

立法會
Legislative Council

LC Paper No. CB(1)579/13-14
(These minutes have been seen
by the Administration)

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Panel on Economic Development

Minutes of meeting
held on Monday, 27 May 2013, at 9:30 am
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Hon CHUNG Kwok-pan (Deputy Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP
Hon Albert CHAN Wai-yip
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon CHAN Han-pan
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu
- Members absent** : Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
- Members attending** : Hon Emily LAU Wai-hing, JP
Hon WONG Kwok-hing, MH
Hon Cyd HO Sau-lan
Dr Hon Kenneth CHAN Ka-lok

Dr Hon KWOK Ka-ki

Public officers attending : Agenda Item IV

Professor Anthony CHEUNG
Secretary for Transport and Housing

Ms Julina CHAN Woon-yee
Deputy Secretary for Transport and Housing
(Transport) 5

Mr Francis LIU Hon-por
Director of Marine

Mr TUNG Hon-ming
Deputy Director of Marine

Ms Shirley LAM Shuet-lai
Deputy Director of Marine (Special Duties)

Agenda Item V

Ms Jenny CHAN
Principal Assistant Secretary for Transport and
Housing (Transport)

Mr CHUNG Siu-man
Assistant Director/Port Control
Marine Department

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mr Noel SUNG
Senior Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I Confirmation of minutes of meeting

(LC Paper No. CB(1)1074/12-13 —Minutes of meeting held on 28 January 2013)

The minutes of the meeting held on 28 January 2013 were confirmed.

II Information paper issued since last meeting

(LC Paper No. CB(1)970/12-13(01) —Administration's paper on tables and graphs showing the import and retail prices of major oil products from April 2011 to March 2013)

2. Members noted the above paper issued since the last regular meeting.

III Items for discussion at the next meeting

(LC Paper No. CB(1)1073/12-13(01) —List of outstanding items for discussion

LC Paper No. CB(1)1073/12-13(02) —List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled to be held on 24 June 2013 –

(a) incorporating in local legislation the latest standards of the International Maritime Organization on vessel emissions; and

(b) proposed amendments to legislation relating to the carriage of dangerous goods by air.

IV Follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012

(File Ref: CSO/ADM/CR 6/581/12 —The Legislative Council Brief issued by Administration Wing, Chief Secretary for Administration's Office

LC Paper No. CB(1)1073/12-13(03) —Administration's paper on follow-up actions arising from the Report of the Commission

of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012

LC Paper No. CB(1)1073/12-13(04) — Paper on follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 prepared by the Legislative Council Secretariat (background brief))

4. Secretary for Transport and Housing ("STH") briefed members on the follow-up actions taken by the Government in response to the findings and recommendations in the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 ("CoI") completed in April 2013. For the purpose of enhancing marine safety, the Marine Department ("MD") had undertaken a comprehensive re-inspection of the provision of lifejackets on all ferries, launches and kaitos as well as the structures of all ferries and launches; strengthened work on ship inspections and plan approvals; stepped up routine patrol of local vessels; drawn up of medium and long-term measures to enhance safety of local passenger carrying vessels; and engaged a classification society and a maritime consultancy firm respectively to carry out an independent audit review and a benchmark survey.

5. STH said that in respect of the problems with MD officers in carrying out their duties in the past, including possible maladministration and neglect of duty, as mentioned in the CoI report, he had earlier directed the Director of Marine ("D of Marine") to carry out an internal investigation in accordance with established civil service practice. STH said that he had reviewed the circumstances, and taking into account all relevant considerations, with a view to ensuring objectivity and procedural fairness of the process, he had instructed that the investigation should now be conducted by the Transport and Housing Bureau ("THB"). The Investigation Team would be led by the Permanent Secretary for Transport and Housing (Transport). STH emphasized that the investigation would be conducted in a thorough and fair manner, and in the case that the investigation uncovered any violations of rules and regulations, neglect of duty or issues relating to management responsibilities, the Administration would handle the cases impartially according to established procedures and take disciplinary action against the officers concerned, irrespective of their ranks.

