

For Discussion  
on 28 April 2014

**Legislative Council Panel on Economic Development**

**The Transport and Housing Bureau's Investigation  
into Staff Conduct in the Marine Department  
in relation to the Vessel Collision Incident near Lamma Island  
on 1 October 2012**

**PURPOSE**

This paper informs Members on the result of the Transport and Housing Bureau's ("THB's") investigation into staff conduct in the Marine Department ("MD") in relation to the vessel collision incident ("incident") near Lamma Island on 1 October 2012.

**BACKGROUND**

2. The Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 ("CoI") and its Report revealed possible problems, which include possible maladministration and negligence of duty, with MD officers in carrying out their duties in the past relating to the Lamma IV. In this respect, the Investigation Team ("Team"), set up in THB and led by the Permanent Secretary for Transport and Housing (Transport), is tasked to identify any shortfall or deficiency on the part of MD officers when carrying out their duties in respect of the Lamma IV in the past as revealed by the CoI. The Team should also make recommendations on disciplinary actions to be taken against the officers who are alleged to have misconducted themselves. For matters involving suspected criminal offences, the Team should report to law enforcement agencies.

3. The task of the Team was to investigate into the adequacy or otherwise in the MD officers' discharge of duties in relation to the Lamma IV in the past. It was not tasked to establish the causation between staff conduct and the sinking of the Lamma IV and the consequential casualties. Nor does the Team have the authority to determine the criminal and civil liabilities of the MD staff or MD in general in the incident. Such authority rests with the court.

## **LATEST POSITION**

### Progress of the Investigation

4. The Team was established in late June 2013 and has conducted its work in full swing since then. It was expected to conduct the investigation in a fair, impartial and thorough manner in line with civil service practices and requirements.

5. Under section 7 of the Commissions of Inquiry Ordinance, Cap. 86, evidence given by any person before the Commission (i.e. the CoI) shall not be admissible against him in any civil or criminal proceedings by or against him, except where he is charged with any offences under Part V (Perjury) of the Crimes Ordinance (Cap. 200) or is proceeded against under section 8 or 9. As such, the Team cannot rely solely on the information and evidence contained in the CoI Report in its investigation. The Team has to collect information and evidence afresh from MD officers. In view of the long span of time, the wide scope of issues and the large number of MD officers covered by the investigation, the Team spent considerable time in researching voluminous papers and documents dating back to the early 1990s, tailor-making questionnaire for each and every officer in respect of his roles and responsibilities involved, conducting interview with each officer, analysing the information collected and any evidence ascertained, and working out recommendations as to the disciplinary actions to be taken against those officers found to have prima facie evidence to support that they have misconducted themselves in their discharge of duties. In the process, the Team has sought legal advice.

6. The investigation has now been completed and the Team submitted the Investigation Report (“Report”) to the Secretary for Transport and Housing on 31 March 2014. The Report runs to some 430 pages, comprising seven Chapters, respectively on (1) introduction; (2) an account of facts about the Lamma IV from 1994 to 2012; (3) findings and analyses of the respective roles and responsibilities of individual Marine Department officers in the handling of the Lamma IV; (4) recommendation on disciplinary actions to be taken against the Marine Department officers; (5) other matters revealed in the course of investigation; (6) problems and deficiencies in the prevailing system and practices of the Marine Department; and (7) conclusions. There are a total of 399 Appendices.

7. Since disciplinary action against certain MD officers is recommended, the Report was forwarded to the Civil Service Bureau (“CSB”) in early April 2014 for consideration and initiation of action.

### Criminal Investigation

8. On the other hand, the Hong Kong Police Force (“Police”) is concurrently conducting a full criminal investigation into the incident from all fronts, and has been in close contact with the Prosecutions Division of the Department of Justice (“DoJ”)<sup>1</sup>.

9. The latest development is that the Police has requested THB to provide them with the Report for the purpose of their criminal investigation. In consultation with DoJ, THB is satisfied that the provision of the Report to the Police for criminal investigation is in the public interest, and that such transfer of personal data as contained in the Report for the prevention and detection of crime is exempt from the data protection principle regarding the use of personal data under section 58(2) of the Personal Data (Privacy) Ordinance, Cap. 486. The Report has since been provided to the Police.

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<sup>1</sup> There is a firewall in place within the DoJ to prevent conflict of interest amongst the different DoJ teams which have been giving advice on different aspects of the incident.

## Considerations on Public Disclosure of the Report

10. There has been strong public expectation for the Report to be published. In particular, families of the victims of the incident are keen to know the full findings of the investigation. Such expectations and sentiments are fully understandable.

11. In respect of public disclosure of any content of the Report, the Administration has to take into account the following considerations:

- (a) the public interest and right to know;
- (b) any mandatory restrictions under the Personal Data (Privacy) Ordinance, Cap. 486;
- (c) the risk of criminal investigation and any potential criminal proceedings being prejudiced; and
- (d) the right to a fair hearing for officers alleged of having misconducted themselves and disciplinary proceedings to be initiated against them.

In short, the Administration has to strike a fine balance among these considerations.

12. The Report contains substantial personal data of the officers under investigation, detailed account of the specific acts of officers and incidents related to the handling of the Lamma IV, detailed analyses of the roles and responsibilities of each of the officers, and specific recommendations on the disciplinary actions to be instituted against those officers who are alleged to have misconducted themselves in their discharge of duties. Further, the Report contains information on matters involving suspected criminality.

13. The view of the DoJ is that public disclosure of the full Report (which is now with the Police for criminal investigation) has the serious risk of prejudicing criminal investigation and any potential criminal proceedings in respect of the incident. Such disclosure, if made at this stage, may allow suspects to be forewarned about what witnesses may say against them, thereby giving them the chance to modify or even fabricate

accordingly the evidence they may subsequently give to the Police. The memories and evidence of potential witnesses may also be tainted – either by them deliberately tailoring their evidence according to what they have read from the Report, or just sub-consciously (but the consequences still grave) confusing what they themselves have independent recollection of with what they in fact do not have contemporaneous knowledge of but have only since read about. The weight and reliability, or even admissibility, of their evidence will be adversely affected. The risk is particularly acute when it comes to the disclosure of the findings and analyses of the respective roles and responsibilities of individual MD officers in the handling of the Lamma IV, the recommendations of the Team on whether and (if so) what disciplinary action should be instituted against each of the MD officers concerned, and other matters which have come to light in the course of investigation which may amount to disciplinary and / or criminal offences. Such disclosure, if made, will not only affect the admissibility and quality of the evidence in the manner as has been explained above. In addition, potential juries may be influenced by the findings and recommendations made by the Team, thereby attracting allegations and attacks that any potential criminal proceedings in respect of the incident have become unfair.

14. On the other hand, redaction of the Report for public disclosure purpose is not practicable since the bulk of the Report (containing the identifiable personal data of the officers under investigation, details of the specific acts of the officers and incidents related to the handling of the Lamma IV) will have to be redacted in order not to risk prejudicing the ongoing criminal investigation and any potential criminal proceedings. The excision of those materials will leave behind a Report which makes very little coherent sense.

15. Same as the risk of prejudicing potential criminal proceedings, disclosure of any information (e.g. names, ranks / grades, respective acts of misconduct, etc.) expressly or implicitly identifying any officer will result in pre-trial prejudicial publicity which may prejudice the fair conduct of the disciplinary proceedings / actions to be taken against the officer concerned. In the circumstances, it would not be appropriate to disclose the details to the public so as to maintain the integrity of any

subsequent disciplinary proceedings / actions. In addition, the Government is also bound by the mandatory requirements in the Personal Data (Privacy) Ordinance, Cap. 486, in respect of protection of personal data.

