

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1179/18-19

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Administration)

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**Panel on Economic Development**

**Minutes of meeting**  
**held on Monday, 25 March 2019, at 10:45 am**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon WU Chi-wai, MH (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon YIU Si-wing, BBS  
Hon Kenneth LEUNG  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon Elizabeth QUAT, BBS, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon CHAN Chun-ying, JP  
Hon LUK Chung-hung, JP  
Hon Jeremy TAM Man-ho

**Members absent** : Hon CHUNG Kwok-pan (Chairman)  
Hon Charles Peter MOK, JP  
Hon Dennis KWOK Wing-hang

Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon Jimmy NG Wing-ka, JP

**Public Officers attending** : Agenda item III

Ms Angela LEE  
Deputy Secretary for Transport and Housing (Transport) 5

Ms Louisa YAN  
Principal Assistant Secretary for Transport and Housing  
(Transport) 10

Mr CHOI Chi-chuen  
Assistant Director of Marine / Multi-lateral Policy

Mr Barry LIU  
Chief / Technical Policy  
Marine Department

Agenda item IV

Ms Angela LEE  
Deputy Secretary for Transport and Housing (Transport) 5

Mr Freely CHENG, JP  
Deputy Director of Marine (Special Duties)

Mr LAI Chi-tung, JP  
Assistant Director of Marine / Port Control

**Clerk in attendance** : Ms Shirley CHAN  
Chief Council Secretary (4)5

**Staff in attendance** : Mr Bonny LOO  
Assistant Legal Adviser 4 (Agenda items III and IV only)

Ms Shirley TAM  
Senior Council Secretary (4)5

Ms Lauren LI  
Council Secretary (4)5

Miss Mandy LUI  
Legislative Assistant (4)5 (Acting)

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Action

## **Opening remarks**

Mr WU Chi-wai, Deputy Chairman of the Panel, informed members that he would chair the meeting as Mr CHUNG Kwok-pan, Chairman of the Panel, was unable to attend the meeting.

### **I. Information papers issued since the last meeting**

(LC Paper No. CB(4)604/18-19(01) — Administration's paper on tables and graphs showing the import and retail prices of major oil products from February 2017 to January 2019

LC Paper No. CB(4)609/18-19(01) — Letter from Hon Jeremy TAM Man-ho dated 26 February 2019 regarding the land formation works for the construction of the three-runway system (Chinese version only)

LC Paper No. CB(4)621/18-19(01) — Email from Hon CHU Hoi-dick dated 1 March 2019 regarding the land formation works for the construction of the three-runway system (Chinese version only)

LC Paper No. CB(4)649/18-19(01) — Letter from Hon Jeremy TAM Man-ho dated 12 March 2019 regarding the subletting of private vessel moorings (Chinese version only)

LC Paper No. CB(4)653/18-19(01) — Letter from Hon LUK Chung-hung dated 13 March 2019 regarding the aviation safety in connection with the

announcement made by the Civil Aviation Department on prohibiting the operation of Boeing B737 MAX aircraft into, out of and over Hong Kong (Chinese version only)

2. Members noted the above papers issued since the last regular meeting.

## **II. Items for discussion at the next meeting**

(LC Paper No. CB(4)660/18-19(01) — List of outstanding items for discussion

LC Paper No. CB(4)660/18-19(02) — List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled for Monday, 29 April 2019 at 10:45 am –

(a) Report on the work of the Competition Commission; and

(b) Update on the development of the three-runway system ("3RS") at the Hong Kong International Airport ("HKIA").

4. Mr CHU Hoi-dick requested the Administration to provide early response to his letter as well as the one from Mr Jeremy TAM about the progress on land formation works for the construction of 3RS before the discussion of item 3(b) above. He also suggested that the Panel should timely follow up on the related issues in addition to receiving biannual update on the project.