6. STH further said that the Government was in agreement with the CoI finding that there was a need for systemic change in MD. He would personally lead the Steering Committee on Systemic Reform of the Marine Department ("Steering Committee") which had recently commenced work to steer and drive

MD to undertake a comprehensive systemic review and reform. Initially, the Steering Committee would examine improvement proposals on procedural matters, and aimed to complete this within four to six months. After that, the Steering Committee would focus on systemic and structural changes and make recommendations. In the meantime, the Efficiency Unit would embark on a scoping review on the Department's organization and procedures and would make suggestions on management. Consultants could also be engaged to carry out further studies where necessary. A high-level Task Force, led by the new post of Deputy Director (Special Duties), had been set up within MD to support the Steering Committee in taking forward the review and reform. STH said that he was deeply saddened by the serious casualties caused by the collision incident. The CoI report had noted long-standing inadequacies in procedures and enforcement on marine safety regulation. The Government would take these criticisms seriously, and would strive to make improvements. As the Principal Official with policy purview over transport matters, STH expressed his apologies to the public and to the families of deceased in the incident.

7. D of Marine briefed members on details of the various measures taken by MD for ensuring the safety of local passenger vessels. He said that he was deeply saddened by this serious collision incident and expressed his sincere apologies to the families of the deceased, the injured and the public.

Timing of the officials' apologies

8. Dr Fernando CHEUNG Chiu-hung pointed out that the families of the victims of the collision incident had issued an open letter earlier condemning that D of Marine had all along been evasive and shied away from being accountable for the incident. Dr CHEUNG expressed doubt whether the victims' families would accept the Administration's apologies which came about more than six months after the collision incident and more than a month after the publication of the CoI report. Mr Ronny TONG Ka-wah expressed regret that the apologies of STH and D of Marine came too late and were only made under the pressure of the public. Mr TONG commented that in incidents of a similar scale in many civilized societies, relevant officials would make unreserved apologies promptly. Ms Emily LAU Wai-hing said that the apologies were belated and might not pacify the anger of victims' families. Ms LAU considered it crucial that the Administration should come forward with an apology immediately should a similar incident happen in future.

9. Dr Kenneth CHAN Ka-lok asked whether D of Marine required the approval or suggestion from anyone before he could make an apology, and what had changed his mind so that he now made an apology at the meeting. D of Marine said that on an issue of major importance, it was necessary for MD to consider in detail in making any response. He considered this a prudent and responsible practice that MD discussed with relevant departments in the

Government and consulted their opinions including legal opinion. Dr CHAN did not subscribe to D of Marine's explanation and expressed deep regret about the long time it took D of Marine to make a public apology since the public expected a prompt apology from officials upon such a major disaster.

10. Mr Michael TIEN Puk-sun recounted the question he posed to the Chief Executive at the Chief Executive's Question and Answer Session on 9 May 2013 whether the Chief Executive felt ashamed that no one from the Government had ever tendered an apology to the deceased victims and the general public after such a long time from the collision incident. Mr TIEN opined that the belatedness of the apologies from STH and D of Marine had damaged the Government's image in the perceptions of the public.

Impartiality of the internal investigation

11. Dr KWOK Ka-ki said that the heavy casualties of the collision incident and the problems involving MD officers as revealed in the findings of the CoI report had tarnished the reputation of Hong Kong as an international marine transport centre and shattered the public's confidence in MD. Dr KWOK expressed doubt in the trustworthiness of MD in conducting the internal investigation.

12. Mr WONG Kwok-hing relayed the request of victims' families for an independent investigation to look into the possible maladministration and neglect of duties in MD and to hold relevant officers accountable. Mr WONG sought clarification whether the investigation would be led by STH. STH clarified that THB, rather than MD, would be directly responsible for conducting the investigation.

13. Mr WONG Kwok-hing and Mr CHAN Han-pan enquired about the expected time of the completion of the internal investigation and whether the public would be informed of the outcome of the investigation. The Chairman asked about how the internal investigation would deal with MD officers who might have already left the employment of MD.

14. STH hoped that the internal investigation would not take an unduly long period of time as CoI had made a number of observations and analyses which would serve as the starting point for the investigation. The Administration would endeavour to make public the outcome of the investigation in an appropriate manner. The fact that it would be conducted by THB was to ensure objectivity and procedural fairness of the process. The Investigation Team, led by the Permanent Secretary for Transport and Housing (Transport), would first analyze the CoI report and relevant information, and interview individual MD officers. STH stressed that the Investigation Team would remain vigilant and thorough in carrying out the investigation. It would consider facts

comprehensively and conduct the investigation fairly and impartially. In case the investigation uncovered any violations of rules and regulations or issues relating to management responsibilities, the Administration would handle the cases impartially according to established procedures and disciplinary action would be taken against the officers concerned, irrespective of their ranks.

