

(Translation)

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16 May 2014

Dr. Hon. Kenneth CHAN
Office of Dr. Hon. Kenneth CHAN
Room 814
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Dr. Hon. Chan,

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

Penalties and Enforcement Related Issues

Thank you for your letter dated 30 April 2014 on the captioned subject. Our replies to the various matters mentioned in your letter are set out below.

Penalties for Local Vessels

2. When drafting the Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 (“the Bill”), we have reviewed the penalties for dark smoke emission offences under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (“the Local Vessels Ordinance”) and the Shipping and Port Control Ordinance (Cap. 313) (“the Shipping Ordinance”). The maximum penalties under the Local Vessels Ordinance were set in 2007. We consider that the penalties are still at reasonable levels and are effective deterrents for local vessels which have a comparatively smaller scale of operation.

3. To strengthen the control of dark smoke emission from vessels, the Bill proposes to introduce the Ringelmann Chart as an objective benchmark for

enforcement and prosecution. Under the Bill, it is an offence in law for any vessel in the waters of Hong Kong to emit dark smoke which is as dark as or darker than Shade 2 on the Ringelmann Chart for 3 minutes or more continuously.

Proposed Penalties for Local and Ocean-going Vessels under the Bill

4. For fines of \$100,000 or below, Schedule 8 of the Criminal Procedure Ordinance (Cap. 221) provides for 6 levels of fines as follows:

Level 1	\$2,000
Level 2	\$5,000
Level 3	\$10,000
Level 4	\$25,000
Level 5	\$50,000
Level 6	\$100,000

The above levels of fines are adopted in various provisions under the existing laws of Hong Kong for fines not exceeding \$100,000. To tie in as far as possible with the maximum fines (i.e. \$10,000 for first offence and \$20,000 for subsequent offence) for smoke emission offences under the Shipping Ordinance, the penalty levels for the respective offences under the Local Vessels Ordinance enacted in 2007 are set at level 3 (i.e. \$10,000) for first offence and level 4 (i.e. \$25,000) for subsequent offence. The amount of fine at level 4 is the closest to the maximum fine for subsequent offence under the Shipping Ordinance.

5. As mentioned in paragraph 2 above, we have reviewed the penalty levels for smoke emission offences under the Local Vessels Ordinance and the Shipping Ordinance. Our prime consideration is that the penalty levels should reflect the impact of such offences on the public and should have a deterrent effect. Excessive dark smoke emission from vessels is often an indicator of improper engine operation or maintenance. As compared with local vessels, the power ratings of engines fitted on board ocean-going vessels (OGVs) are relatively larger¹ and hence the amount of dark smoke emitted would be proportionally greater in the event of improper engine maintenance. Our proposed higher level of maximum fine for OGVs is to 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.

Enforcement

6. Upon passage of the Bill, when officers of the Marine Department (MD) detect dark smoke emission from any vessels within the waters of Hong Kong, they

¹ The engine power of a medium OGV and a mega OGV is 36 560 kilowatt (kW) and 80 906 kW respectively, while the largest local passenger ferry in Hong Kong only has an engine power of 2 232 kW.

shall make use of the Ringelmann Chart in assessing the level of dark smoke emitted. If the intensity of emission is as dark as or darker than Shade 2 on the Ringelmann Chart and that such emission has lasted for 3 minutes or more, MD officers shall take prosecution action in accordance with the newly amended legislation. If the intensity of emission is darker than Shade 2 on the Ringelmann Chart but such emission has not lasted for 3 minutes, MD officers shall issue a warning letter to the vessel. If the intensity of emission is as dark as Shade 2 on the Ringelmann Chart but such emission has not lasted for 3 minutes, or if the intensity of emission is as dark as Shade 1 on the Ringelmann Chart and that such emission has lasted for 3 minutes or more, MD officers shall issue an advisory letter to the vessel.

7. The Harbour Patrol Section (HPS) of MD is responsible for the enforcement of the Local Vessels Ordinance and the Shipping Ordinance, including those provisions on smoke emission. Since 2007, the establishment of the HPS has been maintained at around 70 Marine Inspectors with a fleet of 25 patrol launches. These MD officers and patrol launches are stationed at the major waters of Hong Kong to perform their enforcement duties, with the control of dark smoke emission from vessels being one of their daily routines. Random visual surveys of different types and sizes of vessels in the waters of Hong Kong are conducted throughout the year. MD officers in patrol launches will follow the vessels being surveyed, observe the emission by comparing the level of darkness of the smoke emitted against the Ringelmann Chart, and time the duration of the emission. The results are recorded for monitoring and necessary enforcement actions. From 2007 to 2013, MD observed a total of 10 554 vessels by means of visual survey, and issued 23 warning letters and 221 advisory letters in total to those vessels with visible smoke emission. According to the results of the annual monitoring surveys, the number of vessels with visible emission has dropped from 40.8% in 2007 to 1.4% in 2013, indicating that MD’s efforts in controlling dark smoke emission from vessels have been effective.

8. The yearly figures on successful prosecution of vessels for dark smoke emission and the related fines imposed by the court since 2007 are set out below:

	Cases Prosecuted	Minimum Fine	Maximum Fine
2007	4	\$500	\$1,000
2010	1	\$2,500	
2012	2	\$1,000	\$3,000

Delivery of Vessels for Inspection

9. The Shipping Ordinance 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 legislative provision requiring delivery of non-local vessels to MD under the Shipping Ordinance 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 requirement

for qualified engineers to be on board and repair/maintenance works 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.

10. Should you have any enquiries, please feel free to contact me at 3509 8162. Thank you.

Yours sincerely,

(signed)

(Jenny CHAN)

for Secretary for Transport and Housing

c.c.

Ms. Debbie YAU, Clerk to the Bills Committee on Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 (Fax: 3151 7052)

Marine Department (Attn: Mr. Siu-man CHUNG; Fax: 2545 1535)