*(Post-meeting note: The Administration's response to the said letters was issued to members vide LC Paper No. CB(4)763/18-19(01) on 16 April 2019.)*

## **III. Proposed legislative amendments to implement the latest requirements of maritime-related international conventions**

(LC Paper No. CB(4)660/18-19(03) — Administration's paper on proposed legislative amendments to implement the latest requirements of maritime-related international conventions)

Presentation by the Administration

5. At the invitation of the Deputy Chairman, Deputy Secretary for Transport and Housing (Transport) 5 ("DSTH5") gave an introductory remark on the proposed legislative amendments to implement the latest requirements of maritime-related international conventions. With the aid of the powerpoint presentation materials, Assistant Director of Marine / Multi-lateral Policy briefed members on the three legislative proposals to implement requirements of three maritime-related international conventions concerning seafarers' welfare, liability limits on passenger carriers and the discharge of sewage into the Baltic Sea Special Area. Details of the briefings were set out in the Administration's paper (LC Paper No. CB(4)660/18-19(03)).

*(Post-meeting note: The powerpoint presentation materials provided by the Administration were issued to members vide LC Paper No. CB(4)674/18-19(01) on 25 March 2018.)*

Discussion

6. Mr YIU Si-wing noted the increased limits of carriers' liability under the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, and enquired if shipping companies of the passenger carriers concerned could recover the increase in insurance premium resulting from the new requirement by charging their passengers. Noting that the latest protocol was made in 2002, Mr YIU was also concerned if higher liability limits than the ones stipulated in the 2002 Protocol would be prescribed in the relevant local legislation.

7. DSTH5 advised that whether any increase in insurance premium would be reflected in the charges on passengers was the commercial decision of the shipping companies concerned. To her understanding, insurance premium for ships was determined by a host of factors including the ship's claims record and the quality of the vessel, etc. She stressed that the carriers' liability limits stipulated in the 2002 Protocol were a result of deliberation between the member states of the International Maritime Organization ("IMO") and had taken into account the relevant global macroeconomic factors as well as the individual circumstances of each IMO Member State. The legislative exercise would accordingly reflect the level of the carriers' liability limits stipulated in the 2002 Protocol.

8. Given that the 2002 Protocol came into force globally in 2014, Mr YIU Si-wing enquired about the reasons why the relevant legislative proposal had not been introduced earlier so that passengers and passenger

carriers concerned could have had timely protection. In response, DSTH5 advised that the 2002 Protocol, which was adopted in 2002 by IMO, came into force globally in 2014 after at least 10 IMO Member States had expressed their consent to ratify the Protocol. Although China, an IMO Member State, had not yet ratified the 2002 Protocol, the Administration would undertake the necessary preparations such that, once China had done so and completed the procedures to notify IMO of the extension of the Protocol to the Hong Kong Special Administrative Region ("HKSAR"), the Protocol would be implemented locally in good time.

9. Noting that the legislative proposal relating to the 2002 Protocol concerned passengers travelling by sea, Mr YIU Si-wing enquired why there was liability limit to the loss of, or damage to, vehicles or luggage carried inside vehicles under the legislative proposal. DSTH5 replied that some ocean-going passenger carriers could also accommodate passengers' vehicles. The relevant requirement was to cater for such mode of operation.

10. Mr Frankie YICK said that the liability limits for the death or injury to passengers stipulated in the 2002 Protocol were low compared with the maximum compensation amount of the insurance policies normally purchased by shipowners in respect of maritime incidents. The trade held no particular views over the issue due to the little impact on shipping companies' costs. DSTH5 advised that the liability limits under the 2002 Protocol were the maximum limit per case proposed by IMO. After the new liability limits had been incorporated into local legislation, the court could make reference to the relevant liability limit levels when a claim was brought to court. She added that shipowners were free to purchase insurance with higher maximum compensation levels according to the risk assessment on their relevant businesses.

11. Mr Frankie YICK noted that under the legislative proposal, ships carrying more than 12 passengers would be required to purchase and maintain insurance or an equivalent level of financial security up to the corresponding strict liability limit. In this connection, Mr YICK asked if the requirement would cover ferries providing services across Victoria Harbour. DSTH5 replied that the requirement would be applicable to ocean-going vessels and ships engaged in regional carriage. However, it would not cover local vessels, including ferries plying within Victoria Harbour.

12. Mr Holden CHOW welcomed the proposed increase in the liability limits. However, he considered the difference between the current and the proposed liability limits per passenger was rather substantial, and thus enquired if any other adjustments had been made to the limits since the current liability limit levels were effective. In response, DSTH5 advised that the proposed

liability limits were adopted in 2002 vide the 2002 Protocol and came into force globally in 2014 upon reaching the necessary ratification threshold. No adjustments had been made to the liability limits in the interim. In anticipation of the extension of the 2002 Protocol by the Central People's Government to HKSAR, the Administration proposed to take forward the relevant legislative exercise.