Need for an independent investigation

15. Dr Fernando CHEUNG Chiu-hung called for an independent investigation to look into the extent of the responsibility that MD officers should shoulder in in the marine disaster which had caused such heavy casualties.

16. STH said that by nature, the investigation conducted by CoI, which was appointed by order of the Chief Executive in Council pursuant to the Commission of Inquiry Ordinance, was an independent investigation with specified terms of reference. The CoI report had revealed a number of problems involving the work and staff of MD. The internal investigation as set out in the paper would be conducted according to the established practice in the civil service. Its objective was to see if any officers were involved in any possible violations of rules and regulations or neglect of duty.

17. Quoting the CoI's comment that "in the process of designing, constructing and surveying the Lamma IV that there was a litany of errors committed at almost every stage by many different people" (paragraph 285 of the CoI report), Dr Fernando CHEUNG Chiu-hung queried the need of the internal investigation as the CoI report had already set out the responsibilities of MD officials in the marine disaster. Dr CHEUNG said that many of the deficiencies in the work processes as pointed out by the CoI report were related to the enforcement of regulations on lifejackets as well as the inspection and licensing of ships, which were the responsibilities of the current D of Marine and DD of Marine before they took up their current posts. Dr CHUENG considered it absurd that the relevant staff at present led the investigation into matters they were once responsible in the past.

18. STH clarified that THB and not DD of Marine would directly lead the internal investigation. Dr CHEUNG surmised that the internal investigation would only target the same middle to lower ranks officers in MD as those involved in the CoI's investigation and would at the end let go senior officers who should really be held accountable. STH stressed that the findings about the problems of MD's officers in execution of duties as revealed in the CoI report would serve as the starting point of the internal investigation. If the investigation uncovered any violations of rules and regulations, neglect of duty or issues relating to management responsibilities, the Administration would follow up and handle the cases impartially. Notwithstanding the Administration's clarification, Dr CHEUNG expressed his distrust in the impartiality of the

Administration.

19. Ms Emily LAU Wai-hing urged that an independent investigation be conducted to look into the deficiencies of MD and to ascertain responsibilities. The targets of investigation should include the serving officers of MD as well as ex-employees of the Department. Ms LAU said that the public had grave concern about the impartiality of the internal investigation as currently arranged. She said that albeit some civil servants might feel upset about being investigated, an open, fair, independent and professional investigation would be the best way to address the concerns of both the families of the marine disaster victims and the civil servants, and would be acceptable to the LegCo members and the public at large.

20. STH said that he found the longstanding problems in MD as revealed in the CoI report surprising and disturbing. He considered it important to conduct a comprehensive systemic review and introduce reform to address the situation. The objective of the internal investigation was however to ascertain responsibilities. To address the concern about objectivity and procedural fairness of the process, the investigation would be conducted by THB instead of D of Marine. The Investigation Team would analyze the CoI report and relevant information, including past documents in MD, and would interview individual MD officers in addition to those who had testified in the CoI hearings. STH reiterated that the Investigation Team would consider facts comprehensively and conduct the investigation fairly and impartially. In case the investigation uncovered any possible violations of rules and regulations or issues relating to neglect of duty, the Administration would handle the cases impartially according to established procedures and necessary disciplinary action would be taken against the officers concerned, irrespective of their ranks.

21. Ms Emily LAU re-emphasized the concerns of families of the victims, LegCo Members and the public about whether the investigation could be conducted in an objective, open, fair, independent and professional manner. STH said that the Administration was aware of the public's concern that investigation conducted by MD might give rise to perceptions of being biased. The present arrangement under which THB took the lead in the investigation should allay the public's worry. STH considered that such arrangement had struck a balance between observing established practice in civil service and upholding independence of the investigation.

Responsibility for deficiencies in the Marine Department

22. Ms Cyd HO Sau-lan cited the CoI's comments on 14 MD officers in its report and pointed out that the instances of slips and omissions in the work of the MD officers were evident. Ms HO opined that the problem of maladministration had existed in MD for a long time and questioned whether D of Marine could

claim ignorance of those instances as he had worked in MD for 27 years. Citing a statement given by an MD officer who testified in the CoI investigation that MD had a policy of not enforcing the law for vessels, Ms HO criticized that such thinking of the MD officer was totally absurd. She urged that the Administration should conduct an in-depth and impartial investigation into the deficiencies of the work of MD officials and make known to the victims' families and the public the outcome of the investigation.

