

LEGISLATIVE COUNCIL BRIEF

APPOINTMENT OF A COMMISSION OF INQUIRY INTO THE COLLISION OF VESSELS NEAR LAMMA ISLAND

INTRODUCTION

At the meeting of the Executive Council on 22 October 2012, the Council ADVISED and the Chief Executive ORDERED that -

- (a) a Commission of Inquiry (“the Commission”) under the Commissions of Inquiry Ordinance (Cap. 86) be set up to inquire into the facts and circumstances leading to and surrounding the collision of the two vessels (namely, “Sea Smooth” and “Lamma IV”) that took place near Lamma Island, Hong Kong on 1 October 2012;
- (b) the Honourable Mr Justice Michael Victor LUNN, Justice of Appeal of the Court of Appeal of the High Court, be appointed as Chairman and Commissioner, and Mr TANG Kwok-bun, Benjamin be appointed as Commissioner; and
- (c) the Commission be appointed through the instruments at **Annex A** and have the Terms and Reference contained therein.

CONSIDERATIONS

2. Both the Hon Mr Justice Lunn and Mr Benjamin Tang are appointed for their public standing and distinguished records of public service. The Hon Mr Justice Lunn was appointed a Judge of the Court of First Instance of the High Court in September 2003 until he was appointed as Justice of Appeal of the Court of Appeal of the High Court in December 2011. He was also appointed as the Chairman of the Market Misconduct Tribunal from August 2005 to September 2012.

3. Mr Benjamin Tang is an experienced administrator. He served in various bureaux and departments during his career in the civil service.

Mr Tang was appointed as Commissioner of Insurance from January 2000 to November 2003 before he was appointed as Director of Audit from December 2003 to June 2012.

4. The Commission will start operation as soon as practicable and is expected to report to the Chief Executive within six months from the date of appointment or such time as the Chief Executive in Council may allow.

5. Mr LO Chi-hong, Laurie, an Administrative Officer Staff Grade B, has been appointed as Secretary to the Commission.

IMPLICATIONS OF THE PROPOSAL

6. The implications of setting up the Commission have been set out in our Legislative Council Brief dated 9 October 2012 on the same subject, a copy is attached at **Annex B**. The proposed appointments of the Chairman and Commissioners have no additional implication.

PUBLICITY

7. The appointment of the Commission will be published in the Gazette and a press release will be issued on the same day. A spokesman will be available for answering public enquiries.

BACKGROUND

8. The Commissions of Inquiry Ordinance empowers the Chief Executive in Council to appoint one or more Commissioners to “inquire into the conduct or management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance.” (section 2(1) of Cap. 86).

9. At the meeting of the Executive Council on 9 October 2012, the Council advised and the Chief Executive ordered that a Commission of Inquiry under the Commissions of Inquiry Ordinance (Cap. 86) should in principle be set up. The approved Terms of Reference of the Commission are:

Inquire into the facts and circumstances leading to and surrounding the collision of the two vessels that took place near Lamma Island, Hong Kong on 1 October 2012 -

- (a) ascertain the causes of the incident and make appropriate findings thereof;
- (b) consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and
- (c) make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future.

ENQUIRIES

10. For enquiries, please contact Mr LO Chi-hong, Laurie, Secretary to the Commission, at 2313 9301.

Administration Wing,
Chief Secretary for Administration's Office
22 October 2012

The Honourable Mr Justice Michael Victor Lunn, Justice of Appeal

Dear Mr Justice Lunn,

Commissions of Inquiry Ordinance (Cap. 86)

The Chief Executive in Council has appointed you as Commissioner and Chairman of a commission of inquiry under section 2 of the Commissions of Inquiry Ordinance (Cap. 86) to inquire into the matters set out in the Terms of Reference below, being matters which are of public importance.

The Terms of Reference of the Commission shall be as follows –

Inquire into the facts and circumstances leading to and surrounding the collision of the two vessels that took place near Lamma Island, Hong Kong on 1 October 2012:

- (a) ascertain the causes of the incident and make appropriate findings thereof;
- (b) consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and
- (c) make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future.

The Commission shall report to the Chief Executive within six months from the date of this appointment or such time as the Chief Executive in Council may allow.

