

立法會
Legislative Council

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**Legal Service Division Report on
Fisheries Protection (Amendment) Bill 2019**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Fisheries Protection Ordinance (Cap. 171) to:

 - (a) provide for the registration and the issue of provisional approvals for registration of local fishing vessels in respect of which there was no valid operating licence on 15 June 2012;
 - (b) provide for the issue of certificate of eligibility for registration in relation to former trawlers in respect of which there was no valid operating licence on 15 June 2012; and
 - (c) make related amendments to Cap. 171 and the Administrative Appeals Board Ordinance (Cap. 442).

- 2. Public consultation**

The Administration had consulted umbrella organization of various associations of the fisheries sector and they welcomed the proposed amendments.

- 3. Consultation with LegCo Panel**

The Panel on Food Safety and Environmental Hygiene ("Panel") was consulted on 12 February 2019. While members in general supported the proposed amendments to Cap. 171 for accommodating registration of vessels that had been genuinely used for fishing before 15 June 2012 but did not possess a valid operating licence, some members expressed concerns on certain related issues.

- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by the Panel, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 11 December 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: FH CR 12/1/2576/07) issued by the Food and Health Bureau and Agriculture, Fisheries and Conservation Department ("AFCD") in December 2019 for further details.

Object of the Bill

2. The Bill seeks to amend the Fisheries Protection Ordinance (Cap. 171) to:

- (a) provide for the registration and the issue of provisional approvals for registration of local fishing vessels in respect of which there was no valid operating licence on 15 June 2012;
- (b) provide for the issue of certificate of eligibility for registration ("CER") in relation to former trawlers in respect of which there was no valid operating licence on 15 June 2012; and
- (c) make related amendments to Cap. 171 and the Administrative Appeals Board Ordinance (Cap. 442).

Background

3. Cap. 171 was amended by the Fisheries Protection (Amendment) Ordinance 2012 ("Amendment Ordinance 2012") to, among others, introduce a new registration system (i.e. Part 5 of Cap. 171), under which local fishing vessels must be registered by the Director for Agriculture, Fisheries and Conservation ("DAFC") for conducting fishing operations in Hong Kong waters. Under section 14 of Cap. 171 introduced by the Amendment Ordinance 2012, only local fishing vessels with a valid operating licence¹ on the commencement date of the Amendment Ordinance 2012 (i.e. 15 June 2012) are eligible for registration. Under the Amendment Ordinance 2012, DAFC does not have any discretionary power to register a fishing vessel without a valid operating licence on 15 June 2012.

¹ The operating licence is issued by the Marine Department under section 15, 19, 23 or 26 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D).

4. Pursuant to the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 (L.N. 45 of 2011), trawling activities in Hong Kong have been banned since 31 December 2012 ("Trawl Ban"). If owners of former trawlers wish to operate in Hong Kong waters by non-trawling methods after the ban, they may apply for a CER under section 21 of Cap. 171 provided that, among others, there was a valid operating licence for the former trawler on 15 June 2012. Similar to local fishing vessels, DAFC does not have any discretionary power under Cap. 171 to issue a CER in respect of a trawler without a valid operating licence on 15 June 2012.

Provisions of the Bill

5. The Bill seeks to empower DAFC to exercise discretion within a confined scope to register fishing vessels with no valid operating licence on 15 June 2012 (or their replacements) and to issue CER for the registration of former trawlers with no valid operating licence on 15 June 2012 (or their replacements). The main provisions of the Bill are set out in the ensuing paragraphs.

Registration of fishing vessels without a valid operating licence on 15 June 2012 or their replacements

6. The proposed new section 14A of Cap. 171, as added by clause 5 of the Bill, provides for the application for the registration of a local fishing vessel in respect of which there is a valid operating licence at the time of application but there was no valid operating licence on 15 June 2012. The applicant must show to the satisfaction of DAFC, among others, that:

- (a) the applicant was the owner of the vessel on 15 June 2012, or the application is supported by a waiver given by the owner of the vessel on 15 June 2012 under the proposed new section 14B(6); and
- (b) the vessel was used, or intended to be used, for the purpose of fishing up to the expiry of 14 June 2012.