23. STH said that the alleged phenomenon that MD had a policy of not enforcing the law as referred to by Ms HO was totally unacceptable and it was a matter that the internal investigation would definitely look into.

24. Mr TANG Ka-piu expressed his astonishment at the CoI findings in respect of the deficiencies of the work of MD officers. Mr TANG quoted the following comment made by CoI on MD in its report (paragraph 402) and requested the Administration to respond to the comment –

"The fact that the so-called 'policy' had not been drawn to the attention of the Commission earlier is perhaps less surprising given the absence of any contemporaneous documentation of the genesis of the decision-making: by whom and when was the matter considered? On whose authority was the decision made, in particular was the Director of Marine even aware of the policy let alone had he authorized it? Was the Government and the Legislative Council informed of a policy not to enforce recently enacted legislation? Was the public informed of those matters?"

25. STH stressed that the Government did not allow the occurrence of not enforcing the law and said that the questions raised by CoI were definitely matters to be looked into by the internal investigation. D of Marine said that the internal investigation aimed at ascertaining facts and finding out the truth. He declined to comment further on the CoI's remark at this stage on the ground that this would be prejudicial to the fairness of the investigation.

26. Mr WONG Ting-kwong asked whether the Administration would make public the findings of the internal investigation, particularly the reasons for MD officers' not enforcing the law in past years as alleged in the CoI report. Similarly, Mr TANG Ka-piu asked if the Administration would make public the outcome of the internal investigation.

27. STH said that the findings regarding the deficiencies in the work processes as revealed in the CoI report would be the starting point of the internal investigation. The internal investigation aimed at identifying responsibilities for any possible maladministration or neglect of duty within MD. The Administration would handle the cases impartially according to established procedures and disciplinary action would be taken against the officers concerned,

irrespective of their ranks. If the process of investigation reveals suspected crime, cases would be referred to the law enforcement agencies for immediate actions. Upon completion of the investigation, the outcome of the investigation would be made known to the public as far as not affecting subsequent disciplinary or legal actions.

28. Mr Michael TIEN Puk-sun said that whilst civil servants usually did not take the political responsibility for errors in policies formulated by the Bureau secretaries, the findings of CoI indicated that the collision incident was a case of maladministration by MD. Mr TIEN asked if D of Marine should come forward to shoulder the responsibility for the errors of his department.

29. STH said that the internal investigation would study and analyze the findings of the CoI report regarding the deficiencies of MD, and its primary aim was to identify responsibilities for any possible maladministration or neglect of duty within the Department. He said that at this stage he was unable to give specific details of the kind of responsibilities. Pending the investigation result, he declined to comment on who should be held accountable. STH reiterated that in case the investigation uncovered any violations of rules and regulations, neglect of duty or issues relating to management responsibilities, the Administration would handle the cases impartially according to established procedures and necessary disciplinary action would be taken against the officers concerned, irrespective of their ranks.

30. In response to the enquiries of Mr CHAN Han-pan and Mr YIU Si-wing on the work of the Steering Committee and the high-level Task Force as set out in the paper, STH said that the Steering Committee would make recommendations on improvements to operational procedures as well as examine systemic and structural issues and that the Task Force was to provide support to the Steering Committee in the implementation of reform measures.

Measures for enhancing the safety of local passenger vessels

31. Mr YIU Si-wing noted that for enhancing the safety of local passenger vessels, the Administration had proposed that children on board spectator vessels should don lifejackets at all times and a passenger list should be kept on board. Mr YIU expressed concern about the role and responsibility of tourist agents and escorts for ensuring passenger safety on board during firework displays and other major events as he noted that tourist agents and escorts would encounter practical difficulty in enforcing the said measures.

32. D of Marine said that in the longer term, the Administration intended to implement the requirements such as those for donning lifejackets and keeping passenger lists by way of legislation. MD had been in consultation with the trade about the implementation details and was aware of the trade's concern about

which parties should in practice be responsible, given the concern for the safety of passengers on board. In the interim, for large-scale events, MD would check for compliance with the safety guidelines at the popular embarkation points to ensure the safety of passengers and would consider taking prosecution actions if there were instances of non-compliance. The Chairman observed that the inspections conducted by MD officers at points of embarkation and disembarkation on holidays often caused congestion to pleasure vessels and in some instances, gave rise to potential risks of collision. D of Marine took note of the comment.

33. Mr CHUNG Kwok-pan said that according to some media reports, there were still instances of lifejackets on vessels being locked up or stored at places where passengers had difficulty to retrieve them. Mr CHUNG asked for the reason that the Administration did not require lifejackets to be placed under passenger seats.

