

立法會
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**Paper for the House Committee Meeting
on 21 March 2014**

**Legal Service Division Report on
Shipping Legislation
(Control of Smoke Emission) (Amendment) Bill 2014**

I. SUMMARY

1. The Bill

At present, it is an offence for a non-local vessel and a local vessel to emit smoke in Hong Kong waters and in such quantity that constitutes a nuisance under Shipping and Port Control Ordinance (Cap. 313) and Merchant Shipping (Local Vessels) Ordinance (Cap. 548) respectively. In relation to a non-local vessel, the offence is punishable with a maximum fine of \$10,000 upon first conviction and \$20,000 upon any subsequent conviction. For a local vessel, the offence is punishable with a maximum fine of \$10,000 upon first conviction and \$25,000 upon any subsequent conviction.

The Bill seeks to amend the said Ordinances to re-formulate the offence, so that in future it is the emission of smoke reaching a certain intensity of shade of grey for 3 minutes or more that would constitute an offence. Further, in relation to a non-local vessel, the Bill proposes to increase the maximum fine to \$25,000 upon first conviction of the offence and to \$50,000 upon any subsequent conviction. The maximum fines in relation to a local vessel would remain the same.

2. Public Consultation According to the Administration, it has consulted the Panel on Economic Development in May 2013. Further, the Local Vessel Advisory Committee and the Port Operations Committee have also endorsed the proposal.

3. Consultation with LegCo Panel According to the Clerk to Panel on Economic Development, the Panel was consulted on 27 May 2013 on the legislative proposal. Members in general support the proposal.

4. Conclusion It is noted that, despite the general support by the Panel, specific concerns such as the proposed penalty levels were raised by members. Members may wish to study the Bill in greater detail. Meanwhile, enquires have been made with the Administration regarding certain legal and drafting aspects of the Bill.

II. REPORT

The date of First Reading of the Bill is 19 March 2014. Members may refer to the LegCo Brief (File Ref.: THB(T) PMLCR 8/10/60/4) issued by the Transport and Housing Bureau and dated 26 February 2014 for further details.

Object of the Bill

2. The Bill proposes to amend the Shipping and Port Control Ordinance (Cap. 313) and the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) to control of emission of dark smoke from vessels in Hong Kong waters.

Background

3. At present, non-local and local vessels are respectively regulated by Cap. 313 and Cap. 548. Under the said Ordinances, a non-local and local vessel respectively must not emit smoke in Hong Kong waters in such quantity as to be a nuisance. According to the Administration, given that there is no definition in the Ordinances for the extent of emission which constitutes nuisance, whether there is any nuisance caused by such emission has to be decided by the court on a case by case basis. As such, the Administration proposes to assess the intensity of any smoke which is emitted from any such vessel with reference to the Ringelmann Chart¹ (the Chart) and to make it an offence for any such vessel which emits smoke that reaches a certain level of intensity as specified on the Chart.

Provisions of the Bill

4. The Bill seeks to amend the said Ordinances to re-formulate the smoke emission offence. In future, a local or non-local vessel may not emit smoke which is as dark as or darker than shade 2 of the Chart for 3 minutes or more continuously at any one time in Hong Kong waters. In relation to a non-local vessel, the offence would be punishable with a maximum fine of \$25,000 upon first conviction and a maximum fine of \$50,000 upon any subsequent conviction². Further, the vessel owner's agent would also be made liable for the offence³.

¹ Members may refer to Annex B of the LegCo Brief for a sample of the Chart.

² The current offence is punishable with a maximum fine of \$10,000 upon first conviction of the offence and \$20,000 upon any subsequent conviction.

³ At present, only the owner and the master of the vessel are liable for the current offence concerned.

5. In relation to a local vessel, the Bill proposes that the respective maximum fines upon the first and any subsequent conviction of the offence should remain at the existing level (i.e. \$10,000 upon first conviction and \$25,000 upon any subsequent conviction). Further, an authorised officer⁴ may direct the owner or coxswain or the owner's agent of a local vessel to "deliver" (or "交付" as appeared in the corresponding Chinese rendition) the vessel to the Director of Marine for ascertaining whether the vessel emits any dark smoke if the officer has reasonable grounds for suspecting that there has been a contravention. The Administration has been requested to clarify the meaning and effect of "deliver" in relation to the direction. Besides, it is noted that no similar provision is proposed in relation to a non-local vessel and the Administration has also been asked to provide the relevant considerations in this respect.

6. It is also noted that, according to its long title, the Bill seeks to amend Cap. 313 and Cap. 548 to "enhance the control of emission of dark smoke from vessels in the waters of Hong Kong...". Given that the Bill proposes to change the offence from nuisance to colour-based, it may be debatable whether the proposed amendments are an enhancement or whether it is accurate to imply that the existing control is about the emission of dark smoke. As such, the Administration has been requested to clarify the objective of the Bill. Regarding the proposed penalties, it is observed that heavier maximum fines would be imposed in relation to a non-local vessel than a local vessel in respect of the same offence. The Administration has also been requested to clarify whether such a proposal is compatible with any non-discriminatory principles.

Public Consultation

7. The Administration has consulted the Local Vessel Advisory Committee and the Port Operations Committee and they have endorsed the legislative proposal.

Consultation with LegCo Panel

8. According to the Clerk to Panel on Economic Development, the Panel was consulted on 27 May 2013 on the legislative proposal to strengthen enforcement against dark smoke emission from vessels in Hong Kong waters. Members in general expressed support for adopting the Chart as a reference for

⁴ An authorised officer is defined in Cap. 548 to mean the Director of Marine and public officer of the Marine Department of or above the rank of Marine Inspector Class II, any police officer of or above the rank of Sergeant and any public officer authorised in writing in this behalf by the Director.

measuring the dark smoke emitted from such vessels in order to determine whether the proposed offence has been committed. Some members expressed concerns on the proposal such as the effectiveness of using the Chart for measuring dark smoke that is emitted from vessels and the proposed penalty levels and enquired on the enforcement of the relevant proposed legislation if it is passed by LegCo. Some other members enquired whether the Administration would take the opportunity to make specific regulations for the control of emission of dark smoke from vessels and render assistance to vessel operators in switching to low sulphur fuel.

Conclusion

9. In the light of the concerns raised by the Panel, Members may wish to study the Bill in greater detail. A further report will be made, if necessary, after the Administration has responded to the enquiries mentioned in paragraphs 5 and 6 above.

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