16. Taking account of the considerations above, we were of the view that redaction for the purpose of public disclosure is not feasible. For this reason, a summary of the Report (at Appendix) is prepared providing the gist of the facts and the Team's overall findings and recommendations on disciplinary action. This summary, though brief when compared with the full Report, is intended to give a coherent account of the work done by the Team and the overall findings, without jeopardising any subsequent actions / proceedings, whether disciplinary or criminal, relating to the incident. This approach is considered to be in the public interest in order to protect the integrity of the ongoing criminal investigation and any subsequent criminal proceedings and disciplinary proceedings / actions.

17. The summary has essentially not included the names and ranks of the MD officers under investigation, the Team's analyses of the roles and responsibilities of individual officers with the evidence ascertained, the Team's specific recommendations on the disciplinary actions to be instituted against individual MD officers who are alleged to have failed their duties, and matters which are considered to be related to criminal investigation.

#### Other Matters revealed in the Course of Investigation

18. In the course of investigation, the Team has come across other matters of non-compliance in respect of Classes I and II vessels<sup>2</sup> and matters involving suspected criminality. For non-compliance matters, the investigation reveals that the CoSs of many Class I vessels

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<sup>2</sup> According to the "Code of Practice – Safety Standards for Classes I, II and III Vessels" (December 2006 edition), a Class I vessel is any vessel, other than a Class IV vessel, which is permitted to carry more than 12 passengers; a Class II vessel is any vessel, other than a Class IV, which is permitted to carry not more than 12 passengers; a Class III vessel is any vessel used exclusively for fishing and related purposes; and a Class IV vessel is any vessel used exclusively for pleasure purposes, regardless of the number of passengers it is permitted to carry.

(same Class as the Lamma IV) indicate non-compliance with the requirement of life-saving appliances, the CoSs of some Class I vessels have been extended to the effect that their aggregate validity being 15 months instead of 14 months allowed, on-slip inspection of some Class II vessels has not been implemented, and the provision of children lifejacket on board Class II new vessels operating within Hong Kong waters and provision of some life-saving appliances on board dump lighters and hopper barges have not been fully met. The handling and current position of these problems are set out in paragraphs 68 to 71 of the Appendix.

#### The Team's Referral to the Police

19. As to matters involving suspected criminality, the Team has already made referrals to the Police in line with its Terms of Reference.

#### Follow-up on Criminal Investigation and Disciplinary Action

20. The Administration has provided to the Police a copy of the full Report.

21. While the Police is continuing its criminal investigation, CSB also has to ensure that any disciplinary action to be initiated will not prejudice criminal investigation and any subsequent criminal proceedings.

#### **ADVICE SOUGHT**

22. Members are invited to note this paper and the attached summary of the Report.

Transport and Housing Bureau  
April 2014

## **A Summary of the Investigation Report**

The Transport and Housing Bureau (“THB”) conducted an investigation into staff conduct in the Marine Department (“MD”) in relation to the vessel collision incident near Lamma Island on 1 October 2012. The Investigation Report (“Report”) was submitted to the Secretary for Transport and Housing (“STH”) on 31 March 2014.

2. The Report contains seven chapters, covering respectively (1) introduction; (2) an account of the facts about the Lamma IV from 1994 to 2012; (3) findings and analyses of the respective roles and responsibilities of individual Marine Department officers in the handling of the Lamma IV; (4) recommendation on disciplinary actions to be taken against the Marine Department officers; (5) other matters revealed in the course of investigation; (6) problems and deficiencies in the prevailing system and practices of the Marine Department; and (7) conclusions, with a total of 399 Appendices.

3. This summary (with a list of abbreviations at Annex I and a list of technical terms at Annex II) is prepared in order to give an account of the contents and main findings of the Report, having regard to the following considerations:

- (a) the public interest and right to know;
- (b) any mandatory restrictions under the Personal Data (Privacy) Ordinance (Cap. 486);
- (c) the risk of criminal investigation and any potential criminal proceedings being prejudiced; and
- (d) the right to a fair hearing for officers alleged of having misconducted themselves and disciplinary proceedings to be

initiated against them.

In this regard, this summary is intended solely for public information, and will not replace the original full Report in the context of civil service disciplinary and staff management actions and any subsequent proceedings, or for other purposes.

## **BACKGROUND**

### The Commission of Inquiry

4. The Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 (“CoI”) was appointed by order of the Chief Executive in Council on 22 October 2012, pursuant to section 2 of the Commissions of Inquiry Ordinance, Cap. 86 (“Cap. 86”). The Terms of Reference of the CoI are to “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.”

5. The CoI conducted the inquiry by way of hearings open to the public. As far as the Marine Department (“MD”) was concerned, a total of 23 serving / retired officers testified before the CoI among other witnesses.

6. Under section 7 of Cap. 86, evidence given by any person before the Commission shall not be admissible against him in any civil or criminal proceedings by or against him, except where he is charged with any offences under Part V (Perjury) of the Crimes Ordinance (Cap. 200) or is proceeded against under section 8<sup>1</sup> or 9<sup>2</sup>.

7. The CoI submitted its Report to the Chief Executive (“CE”) on 19 April 2013. The redacted version of the CoI Report<sup>3</sup> was released by the Government on 30 April 2013.

8. The CoI Report carries criticisms on MD for deficiencies in various work processes: in procedures and documentation, in the inspection / survey and damage stability calculations of the Lamma IV and the enforcement of the lifejacket requirement which had taken effect in 2008. It points out, among other things, that there were and are serious systemic failures in the past and present system of control in MD.

9. The CE has instructed THB and MD to follow up on the CoI Report. In respect of the deficiencies revealed, should there be any maladministration and human error found, the Government will deal with it in an impartial and serious manner, including the institution of disciplinary actions. On 2 May 2013, Mr LIU Hon-por, the then Director of Marine, issued a letter to all staff members of MD informing them that internal investigation had commenced into the reasons the provision of lifejacket on board the Lamma IV had not met the statutory requirement and the structure of the vessel had not been constructed

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<sup>1</sup> Section 8 of Cap. 86: “Contempts to be offences”.

<sup>2</sup> Section 9 of Cap. 86: “Contempts dealt with by Commission”.

<sup>3</sup> Charges of manslaughter have been laid against the two coxswains involved in the incident and the Government has decided to redact those parts of the Report relating to issues concerning the responsibilities of the two coxswains in order to safeguard the two coxswains’ right to a fair trial. The Government has also indicated that it will release the full report after all relevant criminal proceedings have been concluded. The redacted version of the Report can be accessed at [www.coi-lamma.gov.hk](http://www.coi-lamma.gov.hk).

according to the drawings as approved by MD.

## **INVESTIGATION CONDUCTED BY THE TRANSPORT AND HOUSING BUREAU**

10. On 27 May 2013, STH announced that the Government had decided that THB would take over and lead the investigation into MD in order to ensure the procedural integrity and impartiality of the investigation. The Permanent Secretary for Transport and Housing (Transport) (“PS(T)”) was appointed to conduct the investigation.

### Terms of Reference of THB’s Investigation Team

11. PS(T) is supported by an Investigation Team (“the Team”) established in late June 2013. The Terms of Reference of the Team are:

- (a) to conduct a thorough, impartial and fair investigation, in accordance with practices in the civil service, with a view to identifying any shortfall or deficiency on the part of MD officers when carrying out their duties in respect of the Lamma IV in the past as revealed from the vessel collision incident near Lamma Island on 1 October 2012;
- (b) to establish and collate evidence of specific acts of misconduct, neglect of duty and maladministration, if any, which may warrant disciplinary and / or administrative actions to be taken against any officers;
- (c) to report to the law enforcement agencies for follow-up on any cases, which may be found in the course of investigation, to involve possible criminal offences; and

- (d) to make recommendations to PS(T) on whether disciplinary and / or administration actions should be taken against any officers.

