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Mayer Brown
16th - 19th Floors
Prince's Building
10 Chater Road
Central, Hong Kong

孖士打律師行
香港中環遮打道 10 號
太子大廈 16-19 樓

T: +852 2843 2211
F: +852 2845 9121
www.mayerbrown.com

Bill Amos

T: +852 [REDACTED]
F: +852 [REDACTED]
[REDACTED]@mayerbrown.com

30 January 2019

BY HAND & BY EMAIL

sthoffice@thb.gov.hk

(1) Secretary for Transport and Housing Bureau
Government Secretariat
Transport Branch
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong
(Attn: Ms. Louisa Yan)

(2) Director of Marine
(Attn: Mr. Y.K. Tang)
Harbour Building
38 Pier Road
Central, Hong Kong
Ref: (5) in HQ/COM 928/12(7) pt.IV

Your ref:
Our ref: WPA/18595466

Dear Sirs

Re: Pilotage in Mirs Bay

1. Thank you for your reply dated 15 January.
2. In this letter we adopt the defined terms used in our letter dated 17th September 2018.
3. It is noted that one reason for the Proposed Amendments is the concern that the 1998 Exemption was without legal backing. However, we submit that the 1998 Exemption was, and remains, legally sound. Section 10D (3) provides that:

"The Authority may exempt a ship ... from compulsory pilotage if satisfied

(a) that no licensed pilot is available to pilot the ship; or

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(b) that compliance with the requirement of compulsory pilotage is unnecessary in the circumstances of the case."

4. There is no reason to restrict the breadth of the Authority's statutory power of exemption. The Authority's power to "exempt a ship" under section 10D(3) is not limited to applications made by individual ships for exemption. The statute enables the Authority to exempt ships, and that power can be used to exempt all ships within an area, if the criteria are satisfied.
5. Accordingly, under section 10D(3) the Authority may exempt all ships transiting Mirs Bay since (a) no licensed pilots are available in Mirs Bay to pilot such ships; and (b) compulsory pilotage is unnecessary in the circumstances of the case i.e. in Mirs Bay.
6. Our client CLSICO, as the party operating ships on a regular "shuttle" service through Mirs Bay, knows as well as anyone the marine traffic conditions in the area. CLSICO maintains that the Proposed Amendments are adverse to safety and to shipping. Our letter dated 17 September 2018 cited the reports which indicate that introducing Hong Kong pilotage would actually increase the risk to safety.
7. Everyone is agreed that safety is the overriding consideration, which should determine what should be done in Mirs Bay. If the law did not promote a safe environment within Mirs Bay, then it must be changed to ensure that safety takes priority. But, as noted above, there is nothing to suggest that a change of the law is needed.
8. Everyone is also agreed that there is a genuine difference of opinion as to whether Hong Kong pilotage is needed in Mirs Bay in order to maintain safety. There is a factual issue here which should be resolved by an independent pilotage expert: would placing a Hong Kong pilot on board the ship for the 30 minute trip from Shek Ngau Chau to Ping Chau increase or reduce safety?
9. We therefore propose that the parties meet together in order to discuss the way forward and, in particular, to explore whether there is scope for appointing an independent maritime pilotage expert in order to prepare an independent report on the impact on safety of Hong Kong pilotage in Mirs Bay.
10. If we can assist in anyway in relation to the above, please do not hesitate to let us know.
11. We look forward to hearing from you.

Yours faithfully,



Bill Amos

Mayer Brown

cc. LegCo Panel on Economic Development
(Attn: Ms. Shirley Chan) Email: panel_edev@legco.gov.hk