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**Paper for the House Committee Meeting  
on 11 November 2011**

**Legal Service Division Report on  
Fisheries Protection (Amendment) Bill 2011**

**I. SUMMARY**

- 1. Objects of the Bill** To provide for the registration of local fishing vessels, the regulation of fishing within waters of Hong Kong, the designation of fisheries protection areas and appointment of an authority to manage and control fishing in those areas and for related matters.
- 2. Comments** The Bill proposes to introduce a registration system with a 12-month transitional period imposed. Owners of fishing vessels in respect of which there are valid operating licences must apply for registration during that period in order to continue fishing in Hong Kong waters. Such requirement intends to limit the number of fishing vessels in the industry to help bring the fisheries industry back to a sustainable path. However, a person may apply for a research fishing permit to carry out fishing activities, which are otherwise prohibited under the Bill, for scientific research, environmental monitoring or related purposes.
- 3. Public Consultation** The Agriculture, Fisheries and Conservation Department has consulted the Advisory Committee on Agriculture and Fisheries, the Fish Marketing Advisory Board and various other fishermen representatives regarding the proposed fisheries management measures.
- 4. Consultation with LegCo Panel** The Panel on Food Safety and Environmental Hygiene was consulted on 8 March 2011 on the Administration's proposal to introduce a package of fisheries management measures to control the fishing effort in Hong Kong waters and protect important fish spawning and nursery grounds.
- 5. Conclusion** The Bill contains a wide range of proposals that affect the fisheries industry in Hong Kong, including a registration system and limitation on new entrants to the industry. It is recommended that a Bills Committee be formed to study the Bill in detail. Scrutiny of its provisions is still continuing.

## **II. REPORT**

### **Objects of the Bill**

To provide for the registration of local fishing vessels, the regulation of fishing within waters of Hong Kong, the designation of fisheries protection areas (FPA) and appointment of an authority to manage and control fishing in those areas and for incidental and connected matters.

### **LegCo Brief Reference**

2. File Ref.: FHB CR 3/1/2576/07 issued by Food and Health Bureau and dated 12 October 2011.

### **Date of First Reading**

3. 9 November 2011.

### **Comments**

4. According to the Administration, fish catch and fishing efforts in Hong Kong waters have far exceeded the maximum sustainable yield and optimal fishing effort. In order to help bring the fisheries industry back to a sustainable path, a trawl ban which will take effect on 31 December 2012 has been imposed<sup>1</sup>. The Bill seeks to amend the Fisheries Protection Ordinance (Cap. 171) (Ordinance) to implement a series of fisheries management measures which is complementary to the trawl ban in order to regulate fishing activities. The measures include –

- (a) limiting the entry of new fishing vessels into the local fisheries industry by introducing a registration system to maintain the appropriate level of fishing;
- (b) prohibiting fishing activities with the use or aid of non-local fishing vessels and restricting fishing activities with the use or aid of non-fishing vessels; and
- (c) designation of FPA.

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<sup>1</sup> The Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 (L.N. 45 of 2011) published in the Gazette on 25 March 2011 specifies that any apparatus used for trawling shall be prohibited as from 31 December 2012.

Registration for local fishing vessels and limiting new entrants

5. Currently, fishing vessels are only required to hold a valid operating licence (VOL) under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) issued by the Marine Department (MD). The said licencing system aims primarily at regulating local fishing vessels for the purpose of ensuring their safety and seaworthiness. The Bill proposes to introduce a registration system to regulate fishing vessels for fishing purpose in Hong Kong waters.

6. Under the Bill, the Director of Agriculture, Fisheries and Conservation (DAFC) is the prescribed authority for registration. The Bill provides that an owner of a local fishing vessel in respect of which there is a VOL on the commencement date of the Bill as enacted (the commencement date) OR possesses an approval-in-principle letter issued by MD that is valid on the commencement date and a valid operating licence can be produced at the time of application for registration may apply to be registered under the Ordinance<sup>2</sup>. The application for registration must be made within 12 months from the date of the commencement (the transitional period) and late application may not be entertained. An applicant may continue fishing with an unregistered local fishing vessel during the transitional period or until the application has been finally disposed of by the DAFC. According to the LegCo Brief, the limited registration period is imposed as the Administration does not intend to allow new fishing vessels to enter the local fisheries industry. Upon expiration of the transitional period, any person who, without reasonable excuse, engages in fishing with the use or aid of a fishing vessel which is not registered or without a valid research fishing permit (RFP) commits an offence.