The Chief Executive in Council has –

- (a) conferred on you as Chairman a second or casting vote for use where

the Commission shall, in any case, be equally divided on any question arising during the proceedings;

- (b) directed that when hearing evidence the two Commissioners shall sit together but as Chairman, you may sit alone to consider procedural matters and to give directions for the efficient conduct of the inquiry;
- (c) directed that the Commission may appoint experts to provide reports or other forms of assistance on any matters covered by the Inquiry;
- (d) directed that the Commission shall have and exercise the powers conferred by section 9 of the Commissions of Inquiry Ordinance to punish all or any of the contempts specified in section 8; and
- (e) directed that the determination of any criminal or civil liability of any person shall be outside the terms of reference of the Commission.

The Commission may submit interim reports on any aspects of the inquiry as it may see fit.

Mr Lo Chi-hong has been appointed as Secretary to the Commission to provide you with the necessary administrative support for the inquiry. The Commission will also be provided with other support staff.

The Chief Executive in Council has appointed Mr Tang Kwok-bun, Benjamin as the other Commissioner of the Commission.

I am most grateful to you for your agreement to take on this important task.

Yours sincerely,

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Chief Executive

Mr Tang Kwok-bun, Benjamin

Dear Mr Tang,

Commissions of Inquiry Ordinance (Cap. 86)

The Chief Executive in Council has appointed you as Commissioner of a commission of inquiry under section 2 of the Commissions of Inquiry Ordinance (Cap. 86) to inquire into the matters set out in the Terms of Reference below, being matters which are of public importance.

The Terms of Reference of the Commission shall be as follows –

Inquire into the facts and circumstances leading to and surrounding the collision of the two vessels that took place near Lamma Island, Hong Kong on 1 October 2012:

- (a) ascertain the causes of the incident and make appropriate findings thereof;
- (b) consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and
- (c) make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future.

The Commission shall report to the Chief Executive within six months from the date of this appointment or such time as the Chief Executive in Council may allow.

The Chief Executive in Council has –

- (a) conferred on the Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question

arising during the proceedings;

- (b) directed that when hearing evidence the two Commissioners shall sit together but the Chairman may sit alone to consider procedural matters and to give directions for the efficient conduct of the inquiry;
- (c) directed that the Commission may appoint experts to provide reports or other forms of assistance on any matters covered by the Inquiry;
- (d) directed that the Commission shall have and exercise the powers conferred by section 9 of the Commissions of Inquiry Ordinance to punish all or any of the contempts specified in section 8; and
- (e) directed that the determination of any criminal or civil liability of any person shall be outside the terms of reference of the Commission.

The Commission may submit interim reports on any aspects of the inquiry as it may see fit.

Mr Lo Chi-hong has been appointed as Secretary to the Commission to provide you with the necessary administrative support for the inquiry. The Commission will also be provided with other support staff.

The Chief Executive in Council has appointed the Hon Mr Justice Michael Victor Lunn as the Chairman of the Commission.

I am most grateful to you for your agreement to take on this important task.

Yours sincerely,

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Chief Executive

File Ref.: CSO/ADM/CR 6/581/12

LEGISLATIVE COUNCIL BRIEF

APPOINTMENT OF A COMMISSION OF INQUIRY INTO THE COLLISION OF VESSELS NEAR LAMMA ISLAND

INTRODUCTION

At the meeting of the Executive Council on 9 October 2012, the Council ADVISED and the Chief Executive ORDERED that –

- (a) a Commission of Inquiry (“the Commission”) under the Commissions of Inquiry Ordinance (Cap. 86) should in principle be set up to –
 - (i) inquire into the facts and circumstances leading to and surrounding the collision of the two vessels that took place near Lamma Island, Hong Kong on 1 October 2012;
 - (ii) ascertain the causes of the incident and make appropriate findings thereof;
 - (iii) consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and
 - (iv) make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future.
- (b) the Commission be set up with the Terms of Reference and other key terms at **Annex**.

2. The Government is in the course of securing the most appropriate person(s) to be appointed as Commissioner(s) (and if two or more Commissioners are to be appointed, one will be appointed the Chairman). The Executive Council’s approval will be sought for the formal appointment

of the Commission once the suitable person(s) have been identified. The formal appointment shall be published in the Gazette.

THE INCIDENT

3. At about 2020 hours on 1 October 2012 off Shek Kok Tsui, northwest of Lamma Island, a Hong Kong & Kowloon Ferry Ltd¹ ferry “Sea Smooth” (海泰) carrying 4 crew and 95 passengers enrouting from Central to Yung Shue Wan, Lamma Island collided with a Hong Kong Electric Company Limited launch “Lamma IV”. The latter vessel carrying 127 persons including 3 crew members was leaving Lamma Island for Central. After the collision, the ferry “Sea Smooth” (海泰) remained afloat while the launch “Lamma IV” sank quickly and rested almost vertically with its bow protruding above the water. The majority of persons on board “Lamma IV” fell into the sea and some were trapped inside the vessel.