12. The CoI was to ascertain the causes of the collision incident and make appropriate findings, among its Terms of Reference. The Government is committed to following up on the CoI's recommendations. On the basis of the issues revealed in the course of the CoI, the Team investigates into the adequacy or otherwise in the MD officers' discharge of duties in relation to the Lamma IV in the past. The Team is not tasked to establish any causality between any inadequacies, if found, on the part of MD officers and the collision and sinking of the Lamma IV, and the eventual loss of lives. Since the investigation is an administrative exercise, the Team has no special investigative powers or privileges, and no authority to determine the criminal or civil liabilities of any concerned officers / parties.

#### Targets of investigation

13. With regard to the targets of investigation, these include most of the MD officers who have come across the Lamma IV during the performance of their duties since November 1994 (i.e. when MD was notified by Cheoy Lee Shipyards Limited of the vessel's construction), including those who were involved in drawing / plan examination and approval, initial survey, inclining experiment and vetting of stability calculations as a new vessel and addition of fender / addition of and raising of the position of the ballast, issue of the first Certificate of Survey, periodical surveys and issue of Certificates of Survey, enforcement of the new lifejacket requirement, inspection of seats, watertight closing appliances, etc. To investigate into supervisory accountability, the supervisors of these officers up to the top management are also included as targets.

14. A total of 55 MD officers have been identified, among whom two had passed away. Of the remaining officers, one was not able to assist the investigation due to serious health problem. Hence, a total of 52 officers have come under investigation, comprising 11 directorate officers and 41 non-directorate officers; 38 are serving officers<sup>4</sup> while 14 have retired from the service. Of these 52 officers, currently 32 are of the Ship Inspector Grade, 16 of the Surveyor of Ships Grade, two of the Marine Officer Grade and two of the Shipping Safety Officer Grade.

15. Among these 52 officers, 37 of them were directly involved in the handling of the Lamma IV while the remaining officers under investigation were their supervisors at different levels in the management, or involved in the work of local vessels in general.

16. The material time during which these officers' discharge of duties comes under investigation is from November 1994 to the time when the Investigation Report was compiled.

17. For the avoidance of doubt, the Team needs to emphasise this. As explained in paragraph 13 above, an MD officer (serving or retired) would be identified as a target if he had come across the Lamma IV during the performance of his or her duties since November 1994, or had been the supervisor of such an officer. The fact that an MD officer has been identified as a target does not by itself mean that he was suspected by the Team to have done anything wrong.

#### Sources of information and methodology

18. The Team investigates into the roles and responsibilities of the MD officers in respect of the Lamma IV with focus on the matters as

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<sup>4</sup> In the civil service, serving officers include those officers in active service and those on pre-retirement leave. Disciplinary action can be instituted against an officer as long as he remains a civil servant, i.e. disciplinary action can be instituted / continued against an officer up to the last day of his pre-retirement leave.

revealed in the CoI. Sources of information for the Team include the CoI Report, transcripts of the CoI hearings and relevant documents considered by the CoI (i.e. bundles and materials), information provided by MD serving / retired officers in questionnaires and interviews, and information provided by the MD management upon the Team's enquiry (e.g. past records related to the Lamma IV, internal meetings and meetings with the trade, policy and operation files, etc.).

19. For the 52 MD serving / retired officers under investigation, each officer was requested to respond in writing to a questionnaire tailor-made by the Team for each officer, followed by attending an interview with the Team. The interviews were audio-recorded.

20. On the covering letter containing the tailor-made questionnaire and at the outset of the interview, the officer was informed that the information to be collected via the questionnaire and the interview would be used for the purpose of THB's investigation into staff conduct in MD in relation to the vessel collision incident and that such information might be used in action (including disciplinary action) against relevant persons in the future. Prior to the actual questioning at the interview, the officer was told that the interview would be audio-recorded.

21. To ensure that the investigation is conducted in a fair and impartial manner, necessary steps have been taken by THB at an early stage to avoid any conflict of interest of those officers who are at the senior management level and who are, at the same time, targets of this investigation. They were advised by THB to refrain from handling matters of the investigation. The incumbent Deputy Director of Marine (Special Duties) has been assigned to take on the role of the most senior officer representing the Department in dealing with all matters related to the investigation (e.g. correspondence with the Team). The Team wrote to the MD management on eight occasions to seek information.

22. The Team's investigation is conducted along the following principles:

- (a) the Team's findings should be based on evidence as revealed in the course of investigation and other sources of information. The standard of proof in making the findings is the balance of probability;
- (b) the appropriateness of an act, conduct and behaviour of an officer will be measured with reference to the law of Hong Kong and the relevant government / MD regulations, rules, instructions, codes or practices. Hence, the law, practices, standards, rules, etc. of another maritime jurisdiction may not be the relevant yardsticks in this context;
- (c) where no specific rules or instructions are applicable in a particular case, the standard expected of an officer of his grade, rank and experience will apply; and
- (d) more is expected from a senior officer who, in discharging his duties, cannot rely only on written rules and is expected to exercise a level of judgement and assume a level of accountability commensurate with the position he holds.

## **AN ACCOUNT OF THE FACTS ABOUT THE LAMMA IV FROM 1994 TO 2012**

23. In order to gather all facts about the handling of the Lamma IV, identify individual MD officers involved in the whole period and accordingly investigate into their discharge of duties at the material time, the Team researched voluminous documents dating back to the early 1990s. A full account of facts about the Lamma IV in relation to MD is

set out below.

**A. The Lamma IV in Construction:  
Plan Approval, Initial Survey and Vetting of Stability  
Calculations by the Marine Department**

24. Before the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) came into effect on 2 January 2007, local vessels were governed by requirements set out in various ordinances and their subsidiary legislation<sup>5</sup>. In order to be licensed to operate, local passenger-carrying launches and ferry vessels should be built and surveyed in accordance with the instructions of Director of Marine (“DM”)<sup>6</sup> for the issue of a Certificate of Survey (“CoS”)<sup>7</sup>. The Local Vessels Safety Section (“LVSS”) of MD<sup>8</sup>, on receipt of a ship builder’s application for survey for certification and licensing of a local vessel, would notify the ship builder of the vessel design drawings / plans required to be submitted for their approval / consideration before construction commenced. These

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<sup>5</sup> Matters related to safety and survey of local vessels were previously provided in the Shipping and Port Control Ordinance (Cap. 313), the Merchant Shipping (Safety) Ordinance (Cap. 369) and the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). Cap. 548 was enacted to consolidate the scattered provisions into one piece of legislation dedicated for local vessels. The implementation of Cap. 548 entailed the introduction of 11 pieces of subsidiary legislation, including the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G). The main purposes of Cap. 548G are to provide for the approval of plans and survey in relation to local vessels with respect to the construction and maintenance, the life-saving appliances and fire-fighting apparatus to be provided, the carriage of passengers and the plying limits.

<sup>6</sup> Prior to 2 January 2007, the primary instructions issued by DM, based on provisions of relevant ordinances and subsidiary legislation applicable to the survey of launches and ferry vessels, were the “Instructions for the Survey of Launches and Ferry Vessels” (“the Blue Book”) and “Instructions for the Survey of Class I and Class II Launches and Ferry Vessels” (“the 1995 Instructions”). The 1995 Instructions, promulgated vide MD Notice No. 7 of 1996 on 19 January 1996, superseded the Blue Book on the same date.

<sup>7</sup> Before 2 January 2007, pursuant to the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap. 313E), a launch or ferry vessel basically could not be used for any commercial purpose without a valid licence, and no licence should be issued or renewed except upon production of a valid CoS issued by a Government surveyor.

<sup>8</sup> Formerly the Local Craft Safety Section (“LCSS”).

drawings / plans covered the structure, size and shape of the vessel (e.g. hull and deck), provision / arrangement of its various appliances (e.g. life-saving and fire-fighting appliances) and also machinery / electrical installations, etc. Before the issue of the first CoS and operating licence, a vessel would be surveyed (i.e. the initial survey) by classification societies and / or LVSS of MD at various stages of construction.