13. Mr Holden CHOW was glad to note the compulsory insurance requirement under the legislative proposal. He pointed out that the Traffic Accident Victims Assistance Scheme, which was administered by the Social Welfare Department and financed by the Traffic Accident Victims Assistance Fund, provided speedy financial assistance to traffic accident victims on a non-means-tested basis, regardless of who was at fault in causing the accident. He urged the Administration to devise a similar mechanism on maritime incidents riding on the compulsory insurance requirement proposed, so that victims of maritime incidents could also be offered similar financial assistance.

14. In response, DSTH5 advised that the proposed compulsory insurance requirement under the 2002 Protocol would help ensure that passengers travelling by sea would be duly compensated in the event of accidents. While the Traffic Accident Victims Assistance Fund provided financial assistance to victims of local road traffic accidents, the proposed liability limits under discussion would apply to ships engaged in international voyages and those engaged in regional carriage. She added that through the relevant legislative amendments made in 2016, the minimum amounts of liability cover for the compulsory third party risks insurance of local vessels had been raised which had helped offer greater protection to local vessel passengers.

### Conclusion

15. The Deputy Chairman concluded that the Panel was generally supportive of the legislative proposals put forward by the Administration.

## **IV. Combating drink and drug boating**

(LC Paper No. CB(4)660/18-19(04) — Administration's paper on regulating drink and drug boating)

### Presentation by the Administration

16. At the invitation of the Deputy Chairman, DSTH(T)5 briefed members on the proposed legislative framework to regulate drink and drug boating within

Hong Kong waters, i.e., all waters, whether navigable or not, included in HKSAR (see section 3 of the Interpretation and General Clauses Ordinance (Cap. 1)). Under the proposed framework, a dedicated piece of legislation would be enacted to regulate drink and drug boating in Hong Kong. Details of the proposal were set out in the Administration's paper (LC Paper No. CB(4)660/18-19(04)).

## Discussion

### *Proposed legislative framework*

17. Mr YIU Si-wing supported the proposed legislative framework and asked about the current situation of drink and drug boating in Hong Kong, including relevant statistics and interim measures taken to combat the problem before the implementation of the proposed legislation. He also asked whether the shipping company which employed the convicted crew member or the coxswain in charge of the vessel would have any liability under the proposed legislation.

18. DSTH(T)5 explained that the statistics on drink and drug boating in Hong Kong was unavailable as there was no dedicated law in this respect. Currently persons who operated a vessel in Hong Kong waters under the influence of alcohol or drugs might be prosecuted for a general offence of "endangering the safety of others" at sea under section 72 of the Shipping and Port Control Ordinance (Cap. 313) and section 32 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). Moreover, for pilots licensed under the Pilotage Ordinance (Cap. 84), working under the influence of alcohol or drugs was a disciplinary offence. To enhance marine safety in Hong Kong and to protect the safety of persons on board, the Administration considered it necessary to enact a dedicated piece of legislation to regulate drink and drug boating in Hong Kong waters. The legislation would be applicable to all vessels within Hong Kong waters, including local vessels, river-trade vessels and ocean-going vessels ("OGVs").

19. DSTH(T)5 added that a person involved in operating a vessel would commit an offence if he was under the influence of alcohol or drugs to the extent of being incapable of operating the vessel properly, or had alcohol exceeding the prescribed limits in his body, or had any specified illicit drug in his body. That said, only the crew member who had committed the offence, but not his shipping company or employer, would be subject to the liability.

20. Mr Holden CHOW expressed support for strengthening controls on drink and drug boating with a view to safeguarding other vessels and lives of persons on board. To achieve a greater deterrent effect, he suggested that a

mechanism should be established to warn relevant shipping companies in case their employees were found to have breached the law.

21. DSTH(T)5 responded that the regulatory regime sought to target individual persons who had committed an offence relating to drink and drug boating. Nevertheless, it was acknowledged during the consultation that shipping companies were mindful of the necessity to remind their employees not to breach the law especially when they were on duty.