4. The emergency call was received at around 2022 hours. The first Police launch arrived at the scene at around 2034 hours and the first fireboat arrived at around 2041 hours. They commenced rescue operation and conducted underwater search immediately.

5. The Marine Emergency and Maritime Rescue Co-ordination Centre (MRCC) of Marine Department co-ordinated a search and rescue operation forthwith with Marine Police as the On-scene Commander. The Police, Fire Services Department, Marine Department, Auxiliary Medical Services, Government Flying Service and St. John Ambulance were deployed for the search and rescue. A total of more than 1 100 staff, 95 vehicles, 24 vessels and five helicopters from various departments/forces were involved in the operation. Rescue staff reported that they encountered difficulties such as strong tidal current, wavy waters, poor underwater visibility, large number of victims and large quantities of miscellaneous articles inside the ship wreckage which blocked the passageway. To aid the search and rescue and facilitate the diving operation, Marine Department deployed a barge to stabilize the vessel. Among the 124 passengers and three crew members on board of “Lamma IV”, there were 39 deceased and 87 injured. One passenger did not require any medical treatment.

¹ Licensed operator providing ferry service between Central and Yung Shue Wan.

CONSIDERATIONS

6. The incident has resulted in heavy casualties among the passengers and crew members. The entire community is shocked. Families of the deceased and the injured as well as the general public expect an early investigation by independent authorities to find out the causes of the incident and make recommendations for necessary actions to prevent the recurrence of similar tragedies. Hong Kong's maritime safety has also been called into question.

7. While various government departments will undertake a series of investigations in accordance with the relevant statutory procedures and administrative guidelines, given the scale of the tragedy and the serious concerns expressed by the public at large and politicians, there is a need for an independent, objective and apolitical inquiry.

8. Having considered the above and the experience concerning Commissions of Inquiry set up previously in respect of matters of great public importance including the Garley Building fire killing 40 people in 1996, the Chief Executive announced in the press conference on 2 October that he intended to set up a Commission of Inquiry under the Commissions of Inquiry Ordinance (Cap. 86) to investigate into the matter.

9. With sufficient and appropriate safeguards in place to avoid any prejudice to other proceedings or inquiries that are anticipated, such as possible criminal prosecution that may be brought against anyone who is criminally liable; any coronial inquest into the deaths; and any civil actions by the personal representatives of the deceased and those injured, a statutory inquiry by the Commission can be tasked to fulfill a broader evaluation and assessment of the incident. A Commission has a wider power to inquire into any matter as specified in its terms of reference from a broader perspective. It can specifically inquire into the causes of and the circumstances leading to and surrounding the incident and make any necessary recommendations in order to address the wider public concern as identified.

10. While a commission of inquiry may be set up on an administrative basis as in the case of the Lan Kwai Fong tragedy in 1993, we consider a statutory commission under the Commissions of Inquiry Ordinance (Cap. 86) more appropriate for the present case because –

- (a) A Commission may compel persons to give evidence and disclose documents and witnesses can be examined on oath. Any evidence given by any persons before the Commission shall not in general be admissible against him in any civil or criminal proceedings by or against him. Further, the Commission and witnesses are given statutory protection in relation to the proceedings. A non-statutory committee does not have similar power to summon witnesses, order the production of documents or take evidence on oath and any cross-examination and disclosure may only be done by consent of the interested parties.
- (b) When there is substantial dispute on facts relating to the causes of and circumstances leading to the collision, the power of the Commission to examine witnesses on oath and to cross-examine them will be essential to establishing the causes of the incident. We expect that the evidence would normally (subject to any consideration of confidentiality or prejudice to possible criminal proceedings) be taken in public in the presence of other interested parties who would then have the opportunity to cross-examine witnesses and to make submissions on evidence.

11. It is true that a statutory Commission has its disadvantages. Its procedures tend to be more elaborate and would normally require more resources and take a longer time to complete than a non-statutory committee. Further, the persons to appear before a Commission may find it necessary to have legal representation (though they are not required to do so). Nevertheless, in the circumstances of this case and for the reasons outlined above, we consider that the merits of a statutory Commission outweigh its disadvantages for a public matter of this nature and scale.