7. A certificate of registration containing specifications of engine powers and the number of ancillary vessels to the registered vessel will be issued to the successful applicant. Those specifications must not be exceeded by the vessel registered under that certificate unless with the permission of the DAFC<sup>3</sup>. The registration will remain valid throughout the life span of the vessel and replacement of vessel is allowed. Further, the Bill imposes a duty on the DAFC to keep a complete register of all registered vessels and to allow public access to the register subject to payment of fees.

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<sup>2</sup> Owners of existing trawlers may EITHER modify their existing trawlers into a non-trawler and apply for registration OR acquire a new non-trawler with no higher engine power than the existing trawler and apply for registration for the non-trawler.

<sup>3</sup> A similar condition is imposed on holders of RFPs referred in paragraph 8.

Restricting or prohibiting fishing activities

8. According to the LegCo Brief, the Administration intends to further control fishing activities in Hong Kong waters. To achieve this end, all fishing activities with the use or aid of non-local fishing vessels will be prohibited and fishing with the use or aid of any fishing vessels (other than non-local ones) can only be carried out in accordance with the means prescribed under Schedule 2. However, a person may apply for an RFP in order to carry out fishing activities that are otherwise prohibited under the Bill if such fishing activities are carried out for scientific research, environmental monitoring or related purpose. Further, engaging in fishing by means other than those prescribed without reasonable excuse constitutes an offence.

Fisheries Protection Area (FPA) and empowering provisions

9. In addition, the Bill confers power on the Secretary for Food and Health (the Secretary) to designate any area in the waters of Hong Kong to be an FPA to promote the conservation and management of marine and fisheries resources. An authority may be appointed by the Secretary for the purpose of the Ordinance and to make rules for the management and control of fishing in any FPA. The rules may prescribe that contravention of any of the rules constitutes an offence and a penalty not exceeding a fine of HK\$200,000 and imprisonment for 6 months may be imposed. Further, DAFC may impose conditions to designate the manner in which fishing is to be carried out. The Bill also empowers DAFC, a fisheries inspector or an authorized officer (authorised personnel) to stop, search, detain or arrest a person or a vessel and to seize a vessel or anything, with or without a warrant, if there is any reasonable ground to suspect the vessel has been or is being used in connection with any offences prescribed under the Ordinance. A person who obstructs any authorised personnel in the exercise of any of the above powers commits an offence.

Consequential amendments

10. Further, consequential amendments are made to –
- (i) include environmental monitoring as a valid ground for exemption from the Fisheries Protection Regulations (Cap. 171A);
  - (ii) provide any substance prescribed under Schedule 1 as toxic substance under the Waterworks Regulations (Cap. 102A); and
  - (iii) apply the Administrative Appeals Board Ordinance (Cap. 442) to decisions made by DAFC on registration as stated in paragraph 6 above.

## Commencement

11. The Bill as enacted will come into operation upon gazettal.

## **Public Consultation**

12. According to the Administration, the Agriculture, Fisheries and Conservation Department has consulted the Advisory Committee on Agriculture and Fisheries, the Fish Marketing Advisory Board, umbrella fishermen bodies, fishermen representatives or individual fishermen in major home ports on the proposed fisheries management measures among other initiatives after the announcement of the proposed fisheries management measures in October 2011.

## **Consultation with LegCo Panel**

13. At its meeting on 8 March 2011, the Panel on Food Safety and Environmental Hygiene was consulted on the Administration's proposal to introduce a package of fisheries management measures to control the fishing effort in Hong Kong waters and protect important fish spawning and nursery grounds. A member expressed support in principle for the Administration's proposal.

## **Conclusion**

14. The Bill contains a wide range of proposals that affect the fisheries industry in Hong Kong, including a registration system and limitation on new entrants to the industry. It is recommended that a Bills Committee be formed to study the Bill in detail. Scrutiny of its provisions is still continuing.

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