I. Plan Approval

25. On 24 November 1994, Cheoy Lee Shipyards Limited (“Cheoy Lee Shipyards”) notified MD that they were commissioned by the Hongkong Electric Co., Ltd. (“HKE”) to build a 28-metre passenger launch which was later named the Lamma IV. On 3 January 1995, MD notified Cheoy Lee Shipyards the list of design plans required to be submitted to them for approval / consideration.

26. During the period between May 1995 and March 1996, the 23 plans of the Lamma IV tabulated below were vetted / approved by MD:

<b>Item</b>	<b>Plans of the Lamma IV</b>
(1)	<i>General Arrangement Plan</i>
(2)	<i>Shell Expansion Plan</i>
(3)	<i>Midship Section Plan</i>
(4)	<i>Profile and Deck Plan</i>
(5)	<i>Sections and Bulkheads Plan, Sheet 1</i>
(6)	<i>Sections and Bulkheads Plan, Sheet 2</i>
(7)	<i>Lines Plan</i>
(8)	<i>Frame Offsets Booklet</i>
(9)	<i>Fin Construction Plan</i>
(10)	<i>Bulwark Construction Plan</i>
(11)	<i>F.O. Tank Construction Plan</i>
(12)	<i>Laminate / Framing Layout Plan</i>
(13)	<i>Framing Details (a) Plan</i>

<b>Item</b>	<b>Plans of the Lamma IV</b>
(14)	<i>Typ. Section / General Details Plan</i>
(15)	<i>Engine Girder Plan</i>
(16)	<i>Engine Removal Hatch Details Plan</i>
(17)	<i>Shaft Strut Plan</i>
(18)	<i>Rudder and Rudder Stock Details Plan</i>
(19)	<i>Detail of Rudder Stuffing Box Plan</i>
(20)	<i>Arrangement of Electrical Equipment Plan</i>
(21)	<i>220 / 380V AC Schematic Wiring Diagram</i>
(22)	<i>24V DC Schematic Wiring Diagram</i>
(23)	<i>Safety Plan</i>

## II. Initial Survey of the Lamma IV as a New Vessel

27. On 4 April 1995, Cheoy Lee Shipyards informed MD that the hull and main deck of the Lamma IV would be built by Wuzhou Shipyard in the Mainland and the related survey would be conducted by the China Classification Society. After completion, the hull would be transported to Hong Kong and all glass reinforced plastic superstructure and outfitting work would be carried out by Cheoy Lee Shipyards in Hong Kong.

28. On 27 April 1995, MD issued to Cheoy Lee Shipyards the "Survey Items List" for the Lamma IV, which set out the division of survey items for inspection between MD and the China Classification Society.

29. Survey of the hull and main deck construction of the Lamma IV was conducted and completed by the China Classification Society at Wuzhou Shipyard by early September 1995. According to the China Classification Society's Survey Report, the keel of the Lamma IV was laid on 30 June 1995.

30. From 13 November 1995 to 7 March 1996, a total of 10 MD officers carried out inspections / tests on / relating to the Lamma IV as tabulated below:

<b>Date</b>	<b>Inspection / Tests</b>
13 November 1995	Inspection of internal hull structure.
11 December 1995	Inspection of superstructure and valves.
15 December 1995	Inspection of stern tubes and outstanding items from inspection on 11 December 1995.
2 January 1996	Inspection of steering gear parts.
4 January 1996	Inspection of oily water holding tank.
10 January 1996	Inspection of tailshafts.
11 January 1996	Inspection of rudder plate and outstanding items from inspection on 13 November 1995.
22 January 1996	Inspection of rudder blades / trunk and pipings, measurement of principal dimensions, etc. and inspection of an outstanding item from inspection on 13 November 1995.
31 January 1996	Witness of inclining experiment <sup>9</sup> .

<sup>9</sup> Paragraph 16 of the Blue Book requires all vessels to undergo an inclining experiment. Paragraphs 9.2 and 9.9 in Chapter II of the 1995 Instructions also require an inclining

<b>Date</b>	<b>Inspection / Tests</b>
1 February 1996	Inspection of CO <sub>2</sub> pipes, fire line and bilge line systems.
6 February 1996	Inspection of bilge holding tank, pipes, pillars, etc. and also outstanding items from inspection on 11 December 1995.
9 February 1996	Inspection of electrical system.
13 February 1996	Inspection of CO <sub>2</sub> arrangement and pipelines and also outstanding items from inspection on 9 February 1996.
15 February 1996	Final inspection, with six items found unsatisfactory requiring further inspection.
7 March 1996	Inspection of outstanding items from the final inspection on 15 February 1996.

31. On 15 March 1996, arrangement was made to issue a 3-month temporary permit for the Lamma IV for the period from 7 March to 6 June 1996. Subject to the completion of MD's vetting of the stability calculations, a full-term CoS (valid normally for 12 months counting from the day of the final inspection) for the Lamma IV would be issued.

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experiment on new vessels or existing vessels undergoing modification. An inclining experiment is to confirm the vessel's displacement and centre of gravity in lightship condition. Relevant data collected from the inclining experiment would be used for calculating the stability of the vessel in both the intact and the damaged conditions.

### III. Vetting of Stability Calculations of the Lamma IV as a New Vessel in 1996

32. On 31 January 1996, Cheoy Lee Shipyards carried out an inclining experiment for the Lamma IV, which was witnessed by an MD officer. Cheoy Lee Shipyards submitted the *Inclining Experiment and Stability Calculation Booklet* on 5 February 1996 and then a revised version on 28 February 1996. On 6 March 1996, Cheoy Lee Shipyards submitted the *Damage Stability Information Booklet*.

33. After vetting by two MD officers, one copy each of the revised *Inclining Experiment and Stability Calculation Booklet* and the *Damage Stability Information Booklet*, stamped and signed, were returned to Cheoy Lee Shipyards on 26 July 1996.

### IV. Issue of the first CoS for the Lamma IV

34. The first CoS for the Lamma IV, with validity up to 12 February 1997, was issued on 30 July 1996.

### **B. The Lamma IV as an Existing Vessel: Periodical Surveys<sup>10</sup> and Vetting of Stability Calculations by MD**

35. All passenger-carrying local vessels like the Lamma IV<sup>11</sup> are required to undergo periodical surveys by MD to ensure that they are fit for their intended service and are in good condition. Items to be

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<sup>10</sup> Interchangeable with the term “Periodic Surveys”.

<sup>11</sup> The Lamma IV, with a passenger-carrying capacity of 224, is categorised as a Class I vessel which is permitted to carry more than 60 passengers under the 1995 Instructions (effective from 19 January 1996 to 1 January 2007); and a Class IA vessel which is permitted to carry more than 12 passengers under Cap. 548G and the “Code of Practice – Safety Standards for Classes I, II and III Vessels” (December 2006 edition) (“2006 CoP”) issued under section 8 of Cap. 548 (both effective since 2 January 2007).

inspected in a periodical survey vary with the type of the survey, i.e. whether it is an annual, biennial or quadrennial survey<sup>12</sup>. In any event, each periodical survey comprises a minimum of two inspections, i.e. one on-slip inspection and one final inspection afloat, and different inspections for a periodical survey are normally conducted by different MD officers<sup>13</sup>.

36. After inspections, relevant inspection records (e.g. M.O. 540, M.O. 539, Survey Report / M.O. 242) would be completed<sup>14</sup>. Upon satisfactory completion of the final inspection of each periodic survey, MD would issue a CoS for the vessel in question, valid normally for 12 months counting from the day of the final inspection<sup>15</sup>. Before 2007, only Surveyors of Ships were authorised to issue CoSs. The CoS was normally prepared by the Ship Inspector / Senior Ship Inspector who conducted the final inspection for the signature of a Surveyor of Ships.

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<sup>12</sup> Chapter IX of the 1995 Instructions, Periodic Survey Programme table for launches and ferry vessels (amended 2004) (effective since 18 May 2004 vide the promulgation of MD Notice No. 69A of 2004), and section 7 of Chapter II of the 2006 CoP.

