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本局檔號 Our Ref. THB(T)PMLCR 8/10/60/4

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21 March 2014

Miss Evelyn Lee
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Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax (No. 2877 5029)
(Total 3 Pages)

Dear Miss Lee,

**Shipping Legislation (Control of Smoke Emission)
(Amendment) Bill 2014**

I refer to your letter dated 18 March 2014 seeking clarification on a number of matters stated therein. Our response prepared in consultation with the Marine Department (MD) and the Department of Justice is set out in the following paragraphs.

Long title

2. “Smoke” is defined in section 49 of the Shipping and Port Control Ordinance (Cap.313) and section 46 of the Merchant Shipping (Local Vessels) Ordinance (Cap.548) to include “soot, ash, grit and gritty particles emitted in smoke or steam”. This definition is in line with our policy intent to regulate emission of **dark** smoke. Dark smoke contains the matters mentioned in the definition, and as a result causes nuisance and adverse environmental impact. Dark smoke may vary in degree of intensity as reflected in its shades of grey / black.

3. All along it has been the emission of dark smoke that is being regulated under the two Ordinances. Our proposed amendments do not change the fact that dark smoke causes nuisance and thus requires regulation. Rather, they enhance

the regulation of dark smoke by introducing an objective benchmark for taking enforcement and prosecution actions (i.e. continuous emission of smoke as dark as or darker than shade 2 on the Ringelmann Chart for 3 minutes or more). The Long Title therefore accurately captures the objective of the amendments which are to “enhance the control of emission of dark smoke”.

Maximum fines

4. As mentioned above, the objective of our amendments are to “enhance the control of emission of dark smoke”. In line with this objective, we propose to impose a higher maximum fine for non-local vessels, which are predominately ocean-going vessels (OGVs).

5. Excessive dark smoke emission from vessels is usually an indicator of improper engine operation or maintenance. Compared to local vessels, the power ratings of engines fitted on board OGVs are relatively larger¹ and hence the amount of dark smoke emission would be proportionally greater in the event of improper engine maintenance. Our proposed higher level of maximum fine for OGVs is commensurate with the greater severity of pollution problem caused by OGVs in the event of dark smoke emission and we think it is well justified by the difference in engine ratings between OGVs and local vessels. Ultimately, the decision on whether to impose the maximum fine rests with the court having regard to the circumstances of individual cases.

Proposed section 51A(1)

Meaning of “deliver”

6. According to the Concise Oxford Dictionary (10th Edition), "deliver" means "bring and hand over" and the Chinese equivalent is "交付", which means "交給"《現代漢語詞典，修訂本》. The section therefore requires the owner of a vessel (if an authorized officer suspects that it has emitted dark smoke) to take the vessel to a place and within the time specified by the Director of Marine so that authorized officers could board the vessel to ascertain whether dark smoke emits from the vessel.

Absence of need for such a provision as regards a non-local vessel

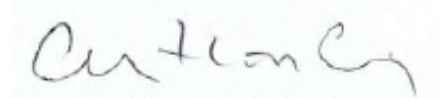
7. Cap. 313 provides for the regulation and control of non-local vessels in Hong Kong waters, which predominantly comprise OGVs but also include cross-boundary passenger ferries. There is no need for similar provision requiring delivery of non-local vessels to MD under Cap.313 because OGVs and cross-boundary passenger ferries are manned by qualified engineer officers at all times, who will be able to take immediate action to rectify the problem if dark smoke is found to have emitted from the vessel. As for local vessels, there is no

¹ The engine power of a medium-size OGV and a mega-size OGV are 36,560 kW and 80,906 kW respectively, whereas the engine power of the largest local passenger ferry in Hong Kong is only 2,232 kW.

requirement for qualified engineers to be on board and repair /maintenance work normally have to be carried out in local shipyards. It is therefore necessary for MD to verify whether the emission problem has been rectified by requiring the vessel to be delivered for inspection.

8. Should you need any further clarification, please do not hesitate to contact me at 3509 8261. Thank you.

Yours sincerely,



(Chiu Hon Chim)

for Secretary for Transport and Housing

c.c.

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