

**For discussion on  
12 February 2019**

**Legislative Council  
Panel on Food Safety and Environmental Hygiene**

**Registration of Fishing Vessels under  
the Fisheries Protection Ordinance (Cap. 171)**

**PURPOSE**

This paper briefs Members on the legislative proposal for amending the Fisheries Protection Ordinance (Cap. 171) (“the Ordinance”) to empower the Director for Agriculture, Fisheries and Conservation (“DAFC”) to exercise discretion to consider registering local fishing vessels that failed to meet the requirement of possessing a valid operating licence issued by the Marine Department (“MD”) on 15 June 2012.

**BACKGROUND**

**Local Fishing Vessel Registration**

2. In 2012, the Ordinance was amended to, among others, introduce a new registration scheme, under which local fishing vessels must be registered with the Agriculture, Fisheries and Conservation Department (“AFCD”) for conducting fishing operations in Hong Kong waters. The legislative intent was to control the fishing activities in Hong Kong waters by broadly capping the level of fishing efforts as at a cut-off date and limiting new entrants<sup>1</sup> after that date, and genuine fishing vessels which had been operating before and up to the cut-off date could be registered within a finite period.

3. The cut-off date was set to be the commencement date of the Fisheries Protection (Amendment) Ordinance 2012 (“Amendment Ordinance 2012”), i.e. 15 June 2012 (“Commencement Date”). Under section 14(1)(a) of the Ordinance, only fishing vessels with a valid operating licence issued by MD under the Merchant Shipping (Local Vessels) Ordinance<sup>2</sup> (Cap. 548) on the

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<sup>1</sup> While registration for a new vessel would not be accepted under the Amendment Ordinance 2012, having regard to the banning of trawling from end 2012 in Hong Kong waters, trawler owners could register a non-trawler vessel if they return to Hong Kong for fishing.

<sup>2</sup> The operating licence certifies the vessel’s safety and seaworthiness.

Commencement Date would be eligible for registration, and the application for registration was made within 12 months thereof (“registration period”). It was considered that a valid operating licence could show that the fishing vessel was actually in operation at that time, thereby barring any attempt of registering retired vessels or new entrants.

### **Appeals to Administrative Appeals Board**

4. During the registration period, 4 474 vessels were registered. A total of 494 applications for registration were rejected, among which 319 were turned down on the grounds that the vessels concerned did not possess a valid operating licence on the Commencement Date in accordance with section 14(1)(a) of the Ordinance. Most of these rejected applications had lodged appeals against DAFC’s refusal with the Administrative Appeals Board (“AAB”). As at December 2018, AAB panels have altogether heard 177 appeal cases, and handed down rulings on 143 of them.

5. AAB so far has dismissed all appeals that fail to meet the operating licence requirement. In handing down the rulings against the appellants, some AAB panel chairpersons expressed sympathy towards the appellants who failed to register their fishing vessels that had all along been used for fishing before the Commencement Date, due to some justifiable reasons rather than faults or negligence on the part of the concerned fishermen. Under the Ordinance, however, DAFC does not have any discretionary power to consider registration of such vessels. Thus, we consider it necessary to amend the law for accommodating their registration.

### **Certificate of Eligibility for Registration**

6. In addition to the local fishing vessel registration scheme, a ban on trawling activities in Hong Kong waters has been imposed since 31 December 2012. To cater for former trawler owners who wish to operate in Hong Kong waters by non-trawling methods after the ban, application for a Certificate of Eligibility for Registration (“CER”) has been opened to these owners, by giving them a right to register a non-trawler in the future, provided that, among others, there was a valid operating licence for the former trawler on the Commencement Date. Neither does DAFC have the discretionary power to grant a CER to a former trawler without a valid operating licence on the Commencement Date, even with a justifiable reason.

## **PROPOSAL**

7. Since the requirements for local fishing vessel registration and application for a CER are clearly set out in the Ordinance, there is no other means than to amend the Ordinance for DAFC to consider those rejected cases with justifiable grounds. We therefore propose amending the Ordinance to provide DAFC with the power to exercise discretion within a confined scope to allow the consideration of those cases where the vessels concerned did not possess a valid operating licence on the Commencement Date.

8. Upon amendment to the Ordinance, AFCD would re-open the registration scheme for application for the 319 cases mentioned in paragraph 4 above, and also to those vessel owners who did not submit their applications in the first place during the registration period as they might have expected that their applications would in any event be refused in view of the clear operating licence requirement. To avoid any floodgate effect, DAFC would consider approving an application only after examining its facts and circumstances. Applicants must prove to the satisfaction of DAFC that the concerned vessels had been used for fishing up to the Commencement Date and the applicants are required to submit their applications within 6 months of the commencement of the amendment.

9. Together with re-opening the application for registration of local fishing vessels, applicants whose CER application was rejected on the grounds of failing to possess a valid operating licence on the Commencement Date could re-apply for a CER.

10. As at December 2018, the number of registered fishing vessels under the Ordinance was 4 491. Despite re-opening the application for registration, we anticipate that the fishing efforts in Hong Kong waters would not increase significantly, hence the proposal would not compromise the legislative intent of the Amendment Ordinance 2012.

## **CONSULTATION**

11. AFCD has informed AAB of the above proposal. The umbrella organisation of various associations of the fisheries sector has been sounded out, and welcome the proposal.

## **LEGISLATIVE TIMETABLE**

12. We plan to introduce the amendment bill into the LegCo for first reading in the first half of 2019.

## **ADVICE SOUGHT**

13. Members are invited to comment on the above legislative proposal.

**Food and Health Bureau  
Agriculture, Fisheries and Conservation Department  
February 2019**