<sup>13</sup> Officers of both the Surveyor of Ships Grade and the Ship Inspector Grade are responsible for conducting periodical surveys for local vessels. There are three streams in, respectively, the Surveyor of Ships Grade (i.e. ship, engineer & ship, and nautical (which is not applicable to the LVSS / LCSS)) and the Ship Inspector Grade (i.e. hull & deck, electrical, and machinery). As far as routine inspections in periodical surveys are concerned, a Surveyor of Ships / Ship Inspector Grade officer from any one stream is required to inspect items under other streams as well.

<sup>14</sup> M.O. 540 (Periodical Inspection Record) is used for periodical surveys for existing vessels. In addition, a final inspection will be conducted and the inspection items will be recorded in M.O. 539 (Final Inspection Record). Before 2009, M.O. 539 would be issued to the ship owner only when there were outstanding items found during the final inspection. From 2009 onwards, M.O. 539 would be issued to ship owners as a matter of course (i.e. whether or not there are outstanding items found during the final inspection). Also, since some time in 2009, MD introduced a procedure whereby Ship Inspectors / Senior Ship Inspectors would pass the office copies of the issued M.O. 540 and M.O. 539 to designated officers senior to them (i.e. Senior Ship Inspectors / Surveyors) for perusal. These designated officers would stamp "Noted" on both M.O. 540 and M.O. 539.

<sup>15</sup> Sometimes, a vessel owner may not apply for survey immediately upon the expiry of the current CoS since the vessel may cease operation for, say, repair and maintenance. Hence, there may be gaps in the validity periods shown in the CoSs of a vessel.

Since 2007, the CoS no longer required the signature of a Surveyor of Ships. The responsible Ship Inspector / Senior Ship Inspector input relevant data into the Licensing & Survey of Local Vessels Computer Information System (“LSLV System”)<sup>16</sup> for the issue of the CoS, which would be printed out by staff of the Licensing and Port Formalities Section for collection by vessel owners.

I. Periodical Survey in early 1997 and the Issue of CoS

37. The first periodical survey for the Lamma IV was conducted in early 1997. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	19 February 1997	Inspection of hull (external) and rudder, etc.
2	5 March 1997	Checking and hose test of the starboard side bottom shell plate outstanding from the inspection on 19 February 1997.
3	7 March 1997	Final inspection and issue of CoS with validity up to 6 March 1998.

II. Vetting of Stability Calculations in relation to Installation of Fender to the Lamma IV in 1997

38. On 26 March 1997, Cheoy Lee Shipyards submitted to MD a *Revised Stability Booklet* in relation to HKE’s request to install two lines of horizontal fenders and 10 vertical / diagonal fenders on both sides of

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<sup>16</sup> To tie-in with the implementation of Cap. 548 and its subsidiary legislation, the LSLV System has been put in use since January 2007.

the Lamma IV, together with its *Profile Plan* and other drawings on the locations of the fenders. The weight of the additional fenders, as recorded in the Booklet, was 1.344 tonnes. The intact stability calculations therein were made without the conduct of any inclining experiment.

39. The *Revised Stability Booklet* and the *Profile Plan* were stamped and signed by two MD officers, with one copy each returned to Cheoy Lee Shipyards on 4 April 1997. There was no record on any inclining experiment having been ordered / conducted at that time.

III. Periodical Survey in late 1997<sup>17</sup> and the Issue of CoS

40. Four inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	21 November 1997	Inspection of hull (external and internal), steering gear and rudder, etc.
2	25 November 1997	Inspection of main generator and blow test of fire extinguishing system outstanding from the inspection on 21 November 1997.
3	1 December 1997	Inspection of the main engines and welding seams at forward bulwark.

<sup>17</sup> The ship owner had arranged to bring forward the periodical survey in 1998 to December 1997.

Inspection	Date	Items
4	15 December 1997	Final Inspection and issue of CoS with validity up to 14 December 1998.

IV. Vetting of Stability Calculations in relation to Addition of Lead Ballast to the Lamma IV in 1998 – 1999

41. On 10 March 1998, Cheoy Lee Shipyards, on behalf of HKE, wrote to MD that trimming lead ballast of 8.25 tonnes would be installed on board the Lamma IV to improve its stability. The ballast was to be located on the hull bottom from the transom to Frame 3, i.e. in Steering Gear Compartment and Tank Room. A set of stability calculations and the *Arrangement of Lead Ballast Drawing* were attached. On 25 March 1998, MD replied Cheoy Lee Shipyards that an inclining experiment was required and returned the stamped and signed copies of the stability calculations and the *Arrangement of Lead Ballast Drawing*.

42. Cheoy Lee Shipyards conducted an inclining experiment in the presence of an MD officer on 2 April 1998, and submitted the *Inclining Experiment and Stability Calculation Booklet* and *Damage Stability Information Booklet* on 20 and 21 October 1998 respectively. In addition, Cheoy Lee Shipyards submitted the drawing of the as-fitted *Arrangement of Lead Ballast* on 5 November 1998.

43. After vetting by two MD officers, one copy each of the *Inclining Experiment and Stability Calculation Booklet* and *Damage Stability Information Booklet*, stamped and signed, were returned to Cheoy Lee Shipyards on 13 January 1999.

V. Periodical Survey in 1998 and the Issue and Extension of CoS

44. Two inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	21 October 1998	Inspection of hull (external).
2	5 November 1998	Final inspection and issue of CoS with validity up to 4 May 1999 and a remark that the CoS can be extended to 4 November 1999 pending stability calculation.
-	28 April 1999	Extension of CoS with validity up to 4 November 1999 <sup>18</sup> .

VI. Periodical Survey in 1999 and the Issue of CoS

45. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	8 November 1999	Inspection of hull (external and internal) and rudder, etc.

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<sup>18</sup> The stability booklets in relation to the addition of lead ballast were endorsed by MD on 13 January 1999.

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
2	16 November 1999	Inspection on outstanding items from the inspection on 8 November 1999.
3	29 November 1999	Final inspection and issue of CoS with validity up to 28 November 2000.

VII. Periodical Survey in 2000 and the Issue of CoS

46. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	22 August 2000	Inspection of hull (external) and rudder, etc.
2	29 August 2000	Final inspection and issue of CoS with validity up to 28 August 2001.
3	18 December 2000	Inspection of / test for the propeller.

VIII. Periodical Survey in 2001 and the Issue of CoS

47. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	7 August 2001	Inspection of hull (external and internal), steering gear and rudder, etc.
2	23 August 2001	Inspection of outstanding items from the inspection on 7 August 2001, including hose test of bottom plate at Steering Gear Compartment.
3	5 September 2001	Final inspection and issue of CoS with validity up to 4 September 2002.

IX. Periodical Survey in 2002 and the Issue of CoS

48. Two inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	7 August 2002	Inspection of hull (external) and rudder, etc.
2	21 August 2002	Final inspection and issue of CoS with validity up to 4 September 2003.

X. Periodical Survey in 2003 and the Issue of CoS

49. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	6 June 2003	Inspection of hull (external and internal), steering gear and rudder, etc.
2	20 June 2003	Inspection of CO <sub>2</sub> cylinders.
3	27 June 2003	Final inspection and issue of CoS with validity up to 26 June 2004.

XI. Periodical Survey in 2004 and the Issue of CoS

50. Two inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	2 June 2004	Inspection of hull (external) and rudder, etc.
2	25 June 2004	Final inspection and issue of CoS with validity up to 23 June 2005.

XII. Periodical Survey in 2005 and the Issue and Extension of CoS

51. Four inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	16 June 2005	Inspection of hull (external and internal), steering gear and rudder, etc., and witnessing the gauging of plate thickness.
2	29 June 2005	Inspection of outstanding items.
3	13 July 2005	Inspection of outstanding items, including checking the raised position of the aft ballast.
4	26 July 2005	Final inspection and issue of CoS with validity up to 25 October 2005 and a remark that the CoS could be extended to 25 July 2006 provided that the stability booklet was in order.
-	18 October 2005	Extension of CoS with validity up to 25 January 2006.
-	12 January 2006	Extension of CoS with validity up to 25 July 2006 <sup>19</sup> .