22. Mr Jeremy TAM noted that the proposed penalties under the proposed legislation included fines ranging from \$2,000 to \$25,000 and/or imprisonment for a period from three months to three years. In addition, relevant Certificates of Competency possessed by the offenders might be rescinded. He asked in the event that a person possessing both a coxswain certificate and an engineer operator certificate, whether the persons would be disqualified from holding both certificates on his conviction of an offence under the proposed legislation.

23. DSTH(T)5 said that under the proposed legislation, if the court was of the opinion that a vessel operator was convicted of an offence, it might order that the person be disqualified from operating vessels. Deputy Director of Marine (Special Duties) ("DD(SD)") added that in case of a ship accident, law enforcement officers would collect evidence on the spot to identify the person responsible for operating the vessel during the accident. If a person was convicted of an offence, he might be disqualified from holding his certificate(s) corresponding to the duty or duties on board during the accident.

24. Mr WONG Kwok-kin considered that there was a need to regulate drink and drug boating. He understood that in drawing up details of the proposed legislation, reference would be made to the current regulatory regime combating drink and drug driving. As crew members usually stayed on board a vessel even they were off duty, he worried that the off-duty crew members who had consumed alcohol might be mistakenly caught by the new legislation.

25. DSTH(T)5 said that it was uncommon for off-duty crew members of local vessels to stay on board. On OGVs, the shipboard duties of individual officers were clearly documented in the vessels' Safety Management System as required by IMO's International Safety Management Code. This would provide information for identifying the crew members who were involved in vessel operation and who were tasked to perform the designated duties at the relevant time.

26. Mr WONG Kwok-kin did not accept the explanation. He pointed out that notwithstanding the statutory requirements, the shipboard duties might be reshuffled when necessary. In addition, some seafarers of local vessels such as

tug boats and barges might stay on board the vessels after duty hours. He was worried that these persons might be caught by the proposed legislation inadvertently.

27. Mr Steven HO noted that during the consultation conducted by the Administration on the proposed legislative framework, the trade members had raised some concerns although they were generally supportive of the proposal. He enquired about the trade's concerns in this regard.

28. DD(SD) said that some trade members had expressed concerns about the application of the proposed legislation to seafarers who had a duty to protect the safety of passengers, such as those involved in the embarkation or disembarkation of passengers, or in assisting passengers to escape in case of emergency. Some emphasized the importance of having an effective means to identify crew members who were actually on duty. Nevertheless, trade members generally supported the proposed legislative framework. The Administration would discuss with the trade further in devising the implementation arrangement during the drafting of the relevant bill.

29. Mr Steven HO said that vessels in typhoon shelters were always required to berth in close proximity to each other due to insufficient berthing spaces. He worried that a vessel operator who had consumed alcohol during rest time might be required to operate his vessel to facilitate berthing of other vessels in the typhoon shelters. He enquired whether such situation would breach the law under the new legislation.

30. DD(SD) explained that the situation described was uncommon and could be handled separately depending on the actual circumstances. For example, the vessel operator concerned might seek assistance from his friends or even the Marine Department ("MD")'s officers to operate the vessel if necessary. In any case, he should not operate the vessel while under the influence of alcohol thereby committing the offence and undermining the safety of others.

31. Sharing Mr WONG Kwok-kin and Mr Steven HO's concerns, Mr Frankie YICK pointed out that while crew members were aware that they should not work under the influence of alcohol or drugs, there might be unpredictable situations which required individual crew members to operate a vessel during rest time. He called on the Administration to take into account different situations when drafting the relevant bill to prevent crew members from breaching the law inadvertently.

32. DSTH(T)5 said that the Administration had commenced the drafting of the new legislation and would maintain liaison with the trade to address their operational concerns.

33. Mr LUK Chung-hung relayed the concerns of the shipping sector about the situations which might lead to the contravention of the law by crew members. For instance, an off-duty officer who had taken medicine for medical purpose might be suddenly required to replace another officer who was unable to operate the vessel. Mr LUK asked if there was any exemption or defence provided under the proposed legislation to cater for different situations.

34. DD(SD) explained that the proposed legislation forbade any person to operate a vessel when he was under the influence of specified illicit drugs. The Administration would draw up a list of illicit drugs making reference to the relevant international standards, relevant legislation in Hong Kong and relevant requirements in other jurisdictions. On the case described by Mr LUK Chung-hung, if the person who had taken medicine prescribed by doctors did not know that such medicine would render him incapable of having proper control of the vessel, this might serve as a defence for him in the court. This arrangement had made reference to the defence available under section 39J(11) of the Road Traffic Ordinance (Cap. 374). In fact, whether the person would be prosecuted would depend on the evidence collected on each case.

