

**立法會**  
**Legislative Council**

LC Paper No. LS14/09-10

**Paper for the House Committee Meeting  
on 20 November 2009**

**Legal Service Division Report on  
Import and Export (Amendment) Bill 2009**

**I. SUMMARY**

1. **Object of the Bill** To amend the description of persons who may become authorized officers under section 4 of the Import and Export Ordinance (Cap. 60) (the Ordinance) and the description of vessels in section 14A(6)(b)(iv) of the Ordinance to which the rebuttable presumption as to smuggling purpose applies.
2. **Comments**
  - (a) To enhance the effectiveness and efficiency of the Police's anti-smuggling efforts, the Bill seeks to enable the Commissioner of Customs and Excise to authorize any police officer, irrespective of rank, to exercise the powers and perform the duties conferred or imposed on an authorized officer by the Ordinance.
  - (b) The rebuttable presumption as to smuggling purpose under section 14A(6)(b)(iv) of the Ordinance is proposed to be extended to a vessel of less than 250 gross tons with a facility to mount one or more outboard engine with a total power which could exceed 168 kilowatts.
3. **Public Consultation** According to paragraph 15 of the LegCo Brief, the local vessel industry has been consulted and the industry in general had no objection to the proposed amendments to section 14A(6)(b)(iv) of the Ordinance.
4. **Consultation with LegCo Panel** The policy aspects of the Bill were referred to the Panel on Security for discussion at its meeting held on 29 June 2009.
5. **Conclusion** Members may decide whether to study the policy aspects of the Bill in detail.

## **II. REPORT**

### **Object of the Bill**

The object of the Bill is to amend the description of persons who may be appointed as authorized officers under section 4 of the Import and Export Ordinance (Cap. 60) (the Ordinance) and the description of vessels in section 14A(6)(b)(iv) of the Ordinance to which the rebuttable presumption as to smuggling purpose applies.

### **LegCo Brief Reference**

2. File Ref.: SBCR 3/3231/98 issued by the Security Bureau dated 30 October 2009.

### **Date of First Reading**

3. 18 November 2009.

### **Background**

4. Section 4 of the Ordinance empowers the Commissioner of Customs and Excise to authorize in writing, among others, 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 the Ordinance. These powers and duties, which are mainly provided in Part V of the Ordinance, include the power to stop, board and search any vessel, aircraft or vehicle; to arrest and detain any person; to seize any article, vessel and vehicle; and to require production and examination of any licence, record or document etc.

5. Section 14A of the Ordinance provides for various offences relating to constructing, repairing or maintaining, and using vessels of less than 250 gross tons for the purpose of smuggling. The maximum penalties for these offences are a fine of \$500,000 and imprisonment for two years on summary conviction, and a fine of \$2,000,000 and imprisonment for seven years on conviction on indictment. Section 14A(6) further provides that for the purposes of the offence provisions in section 14A, a vessel, or a vessel under construction, of less than 250 gross tons shall, in the absence of evidence to the contrary, be presumed to have been under construction, constructed or used for the purpose of smuggling if an authorized officer reasonably suspects that the vessel has been used or is intended to be used for the purpose of smuggling and the vessel has, among others, a facility to mount more than two outboard engines where the total power of the engines could exceed 448 kilowatts.

### **Comments**

6. Clause 2(1) of the Bill seeks to amend section 4 of the Ordinance so that any police officer, irrespective of his or her rank, may be authorized to exercise and

perform the relevant powers and duties under the Ordinance. According to paragraph 4 of the LegCo Brief, the Administration considers that this amendment is necessary as the Police sees the operational need for officers below the rank of Inspector policing the waters of Hong Kong on smaller vessels to be able to exercise the relevant enforcement powers under the Ordinance to enhance the effectiveness and efficiency of the Police's anti-smuggling efforts.

7. Clause 3 of the Bill seeks to amend section 14A(6)(b)(iv) of the Ordinance to reduce the number and the total power of the outboard engines of a vessel, or a vessel under construction, of less than 250 gross tons that may be presumed to have been under construction, constructed or used for the purpose of smuggling from "more than 2 outboard engines" to "one or more than one outboard engine" and from "448 kilowatts" to "168 kilowatts" respectively. According to paragraph 9 of the LegCo Brief, this amendment is proposed in order to enhance the effectiveness of law enforcement actions against smuggling by speedboats following a review of the modus operandi of smuggling activities at sea in recent years.

8. The effect of the amendment proposed in clause 3 is that the presumption as to smuggling purpose would apply to a vessel of less than 250 gross tons which has a facility to mount one or more engine with a total power exceeding 168 kilowatts, if an authorized officer (who could be a police officer of *any* rank under the proposed amendment to section 4) reasonably suspects that the vessel has been used or is intended to be used for the purpose of smuggling. To rebut the presumption, the builder, repairer, master or other person found on board or in charge of the vessel would need to adduce evidence to show that the vessel is not being used or constructed for smuggling purpose.

9. Other proposed amendments relate to changing the Chinese text of section 4 by repealing "和" and substituting "，以及". It is noted that the Chinese text of section 4A of the Ordinance, which in part replicates the language of section 4, also uses "和" rather than "以及". We have written to the Administration to enquire whether, for the sake of consistency, they would consider making a similar amendment to the Chinese text of section 4A.

10. There is no commencement provision in the Bill. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill will come into operation on the day it is published in the Gazette as an ordinance.

### **Public Consultation**

11. According to paragraph 15 of the LegCo Brief, in April and May 2009 the Administration consulted the local vessel industry, including various fishermen associations and pleasure craft clubs as well as the statutory Local Vessels Advisory Committee on the proposed amendments to section 14A(6)(b)(iv) of the Ordinance. The industry in general had no objection to the proposal.

## **Consultation with LegCo Panel**

12. The policy aspects of the Bill were referred to the Panel on Security for discussion at its meeting held on 29 June 2009. At that meeting, while one member expressed support for the proposed amendments, various concerns were raised, including the reasons for extending the authorization made under section 4 of the Ordinance and the existing policy governing the licensing system for pleasure vessels. Members may wish to refer to the minutes of the meeting (LC Paper No. CB(2)2519/08-09) for further information.

## **Conclusion**

13. Apart from the drafting issue mentioned in paragraph 9 above, the Legal Service Division is asking the Administration whether any consultation has been conducted on the proposed amendment to section 4 of the Ordinance. A further report will be issued, if necessary.

14. Since the proposal to entrust police officers of any rank with the search, seizure and other powers enumerated in paragraph 4 above seems to involve a change in policy, members may wish to decide whether to study the policy aspects of the Bill in detail.

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