

For discussion on
25 March 2019

Legislative Council Panel on Economic Development

Regulating Drink and Drug Boating

PURPOSE

This paper briefs Members on the proposed legislative framework to regulate drink and drug boating within the Hong Kong waters.

BACKGROUND

Establishment of an Inter-Departmental Working Group

2. Operation of vessels under influence of alcohol or drugs can bring about marine safety hazards, endangering the safety or seaworthiness of vessels as well as the lives of persons on board. Seeing the need to study operational issues relating to boating under the influence of alcohol and drugs with a view to enhancing marine safety, the Marine Department (“MD”) formed an inter-departmental working group (“the Working Group”) in 2015 comprising the Hong Kong Police Force (“HKPF”), the Department of Health, the Department of Justice (“DoJ”), the Hospital Authority and the Government Laboratory.

3. The Working Group examined the existing control arrangements for drink

and drug boating in the local context, the relevant international requirements imposed by the International Maritime Organization (“IMO”), the practices in overseas jurisdictions as well as the local situation, with a view to making suitable recommendations for regulating drink and drug boating in Hong Kong.

Findings of the Working Group

Existing Control Arrangements in Hong Kong

4. At present, there is no dedicated legislation against drink and drug boating in the Hong Kong waters. There is also no law empowering law enforcement authorities to conduct compulsory alcohol or drug tests for involved parties after a marine traffic accident. Under the International Convention on Standards of Training, Certification, and Watchkeeping (“the STCW Convention”), the IMO requires that masters, officers and other seafarers performing the designated duties relating to the safety of the ship, the security of the ship or the protection of the marine environment in an ocean-going vessel (“OGV”) must not work under the influence of alcohol or drugs to the extent that they behave in a disorderly manner, or that their ability to perform the designated duties is impaired. As an associate member of the IMO, we have incorporated the alcohol limits in blood and breath allowed as prescribed under the STCW Convention into our local legislation¹. The Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478C) stipulates that a seafarer performing designated duties on an OGV must ensure that he/she is not under the influence of alcohol or drugs.

¹ The seafarer must ensure that the proportion of alcohol in his breath or blood does not exceed the specified limits, i.e. 50 milligrams of alcohol in 100 millilitres of blood or 25 micrograms of alcohol in 100 millilitres of breath.

5. Separately, persons who operate a vessel in Hong Kong waters under the influence of alcohol or drugs may also be prosecuted for a general offence of “endangering the safety of others” at sea under the Shipping and Port Control Ordinance (Cap. 313) and the Merchant Shipping (Local Vessels) Ordinance (Cap. 548)². Moreover, for pilots licensed under the Pilotage Ordinance (Cap. 84), working under the influence of alcohol or drug is a disciplinary offence³.

Overseas Practices

6. In some countries, for example, Australia, Canada, Germany, New Zealand, Singapore, the United Kingdom and the United States of America, it is a criminal offence to operate a local vessel or an OGV under the influence of alcohol or drugs. The control regimes in these jurisdictions vary. Some countries such as the United Kingdom have introduced alcohol limits for seafarers working in their local vessels and OGVs in line with the IMO requirements. Some other jurisdictions such as Victoria of Australia have pitched the limits at levels tighter than the IMO requirements⁴. Moreover, some jurisdictions including Australia, New Zealand, the United Kingdom and the United States of America have dedicated legislation empowering law enforcement authorities to require persons on local vessels and OGVs to undergo compulsory alcohol or drug

² The offences are provided under section 72 of the Shipping and Port Control Ordinance (Cap. 313) (applicable to OGVs) and section 32 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (applicable to local vessels).

³ Under section 17 of the Pilotage Ordinance (Cap. 84), pilots who pilot a ship under the influence of alcohol or drugs are subject to disciplinary inquiry by a board of discipline to be set up in accordance with the Pilotage Ordinance.

⁴ In Victoria of Australia, the alcohol limits vary depending on the age of the person and type of vessel. The most stringent requirement provides that a vessel operator must not operate a domestic commercial vessel with any concentration of alcohol in the breath or blood of that person.

tests.

Recommendation of the Working Group

7. Having studied the local and international regimes in regulating drink and drug boating, the Working Group considered that there are merits in enacting a specific legislation in Hong Kong to regulate drink and drug boating in Hong Kong. Marine traffic in the Hong Kong waters, especially in the Victoria Harbour, is generally very heavy. All vessels within the Hong Kong waters (including local vessels and OGVs) should be subject to the same regulatory controls in respect of drink and drug boating. Moreover, with dedicated legislation, law enforcement authorities will be empowered to require crew members of local vessels and OGVs to undergo compulsory alcohol or drug tests under specified circumstances, for example for the investigation of marine incidents to determine whether drink or drug boating is a direct or contributory cause. Spot checks and inspections could also be conducted to deter drink and drug boating and minimise danger caused to passengers on board.

