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來函檔號 Your Ref. WPA/18595466

By e-mail and by post

6 May 2019

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

Dear Sir,

Compulsory Pilotage in Mirs Bay

Thank you for your letter dated 30 January 2019 to the Secretary for Transport and Housing and the Director of Marine on the captioned matter. Our response to the matters raised in your letter is as follows –

Legal Requirement to Implement Compulsory Pilotage in Mirs Bay

Your letter suggested that the decision of the Pilotage Advisory Committee (“PAC”) in 1998 to exempt vessels transiting Mirs Bay from the compulsory pilotage requirement was legally sound. The legal advice given to the Marine Departments (“MD”) is that under the Pilotage Ordinance (Cap. 84) (“the Ordinance”), the PAC and the Pilotage Authority (“the Authority”) have different statutory functions and roles. According to section 5 of the Ordinance, PAC is established to advise the Authority on matters related to pilotage in Hong Kong. As such, given its advisory role, PAC has no statutory power to exempt ships from the compulsory pilotage requirement in the first place.

Section 10D(3) of the Ordinance does state that the Authority may exempt a ship from compulsory pilotage if “(a) no licensed pilot is available

to pilot the ship; or (b) compliance with the requirement of compulsory pilotage is unnecessary in the circumstances of the case". Since local pilots in Hong Kong are able and ready to provide pilotage services in Hong Kong waters, including Mirs Bay, condition (a) is not met. Legal advice given to MD has also confirmed that condition (b) does not apply to the decision made in 1998 to exempt vessels transiting Mirs Bay from the compulsory pilotage requirement, as the Authority could only make an exemption if compliance "is unnecessary in the circumstances of the case". This essentially requires that the Authority assess each and every case the necessity of compliance with the pilotage requirement. In other words, any exemption made under section 10D(3)(b) of the Ordinance has to be made on a case-by-case basis upon the facts and circumstances given in each occasion. Neither the Authority nor the PAC is therefore empowered under the law to make a blanket exemption for all vessels transiting Mirs Bay from complying with the compulsory pilotage requirement.

Marine safety

On marine safety ground, it is necessary to implement compulsory pilotage in Mirs Bay. As explained in the discussion paper of the Legislative Council ("LegCo") Panel on Economic Development ("ED Panel") (LC Paper No. CB(4)1252/17-18(03)) and our previous letter to you dated 15 January 2019, to mitigate the navigation risks arising from the increasing vessel sizes and numbers as well as the presence of LNG facilities in the Mirs Bay area, we have the responsibility to ensure that effective measures recognised internationally are properly implemented in local waters of the area to protect navigation safety. In mapping out details of the current proposal to implement compulsory pilotage in Mirs Bay, such as the location of the pilot boarding stations and the routes to be adopted by vessels under pilotage, we have carefully considered the appropriate factors so as to ensure the safety of both the pilots and the vessels transiting Mirs Bay.

The proposal to implement compulsory pilotage in Mirs Bay has been thoroughly deliberated among the relevant stakeholders. For example, the PAC, comprising stakeholders of pilotage matters including liners, shipping agencies, pilots and master mariners, was consulted on the proposed implementation of compulsory pilotage in Mirs Bay in June 2016 and December 2017. In July 2018, the PAC discussed the operational arrangements for implementing compulsory pilotage in Mirs Bay. In addition, we consulted the LegCo ED Panel in June 2018, where Members supported our proposal to implement compulsory pilotage in Mirs Bay. As such, we do not see a need to engage an independent expert on the matter.

Nevertheless, we would maintain close liaison with the relevant stakeholders as we continue to take forward the proposal with a view to working together towards our common goal of ensuring marine safety in Hong Kong.

Yours sincerely,



(Louisa Yan)
for Secretary for Transport and Housing

C.C.
Director of Marine
LegCo ED Panel

(Attn: Mr C.T. LAI)
(Attn: Ms Shirley CHAN)