**XIII. Vetting of Stability Calculations in relation to Raising of the Lead Ballast by 10 Inches on the Lamma IV in 2005 – 2006**

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<sup>19</sup> The stability booklets in relation to the raising of lead ballast were endorsed by MD on 6 January 2006.

52. On 27 June 2005, Cheoy Lee Shipyards notified MD of HKE’s plan to raise the lead ballast by 10 inches, supported by aluminium frames, to facilitate cleaning and checking of hull plates. An inclining experiment was conducted on 19 July 2005 in the presence of an MD officer. On 21 September 2005, Cheoy Lee Shipyards submitted the *Stability Booklet* to MD.

53. After vetting by two MD officers, one copy of the *Stability Booklet*, stamped and signed, was returned to Cheoy Lee Shipyards on 6 January 2006.

XIV. Periodical Survey in 2006 and the Issue of CoS<sup>20</sup>

54. Two inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	21 June 2006	Inspection of hull (external) and rudder, etc.
2	29 June 2006	Final inspection and issue of CoS with validity up to 25 July 2007.  On the CoS, the number of lifejackets was recorded as “92” and lifebuoys as “65”, which was the same as recorded in all CoSs issued in previous years.

<sup>20</sup> Section 2 of Schedule 8 of Cap. 548G, which came into operation on 2 January 2007, provides that a CoS issued previously under Cap. 313E, which was repealed on 2 January 2007, shall be regarded as a CoS issued under Cap. 548G for the remainder of its period of validity.

## XV. New Requirements of Life-saving Appliances under Cap. 548G

55. With effect from 2 January 2007, the safety and survey requirements of local vessels are governed primarily by the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (“Cap. 548G”) and the “Code of Practice – Safety Standards for Classes I, II and III Vessels” (December 2006 edition) (“2006 CoP”). As regards the provision of life-saving appliances on board local vessels, section 32(2), Schedule 3 and section 9 of Schedule 8 of Cap. 548G are relevant. Section 32(2) provides that every local vessel shall comply with the applicable provision of life-saving appliances (i.e. lifejacket, lifebuoy, buoyant lifeline, self-igniting light and VHF (very high frequency) radio installation) as set out in Schedule 3. In the case of the Lamma IV (a launch with a registered length of 26.15 metres and a carrying capacity of 224 passengers and 8 crews which ply within the waters of Hong Kong), by Schedule 3 of Cap. 548G, it is required to have on board:

- (a) 100% adult lifejacket and 5% children lifejacket<sup>21</sup>; and
- (b) 12 lifebuoys, with 2 lifebuoys fitted with buoyant lifeline and another 2 lifebuoys fitted with self-igniting light.

56. Section 9(1) of Schedule 8 of Cap. 548G provides that during the 12 months after the commencement of Cap. 548G (i.e. 2 January 2007), section 32(2)(b) shall not apply to a local vessel to which Table 1 in Part 2 of Schedule 3 applies in so far as the provision of lifejacket on board the vessel in accordance with the Table is concerned. This provision applies to the Lamma IV.

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<sup>21</sup> Regarding the required quantity of adult lifejacket and children lifejacket expressed as a percentage, to be provided on board a Class I vessel plying within waters of Hong Kong, the basis of the percentage is not specified in Table 1 in Part 2 of Schedule 3 of Cap. 548G or in other parts of the Regulation. According to information available, the practice is to take the “Total number of persons permitted to carry” (i.e. crew plus maximum number of passengers permitted on board) stated on the CoS to mean the required 100%.

XIV. Periodical Survey in 2007 and the Issue of CoS

57. Two inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	28 June 2007	Inspection of hull (external and internal), steering gear and rudder, etc.
2	16 July 2007	Final inspection and preparation of data for issue of CoS with validity up to 25 July 2008. On the CoS, the number of adult lifejackets was recorded as “92”, child lifejackets as “-”, lifebuoys as “65”, lifebuoys with lifeline as “-” and lifebuoys with self-igniting light as “-”.

XVII. Periodical Survey in 2008 and the Issue of CoS

58. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	21 May 2008	Inspection of hull (external).
2	2 and 3 June 2008	Final inspection and input for the CoS in the LSLV System, with validity of CoS up to 1 August 2008.

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
3	4 June 2008	Inspection and hydraulic test of CO <sub>2</sub> piping and preparation of data for issue of CoS with validity up to 25 July 2009. On the CoS, the number of adult lifejackets was recorded as “92”, child lifejackets as “-”, lifebuoys as “65”, lifebuoys with lifeline as “-” and lifebuoys with self-igniting light as “-”.

XVIII. Periodical Survey in 2009 and the Issue of CoS

59. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	14 August 2009	Inspection of hull (external and internal), steering gear and rudder, etc., and witnessing the gauging of plate thickness.
2	21 September 2009	Inspection of outstanding items and engines.
3	27 October 2009	Final inspection and preparation of data for issue of CoS with validity up to 26 October 2010. On the CoS, the number of adult lifejackets was recorded as “92”,

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
		child lifejackets as “-”, lifebuoys as “65”, lifebuoys with lifeline as “-” and lifebuoys with self-igniting light as “-”.

**XIX. Periodical Survey in 2010 and the Issue of CoS**

60. Two inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	29 April 2010	Inspection of hull (external).
2	13 May 2010	Final inspection and preparation of data for issue of CoS with validity up to 12 May 2011. On the CoS, the number of adult lifejackets was recorded as “92”, child lifejackets as “-”, lifebuoys as “65”, lifebuoys with lifeline as “-” and lifebuoys with self-igniting light as “-”.

**XX. Periodical Survey in 2011 and the Issue of CoS**

61. Three inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	18 May 2011	Inspection of hull (external and internal), steering gear and rudder, etc.
2	17 June 2011	Inspection of main engine.
3	8 July 2011	Final inspection and preparation of data for issue of CoS with validity up to 7 July 2012. On the CoS, the number of adult lifejackets was recorded as “*”, child lifejackets as “*”, lifebuoys as “65”, lifebuoys with lifeline as “2” and lifebuoys with self-igniting light as “-”. “*”, as indicated on the CoS, means “One lifejacket for each person on board”.

XXI. Periodical Survey in 2012 and the Issue of CoS

62. Two inspections had been carried out for this survey:

<b>Inspection</b>	<b>Date</b>	<b>Items</b>
1	27 April 2012	Inspection of hull (external).
2	8 May 2012	Final inspection and preparation of data for issue of CoS with validity up to 7 July 2013. On the CoS, the number of

Inspection	Date	Items
		adult lifejackets was recorded as “*”, child lifejackets as “*”, lifebuoys as “65”, lifebuoys with lifeline as “2” and lifebuoys with self-igniting light as “-”. “*”, as indicated on the CoS, means “One lifejacket for each person on board”.