8. The Working Group recommended that reference be made to the relevant legislation in other jurisdictions and Hong Kong when drawing up the details of the regulatory regime. The recommendation was endorsed by the Steering Committee on Systemic Reform of MD⁵ in its Final Report published in April 2016.

⁵ In response to the call for a systemic change in MD by the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012, the Steering Committee was set up in May 2013 to advise and steer the Director of Marine to undertake a comprehensive systemic review and reform of MD. The Steering Committee was chaired by the Secretary for Transport and Housing.

PROPOSED REGIME TO REGULATE DRINK AND DRUG BOATING

Scope and Coverage of the Proposed Legislation

Drink and drug boating offences

9. Under the proposed legislative framework, a person involved in operating a vessel will commit an offence if he/she is under the influence of alcohol or drug to the extent of being incapable of operating the vessel properly, or has alcohol exceeding the prescribed limits in his body (e.g. in his blood, urine or breath), or has any specified illicit drug in his body (e.g. in his blood or urine). We will set out objective standards in our proposed legislation, including prescribing the limits of alcohol and specifying the illicit drugs which should not be exceeded or be present in a person's body. In particular, we will make reference to the relevant international standards and requirements in other jurisdictions in prescribing the upper limits on alcohol concentration in human body, and in drawing up the list of specified illicit drugs.

Scope of Application

10. As the objectives of the proposed legislation is to enhance marine safety in Hong Kong and to protect the safety of persons on board, we propose to make the proposed legislation applicable to all vessels within the Hong Kong waters, including locally licensed vessels, river-trade vessels and OGVs.

11. More often than not, the captain or the coxswain of a vessel is supported by other crew members on board, who will also have a duty to protect the safety of passengers, especially in an accident. As such, the proposed legislation would be applicable to all crew members on board a vessel who have designated duties relating to the safety of the ship, the security of the ship or the protection of the

marine environment as prescribed under the STCW Convention adopted by the IMO. These would cover not only those who control, navigate or pilot a vessel (e.g. masters/coxswains, pilots, watchkeeping personnel of the deck and machinery spaces), but also those who are not necessarily at the helm but have 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. The shipboard duties of individual officers on OGVs are clearly documented in the ships' Safety Management System as required by the IMO's International Safety Management Code. This would provide information for identifying those crew on an OGV who are involved in vessel operation and who are tasked to perform the designated duties. For local vessels, given that their manning scales are generally smaller, all crew onboard a local vessel will necessarily, in one way or the other, be involved in the aforesaid designated duties. As such, it is our policy intention to apply the proposed legislation to all crew members working on board local vessels.

Enforcement

12. We propose to provide MD and police officers the powers to require a person involved in the aforesaid designated duties to undergo authorised alcohol and/or drug tests after the occurrence of a collision or an accident, as well as in spot checks on vessels. There are a variety of alcohol and drug tests (including blood and urine tests) used by different jurisdictions for ascertaining the concentration of alcohol or specified illicit drugs in a person's body. We will make reference to overseas experience, the latest test methods available and their effectiveness when drawing up a set of authorised alcohol and drug tests. For effective enforcement of the proposed legislation, we also propose to make it an offence if a person involved in the aforesaid designated duties refuses to undergo the authorised tests without reasonable excuse, and to confer to MD and police

officers the power to arrest a person who has committed the proposed offence, as well as to arrest a person who has been tested to have exceeded the specified alcohol limits or have specified illicit drug in his/her body.

Penalty

13. Depending on the type and seriousness of the offence and circumstances of the case, the proposed penalties include fines ranging from \$2,000 to \$25,000 and/or imprisonment for a period from three months to three years.

CONSULTATION

14. The Local Vessels Advisory Committee, the Port Operations Committee, the Pilotage Advisory Committee and the High Speed Craft Consultative Committee of MD were consulted in March 2017. Members supported the proposals.

LEGISLATIVE TIMETABLE

15. Subject to the progress in refining and drafting the proposed legislation, we aim at introducing the proposed legislation, in the form of a Bill, in the 2020-21 legislative year.

ADVICE SOUGHT

16. Members are invited to note and comment on the content of this paper.

Transport and Housing Bureau

Marine Department

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