35. Mr Jeremy TAM considered it not suitable to grant exemptions under the proposed legislation simply to address certain operational issues of the trade as such kind of exemptions might undermine the effectiveness of the regulatory regime. He also pointed out that persons operating a vessel under the influence of alcohol or drugs might be excluded from insurance protection after the related legislation was enacted. To address any unpredictable situations, suitable assistance should be solicited from persons who were not under the influence of alcohol or drugs as far as possible.

36. DSTH(T)5 said that the Administration considered it necessary to enact a new piece of legislation with sufficient deterrence so as to step up controls in this respect. In drafting the relevant bill, the Administration was mindful of the need to balance the trade's concern on compliance and the need to enhance marine safety.

#### *Law enforcement*

37. Mr Holden CHOW noted that under the proposed legislation, law enforcement authorities would be empowered to require crew members of local vessels and OGVs to undergo compulsory alcohol or drug tests. He enquired about the details of the enforcement work and whether MD would have sufficient manpower resources to conduct spot checks and inspections. Mr YIU Si-wing raised a similar enquiry.

38. DD(SD) said that law enforcement officers might require vessel operators to go through alcohol or drug tests after the occurrence of marine accidents as well as in spot checks on vessels, especially if there was improper operation of a vessel which might lead to marine traffic offences, such as speeding, unauthorized entry to restricted areas and contravention of the International Regulations for Preventing Collisions at Sea. In addition, crew members might be tested/inspected on board immediately upon the vessel's arrival, or before the vessel's departure. Spot checks and inspections might also be conducted in the water areas regarded as "black spots", at which leisure yachts usually gathered in the summer.

39. Supporting the proposed legislative framework, Mr James TO asked about the detailed arrangements for conducting alcohol and drug tests. He pointed out that certain alcohol and drug tests conducted on drivers could only take place at hospitals, which might not be applicable to vessel operators given a long travelling distance. He also enquired under what situations a suspected crew member should be arrested, as the arrest might affect the operation of the vessel concerned.

40. DD(SD) explained that a variety of alcohol and drug tests (including blood and urine tests) were used by different jurisdictions for ascertaining the concentration of alcohol or specified illicit drugs in a person's body. The Administration would make reference to overseas experience, the latest test methods available and their effectiveness when drawing up a set of authorized alcohol and drug tests. Currently, MD had engaged a tertiary educational institution to develop a testing device which could be installed on patrol vessels, so as to promptly provide essential evidence on the spot which could be presented in court. In addition, law enforcement officers would be empowered to arrest a person, no matter on local vessels or OGVs, who had been tested to have exceeded the specified alcohol limits or had specified illicit drug in his/her body. If such situation arose, the Administration would duly notify the corresponding shipping company to make suitable arrangements. In any case, it was of utmost importance to deter drink and drug boating and minimize danger caused to passengers on board.

41. Mr Jeremy TAM raised concern about the safety of MD officers while taking relevant law enforcement actions, especially when the suspected persons refused to undergo the authorized alcohol and drug tests and resorted to violent acts. He suggested that suitable training should be given to relevant MD officers and assistance from the Marine Police should be sought, particularly during the initial implementation of the new legislation.

42. Mr LUK Chung-hung urged the Administration to provide suitable training and equipment to MD officers who would take law enforcement actions after the implementation of the new legislation to deal with possible violent acts.

43. DD(SD) assured members that MD would strengthen its collaboration with the Marine Police and enhance training for its officers in this respect. In fact, both officers from MD and the Marine Police would be empowered to take relevant enforcement actions under the legislative proposal. Although MD officers were not experienced in dealing with persons having a propensity to violence, they had been taking patrol actions on various marine regulations. MD might jointly carry out enforcement work with the Marine Police if necessary.

Conclusion

44. The Deputy Chairman concluded that the Panel was generally supportive of the proposed legislative framework to regulate drink and drug boating while some members had expressed concerns on the implementation arrangements. He urged the Administration to address the concerns expressed by members before introducing the relevant bill into the Legislative Council in the 2020-2021 legislative session.

**V. Any other business**

45. There being no other business, the meeting ended at 12:11 pm.