**FINDINGS OF THE RESPECTIVE ROLES AND RESPONSIBILITIES OF MD OFFICERS IN THE HANDLING OF THE LAMMA IV AND RECOMMENDATIONS ON DISCIPLINARY ACTION**

63. On the basis of all the information available to the Team, including the materials considered by the CoI, the information provided by MD serving / retired officers in questionnaires and interviews, and information provided by the MD management upon the Team’s enquiry, the Team has analysed in detail the roles of respective officers (i.e. the frontline staff and their supervisors / the management at different levels) in the handling of the Lamma IV and come up with findings on whether or not there is prima facie evidence to support that they had misconducted themselves in their discharge of duties. The analysis of the Team covers various stages of such handling: (a) vetting and approval of plans / drawings; (b) initial survey; (c) attendance at inclining experiment and vetting of stability booklets; (d) periodical surveys; (e) implementation of Cap. 548G; and (f) management responsibility and supervisory accountability. **The two chapters on the Team’s findings and**

**recommendations actually form the bulk of the full Report, but only the overall results can be included in this summary in the light of Department of Justice’s advice on the serious risks of disclosure of the contents of these two chapters prejudicing the ongoing criminal investigation and any potential criminal proceedings and disciplinary proceedings / actions.**

**64. On the basis of prima facie evidence available, the Team has concluded that a total of 17 officers (i.e. 13 serving<sup>22</sup> and 4 retired officers) are alleged to have misconducted themselves while discharging their duties in respect of the Lamma IV in the past.**

**65. Among the 17 serving / retired officers, there are both directorate and non-directorate. Some of them were directly involved in the handling of the Lamma IV while some were supervisors / management at different levels. These officers are found to have failed their duties, some at the time during and others after construction of the Lamma IV.**

**66. The Team has put up recommendations on disciplinary action to be taken against the 13 serving officers, among whom two are at directorate, and 11 non-directorate ranks. The recommendations are made on the basis of prima facie evidence of misconduct of respective officers as revealed, and taking account of the gravity of the misconduct, prevailing government / MD regulations, rules, instructions, codes or practices, the standard expected of the officers of their grades, ranks, experience and all the circumstantial factors. Among these 13 officers, the Team has recommended that consideration be given to instituting formal disciplinary proceedings against seven of them, and summary disciplinary action (i.e. in the form of warnings) against the remaining six.**

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<sup>22</sup> See footnote 4.

67. **For the four officers who have already retired from the civil service at the time of the collision incident, although no disciplinary action can be taken against them even if such action is warranted, for completeness and in fairness to those concerned, the Team has also set out what recommendations it would have made in respect of these officers if they were still in the civil service.** There are one directorate and three non-directorate officers among these four retired officers. **The Team has recommended that, were they still in service, consideration be given to instituting formal disciplinary proceedings against two of them, and summary disciplinary action against the other two.**

## **OTHER MATTERS REVEALED IN THE COURSE OF INVESTIGATION**

68. **In the course of investigation, the Team has come across other matters of non-compliance with the statutory requirements in respect of Classes I and II vessels<sup>23</sup>.** The CoSs of many Class I vessels other than the Lamma IV indicate non-compliance with the requirements of the lifejacket, buoyant lifeline and self-igniting light under Cap. 548G. According to information provided by MD, the non-compliance matters in this respect have been rectified. Although these matters are outside the original Terms of Reference of the Team, with the agreement of STH, the Team has proceeded to conduct a separate investigation into non-compliance with the statutory requirement of life-saving appliances<sup>24</sup>

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<sup>23</sup> According to the 2006 CoP, a Class I vessel is any vessel, other than a Class IV vessel, which is permitted to carry more than 12 passengers; a Class II vessel is any vessel, other than a Class IV vessel, which is permitted to carry not more than 12 passengers; a Class III vessel is any vessel used exclusively for fishing and related purposes; and a Class IV vessel is any vessel used exclusively for pleasure purposes, regardless of the number of passengers it is permitted to carry.

<sup>24</sup> Section 32(2) of Cap. 548G provides that every local vessel shall comply with the applicable provision of life-saving appliances (i.e. lifejacket, lifebuoy, buoyant lifeline, self-igniting light and VHF (very high frequency) radio installation) as set out in Schedule 3.

of Class I vessels (same class as the Lamma IV) in view of its relevance to the current investigation into the Lamma IV. This separate investigation has already commenced and the Team will submit a report to STH as early as practicable.

69. In the course of investigation, it is also revealed that the duration of the CoSs of some Class I vessels has been extended to the effect that their aggregate validity being 15 months (which should not have been the case as the validity of a CoS should not exceed 14 months), and also that the requirement for on-slip inspection of some Class II vessels has not been implemented. According to information provided by MD, these two matters have already been rectified. The incumbent Director of Marine has been tasked to consider the need for investigation into the causes leading to such non-compliance matters.

70. In respect of Class II vessels, the investigation also reveals that the requirement for children lifejacket provided on board new vessels operating within waters of Hong Kong and also that for some life-saving appliances provided on board dumb lighters and hopper barges has not been fully met. According to information provided by MD, corrective action is being taken and full compliance for both matters will be achieved within 2014. The incumbent Director of Marine has been tasked to monitor the situation to ensure early and full compliance for these matters and consider the need for investigation into the causes leading to such non-compliance matters.

71. Details of the above-mentioned non-compliance matters are set out in the Report. However, to avoid prejudicing the ongoing criminal investigation by the Police (which has already obtained a copy of the Report for criminal investigation) and any potential criminal proceedings, only a gist of these matters can be given in this summary.

## **THE TEAM'S REFERRAL TO THE HONG KONG POLICE FORCE**

72. In the course of investigation, the Team came across matters with suspected criminality. In line with its Terms of Reference, **the Team made referrals to the Hong Kong Police Force**. Details of these matters are set out in the Report. However, to avoid prejudicing the ongoing criminal investigation by the Police and any potential criminal proceedings, no details specifically about these matters can be given in this summary.

## **PROBLEMS AND DEFICIENCIES IN THE PREVAILING SYSTEM AND PRACTICES OF THE MARINE DEPARTMENT**

73. In the course of the investigation, the Team has come up with observations on the systemic problems and deficiencies in MD. Although strictly speaking, this is not within the Team's ambit, the setting out of these observations will help depict the broader context in which the various issues relating to the Lamma IV case should be considered, as well as the backdrop against which the Team carried out the investigation and made the analyses and recommendations. All the observations the Team has set out in the Report are made on the basis of specific acts of some of the MD officers and specific incidents as revealed during the investigation.

74. **Due to concern over the serious risk of the disclosure of such relevant specific acts / incidents prejudicing the ongoing criminal investigation and any potential criminal proceedings, and disciplinary proceedings / actions (i.e. considerations outlined in paragraph 3 of this summary), such relevant specific acts / incidents cannot be included in this summary. The observations in this summary are therefore presented in a general manner.** It should be

stressed that the Team has come up with these observations primarily through its investigation concerning the handling of the Lamma IV by the LVSS and the management with oversight of the Section, rather than a study on the work of MD as a whole.

### The Set-up of MD and the Local Vessels Safety Section

75. MD is a department with multi professional and inspectorate grades. The officers at the level of Director, Deputy Director and Assistant Director normally come from the Marine Officer or Surveyor of Ships grades. Within a grade, officers come from different streams of professional specialisation. For instance, there are three streams in, respectively, the Surveyor of Ships Grade (i.e. ship, engineer & ship, and nautical) and the Ship Inspector Grade (i.e. hull & deck, electrical, and machinery).

76. The LVSS is headed by a Senior Surveyor of Ships, staffed by two Surveyors of Ships one each from the engineer & ship stream and the ship stream, one Chief Ship Inspector, and a team of Senior Ship Inspectors and Ship Inspectors / Assistant Ship Inspectors. Senior Surveyor of Ships/LVS reports to General Manager/LVS (ranked at D1), who is in turn subordinate to Assistant Director/Shipping, Deputy Director and Director.

### Management Culture, Work Culture and Internal Communication

#### *Management and Work Culture*

77. The management culture is such that many officers leave it to their subordinates to report when problems arise and assume that all is well when no such reports are received. Such approach is generally found among supervisors at different ranks up to the very high level. On the other hand, the usual practice of the staff is to follow what had gone

on before or what had been done in the past. This culture among the staff has inevitably led to compounding of errors as well as oversight and deficiencies in the operation of MD in the regime of control of local vessels.

### *Internal Communication*

78. Internal communication between the management and staff, and among staff themselves, has been inadequate for the purpose of the efficacy of the LVSS.

79. While it is understandable that directorate officers will not normally be personally involved in / informed of day-to-day operational matters, their leadership, strategic guidance and steer are important to the effective governance of the department. What is more, their guidance and expectation should be duly disseminated down the hierarchy to the frontline staff.