An application for registration under the proposed new section 14A may only be made within six months after the commencement date of the enacted Ordinance.

Issue of provisional approvals for registration of fishing vessels without a valid operating licence on 15 June 2012 or their replacements

7. In relation to a fishing vessel in respect of which there was no valid operating licence on 15 June 2012 ("original vessel"), the proposed new section 14B of Cap. 171 provides for the issue to the vessel owner of a provisional approval for the registration ("PAR") of that vessel or its replacement. The applicant of a PAR, who must be the owner of the original vessel on 15 June 2012, must show to the satisfaction of DAFC, among others, that:

- (a) the original vessel was used, or intended to be used, for the purpose of fishing up to the expiry of 14 June 2012;
- (b) the original vessel is no longer in the applicant's ownership or the operating licence in respect of the original vessel has been cancelled by the Director of Marine; and
- (c) the applicant has not waived the entitlement to apply for a PAR.

An application for a PAR under the proposed new section 14B may only be made within six months after the commencement date of the enacted Ordinance. Under the proposed new section 14B(9), the time limit for application for the registration of the original vessel or its replacement pursuant to a PAR is two years after the date of the issue of the PAR.

Registration of former trawlers without a valid operating licence on 15 June 2012 or their replacements

8. Under the proposed new section 21A of Cap. 171, as added by clause 8 of the Bill, DAFC may issue a CER to the owner of a former trawler in respect of which there was no valid operating licence on 15 June 2012 ("original vessel") for the registration of that trawler or its replacement. The applicant of a CER must show to the satisfaction of DAFC, among others, that:

- (a) the applicant was the owner of the original vessel on 15 June 2012, or the applicant is the owner of the original vessel at the time of application and the application is supported by a waiver given by the owner of the original vessel on 15 June 2012 under the proposed new section 21A(6);
- (b) the original vessel was used, or intended to be used, for the purpose of fishing up to the expiry of 14 June 2012; and

- (c) the original vessel was affected by the Trawl Ban.

An application for a CER under the proposed new section 21A may only be made within six months after the commencement date of the enacted Ordinance. Under the proposed new section 21A(8), the holder of a CER may apply for the registration of the original vessel or its replacement under section 14 of Cap. 171 in accordance with the terms and time limit specified in the CER.

Appeal against DAFC's decisions

9. Clause 10 of the Bill seeks to amend section 33 of Cap. 171 to provide for the appeal to the Administrative Appeals Board against certain DAFC's decisions made under the Bill. These include the decision to refuse an application for registration under the proposed new section 14A(2), 14B(8) or 21A(8) of Cap. 171 and the decision to refuse to issue a CER under the proposed new section 21A(2) of Cap. 171.

10. Clause 14 of the Bill seeks to amend item 72 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442), consequential to the amendments made by clause 10 of the Bill.

Commencement

11. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public consultation

12. According to paragraph 16 of the LegCo Brief, the Administration had consulted umbrella organization of various associations of the fisheries sector and they welcomed the proposed amendments to Cap. 171.

Consultation with LegCo Panel

13. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene ("Panel"), the Panel was consulted on the proposed amendments to Cap. 171 on 12 February 2019. While members in general supported the proposed amendments to empower DAFC 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 of the Amendment Ordinance 2012 (i.e. 15 June 2012), some members expressed concern about how AFCD would, after the completion of this amendment exercise, notify all affected vessel owners of the re-opening of application for registration of local fishing vessels. Concern was also expressed as to how AFCD could ensure that former trawler owners would switch to non-trawling operation in Hong Kong waters, after they had been granted a CER and had fishing vessels registered under Cap. 171.

Conclusion

14. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the above concerns raised by the Panel, Members may consider forming a Bills Committee to study the Bill in detail.

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