 days
	Fine (\$)	20,000	1,000
	Community service order (hour)	240	80
	Driving Disqualification (month)	36	1
2008	Imprisonment (month)	4	14 days
	Suspended Imprisonment (month)	4	14 days
	Fine (\$)	15,000	100
	Community service order (hour)	240	40
	Driving Disqualification (month)	60	1
2009	Imprisonment (month)	8	14 days
	Suspended Imprisonment (month)	4	14 days
	Fine (\$)	15,000	500
	Community service order (hour)	240	60
	Driving Disqualification (month)	40	2

<b>Year of committing the offence</b>	<b>Sentence</b>	<b>Highest</b>	<b>Lowest</b>
2010 (January – April)	Imprisonment (month)	3	14 days
	Suspended Imprisonment (month)	3	1
	Fine (\$)	10,000	1,500
	Community service order (hour)	240	80
	Driving Disqualification (month)	24	3

**Note**

The drink driving offences include:

- Driving under the influence of drink and drugs (s.39 of Cap.374)
- Driving with alcohol concentration above prescribed limit (s.39A of Cap. 374)
- Refuse to take screening breath tests (s.39B of Cap. 374), and
- Refuse to provide specimens for analysis (s.39C of Cap. 374)