80. However, the expectation of the management and the significance of the frontline staff's role on some major issues have not been communicated properly from the management to the frontline staff of the LVSS. There is a need for more proactiveness and effective communication between the management and the frontline staff.

### The Line of Command, Delegation of Authority and Monitoring Mechanism

81. The Team finds the line of command in the LVSS at the material time confusing and not conducive to efficacy. More clarity in defining the roles of different grades and ranks in the LVSS, the line of command and management responsibility is certainly essential to operational efficiency and supervisory accountability.

82. In actual operation, there is a serious lack of adequate monitoring mechanism. The lack of both guidance and monitoring mechanism is one of the systemic problems.

### Training for Staff

83. For many years, training among MD officers, Ship Inspectors in particular, was on-the-job led by senior officers of the Section concerned, particularly for officers newly joining the grade / the LVSS. There was also infrequent training arranged with Classification Societies. While on-the-job training has its merits, it has to be complemented by institutionalised training, and clear written instructions and guidelines. The management should put in place the necessary staff training and development so as to better equip the staff for the job.

### Record Keeping

84. There are serious deficiencies in MD's keeping of both operational and administrative records. In the course of investigation, it is noticed that certain records could not be located by MD and are incomplete even when available. This appears to be a result of the reluctance of MD officers to use written communication / keep written records rather than simply poor record management. Most of the instructions to the staff are by word of mouth, and hence vulnerable to miscommunication, misinterpretation and misunderstanding. This is highly unsatisfactory, rendering it impossible to trace the decisions and deliberations leading to policies and practices, and exemptions and discretions made, of important matters.

85. The Team observes that many of the problems and deficiencies are deep-rooted and have perpetuated for a considerable time. It is now impracticable to pinpoint who in the Department had played a part in perpetuating these systemic problems and deficiencies over the years.

The Department needs reform. The Steering Committee on Systematic Reform of the Marine Department chaired by STH is working towards this end, and is focusing on areas such as review of the business processes, operational procedures, manpower strategy and training matters of MD, among other things.

## **CONCLUSIONS**

86. By its Terms of Reference, the Investigation Team's work focuses on the MD officers' discharge of duties in respect of the Lamma IV in the past. The investigation is to find out any shortfall and deficiency in the officers' conduct while they discharged their duties in respect of the Lamma IV. The Team is not tasked to establish any causation between staff misconduct and sinking of the Lamma IV and the consequential casualties. This is not the focus of the Report. Nor is the Team in a position to determine the criminal and civil liabilities of any serving / retired officer covered in the investigation or that of MD in general. As the investigation is an administrative exercise, the Team has no powers to summon persons and seize documents. In carrying out its work, the Team has to rely on the cooperation of those involved as well as MD.

87. The Team noted that all officers had generally cooperated with the investigation although inevitably some were more forthcoming than the others, and some were unable to provide exact information / details, perhaps due to the lapse of time and memory.

88. In conducting and concluding the investigation, the Team has taken full account of and given due consideration to all the information and evidence available to the Team. The investigation has been conducted in a fair, impartial and thorough manner in line with civil service practices.

**List of Abbreviations**  
**縮寫表**

<b>Abbreviation</b> <b>縮寫</b>	<b>Original Term</b> <b>原名</b>
Blue Book 《藍書》	Instructions for the Survey of Launches and Ferry Vessels 《小輪及渡輪驗船指示》
Cap. 86 第 86 章	Commissions of Inquiry Ordinance 《調查委員會條例》
Cap. 313 第 313 章	Shipping and Port Control Ordinance 《船舶及港口管制條例》
Cap. 313E 第 313E 章	Merchant Shipping (Launches and Ferry Vessels) Regulations 《商船(小輪及渡輪船隻)規例》
Cap. 369 第 369 章	Merchant Shipping (Safety) Ordinance 《商船(安全)條例》
Cap. 413 第 413 章	Merchant Shipping (Prevention and Control of Pollution) Ordinance 《商船(防止及控制污染)條例》
Cap. 548 第 548 章	Merchant Shipping (Local Vessels) Ordinance 《商船(本地船隻)條例》
Cap. 548G 第 548G 章	Merchant Shipping (Local Vessels) (Safety and Survey) Regulation 《商船(本地船隻)(安全及檢驗)規例》
CE	Chief Executive 行政長官
Cheoy Lee Shipyards 財利船廠	Cheoy Lee Shipyards Limited 財利船廠有限公司
CoI 委員會	Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 2012 年 10 月 1 日南丫島附近撞船事故調查委員會

<b>Abbreviation</b> <b>縮寫</b>	<b>Original Term</b> <b>原名</b>
2006 CoP 《2006 年工作守則》	Code of Practice – Safety Standards for Classes I, II and III Vessels (December 2006 edition) 《工作守則—第 I、II 及 III 類別船隻安全標準》 (2006 年 12 月版)
CoS	Certificate of Survey 驗船證明書
DoJ	Department of Justice 律政司
DM	Director of Marine 海事處處長
HKE 港燈	Hongkong Electric Co., Ltd. 香港電燈有限公司
1995 Instructions 《1995 年指引》	Instructions for the Survey of Class I and Class II Launches and Ferry Vessels 《第 I 及 II 類別小輪及渡輪驗船指引》
MD	Marine Department 海事處
LCSS	Local Craft Safety Section 本地船舶安全組
LSLV System 本地船舶發牌和檢驗系統	Licensing & Survey of Local Vessels Computer Information System 本地船舶發牌和檢驗電腦資訊系統
LVSS	Local Vessels Safety Section 本地船舶安全組
Police	Hong Kong Police Force 香港警務處
PS(T) 常任秘書長(運輸)	Permanent Secretary for Transport and Housing (Transport) 運輸及房屋局常任秘書長(運輸)
STH 運房局局長	Secretary for Transport and Housing 運輸及房屋局局長

<b>Abbreviation</b> <b>縮寫</b>	<b>Original Term</b> <b>原名</b>
<b>THB</b> 運房局	<b>Transport and Housing Bureau</b> 運輸及房屋局
<b>The Team</b> 小組	<b>Investigation Team</b> 調查小組
<b>VHF</b>	<b>Very high frequency</b> 甚高頻

**Glossary of Technical Terms**  
**技術用語辭彙**

<b>Technical Term</b>	<b>技術用語</b>
Aft	艉
Arrangement of Lead Ballast Drawing	鉛壓載物布置圖
Ballast	壓載物
Buoyant lifeline	漂浮救生索
Centre of gravity	重心
Classification societies	船級社
Damage stability calculations	破艙穩性計算
Displacement	排水量
Dumb lighter	非自航駁船
Fender	碰墊
Gauging of plate thickness	船板測厚
General Arrangement Plan	總布置圖
Hopper barge	開底躉船
Hose test	射水測試
Hull and deck	船體和甲板
Hydraulic test	壓水測試
Inclining experiment	傾斜測試
Initial survey	初次驗船
Intact stability calculations	完整穩性計算
Keel	龍骨
Lifebuoy	救生圈

<b>Technical Term</b>	<b>技術用語</b>
Lifeline	救生索
Lightship condition	空載情況
Midship Section Plan	舢剖面圖
On-slip	上排
Periodical / Periodic survey	定期驗船
Principal dimensions	主要尺度
Profile and Deck Plan	基本結構和甲板圖
Propeller	推進器
Rudder blades	舵葉
Rudder plate	舵板
Rudder	船舵
Safety Plan	安全布置圖
Sections and Bulkheads Plan	剖面和艙壁圖
Self-igniting light	自亮燈
Stability calculations	穩性計算書
Starboard side	右舷
Steering gears	舵機
Steering Gear Compartment	舵機房
Survey Items List	檢驗項目清單
Tank Room	油箱房
Transom	艉板
Very high frequency radio installation	甚高頻無線電裝設
Watertight closing appliances	水密關閉裝置