12. The Commission may summon government departmental representatives as witnesses and the inquiry conducted by the Commission may proceed in parallel to the non-judicial investigations carried out by relevant government departments.

13. Subject to eventual appointment of the Commission, the Commission will start operation as soon as practicable. It is expected that the Commission will report to the Chief Executive within six months from the date of appointment or such time as the Chief Executive in Council may allow. A Commission would normally appoint a Counsel to the Commission

and solicitors to assist in its work. An Administrative Officer Staff Grade B will be appointed to serve as Secretary to the Commission.

IMPLICATIONS OF THE PROPOSALS

14. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental or sustainability implications. The proposal has financial and civil service implications as set out below.

FINANCIAL IMPLICATIONS

15. Since the financial resource requirements will depend on the approach to the inquiry that the Commission will adopt and the number of witnesses and hearings that it will conduct, it is not possible to give a precise estimate of the financial implications of the proposal at this stage. A rough estimate based on previous Commissions of Inquiry is that the total cost would be in the region of \$25 to \$35 million, representing mainly the legal fees for the support of the Commission and legal services provided for public officials. Section 14 of the Commissions of Inquiry Ordinance provides for the cost of such an inquiry to be a charge on the general revenue. We will first arrange for the funding required to be met from existing provision and provide supplementary provision as needed.

CIVIL SERVICE IMPLICATIONS

16. We expect that the Secretariat of the Commission will be staffed by civil servants redeployed to fill the time-limited posts. The head of the Secretariat will be an Administrative Officer Staff Grade B, to be supported by a small team of supporting staff.

PUBLICITY

17. A press release will be issued and a spokesman will be available for answering public enquiries. The Chief Secretary for Administration and relevant officials would brief Members of the Legislative Council on the incident and the handling of the aftermath at a special House Committee meeting on 12 October 2012.

BACKGROUND

18. The Commissions of Inquiry Ordinance empowers the Chief Executive in Council to appoint one or more Commissioners to “inquire into the conduct or management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance.” (section 2(1) of Cap. 86).

19. When appointing a Commission, the Chief Executive in Council may “nominate a Chairman if 2 or more Commissioners are appointed, and confer on such Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceeding”. The Chief Executive in Council may also appoint a secretary, assistant secretaries and other staff, and a legal advisor to the Commission (section 2(2) of Cap. 86).

20. Every inquiry held under the Ordinance shall be deemed to be a judicial proceeding (section 11 of Cap. 86). The Commission may, among other powers conferred on it under section 4 of Cap. 86, receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible as evidence in civil or criminal proceedings; determine the manner in which such material shall be received; summon any person to attend to give evidence or to produce any article or document; issue warrants of arrest to compel attendance; prohibit the publication to or disclosure of any person attending before the Commission of all or part of the material received by the Commission; enter and inspect any premises, issue warrants for the searching of premises and the seizure therein of any article or document or any class of articles, etc. (section 4 of Cap. 86).

ENQUIRIES

21. For enquiries about this brief, please contact Mr LO Chi-hong, Laurie, Deputy Director of Administration (Special Duties), at 2810 2691.

Administration Wing,
Chief Secretary for Administration's Office
9 October 2012

Terms of Reference and Other Key Terms of Appointment of the Commission of Inquiry into the Collision of Vessels Near Lamma Island

Terms of Reference

Inquire into the facts and circumstances leading to and surrounding the collision of the two vessels that took place near Lamma Island, Hong Kong on 1 October 2012:

- (a) ascertain the causes of the incident and make appropriate findings thereof;
- (b) consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and
- (c) make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future.

Submission of Report

The Commission shall report to the Chief Executive within six months from the date of appointment or such time as the Chief Executive in Council may allow. The Commission may submit such interim reports on any aspects of the inquiry as it may see fit.

Directions to the Commission

- (a) the Commission may appoint experts to provide reports or other form of assistance on any matters covered by the Inquiry;
- (b) the Commission shall have and exercise the powers conferred by section 9 of the Commissions of Inquiry Ordinance to punish all or any of the contempts specified in section 8; and

- (c) the determination of any criminal or civil liability of any person shall be outside the terms of reference of the Commission.

Secretariat Support

Mr LO Chi-hong will be appointed as Secretary to the Commission to provide the necessary administrative support for the inquiry. The Commission will also be provided with other support staff.