34. D of Marine said that the lifejackets on board were required to be stored at places where they could be easily retrieved. If during the inspection of a vessel, the lifejackets were found to be placed at locations where they could not be easily retrieved, MD would require the operators of the vessel to immediately correct the situation.

Consultation with the trade

35. Dr Kenneth CHAN Ka-lok pointed out that the ten medium- and long-term measures for enhancing the safety of local passenger vessels as set out in the Administration's paper were raised as early as the Council meeting of 18 October 2012, but many of them still required further discussion with the trade on their implementation. Dr CHAN queried about the time that the Administration had taken in the consultation with the trade and whether the trade was allowed to reject the measures aimed at protecting the safety of vessel passengers.

36. D of Marine said that in implementing the measures for enhancing marine safety, it was necessary that the Administration consult the views of various stakeholders in the marine industry, including operators of vessels of various classes, trade associations, labour unions, etc and listen to their concerns. STH said that the Administration had clearly conveyed to the trade that no compromise would be made in respect of the need for ensuring marine safety. For certain non-safety related enhancement measures, it would continue to discuss with the trade to identify practical ways to overcome difficulties encountered by the trade. The Local Vessels Advisory Committee and its subcommittees would continue to serve as an effective platform for communication between the Administration and the various stakeholders.

37. Mr Frankie YICK Chi-ming declared that he was a director of the 'Star' Ferry, Limited. Mr YICK welcomed STH's leading the Steering Committee set up for making recommendations on improvements to operational procedures as well as examining systemic and structural issues in MD. Mr YICK said that the trade fully recognized the importance of marine safety and had promptly implemented a number of improvement measures since the collision incident. For certain other measures, further discussion between the trade and the Administration was required before they could be implemented. One such issue was how to inform the passengers on board of the various safety measures. Furthermore, while the requirement for maintaining a passenger list as recommended in CoI report was feasible on spectator vessels, it was difficult for ferries to implement. Mr YICK conveyed the willingness of the trade to further discuss with MD in reaching consensus.

Other concerns about the work the Marine Department

38. The Chairman asked whether MD had sufficient manpower to cope with the large amount of work arising from the above-mentioned follow-up actions such as the internal investigation, re-inspection of vessels, etc.

39. STH said that the Administration was aware that the follow-up actions would add pressure to MD's manpower, and would keep in view the need for additional manpower. D of Marine said that MD would make appropriate work arrangements for professional staff in MD in order to cope with the additional workload.

40. The Chairman noted that whilst MD generally agreed with the recommendations by the expert witnesses appointed by CoI, MD had reservation about their recommendation concerning whether the Marine Accident Investigation and Shipping Security Policy Branch ("MAISSPB") should be removed from the organizational structure of MD. He enquired about the reason for that.

41. D of Marine said that at present MAISSPB, which was led by an Assistant Director in MD, conducted marine accident investigations independently and submitted investigation reports with recommendations arising from these investigations to D of Marine. MAISSPB would publicize the findings of the investigations and the industry would be kept informed of any improvement measures which could be implemented to avoid recurrence of accidents. D of Marine said that from the experience gained over the years, this arrangement of work had been found effective and was in line with the standards of the International Maritime Organization.

42. Mr TANG Ka-piu enquired about the reasons for the difficulty of injured passengers in obtaining the report on an incident near Cheung Chau on 20

October 2011 involving a ferry of New World First Ferry Services. D of Marine said that accident investigation reports would normally be uploaded to the website of MD when completed unless prosecution actions were being considered. The case mentioned by Mr TANG had been referred to the Department of Justice for its consideration of whether prosecution actions should be taken against any person involved in that accident. Therefore, MD's investigation report on the accident could not be given to the injured passengers.

43. Ms Cyd HO Sau-lan noted from the CoI report that MD had been found unable to produce written record for the reasons for the change in the stipulated minimum number of crew on the Lamma IV. Ms HO stressed the importance of record keeping and called on D of Marine to review if MD had been in compliance with the guidelines and codes of practice issued by the Director of Administration on the management of government records.

Assistance to families of the victims

44. Mr Albert CHAN Wai-yip opined that the findings of the CoI report had revealed a clear case of maladministration by MD officials, and that MD should be held responsible for the casualties of the disaster and THB, being the policy bureau supervising MD, was negligent of its duty. Mr CHAN asked whether the Administration would study the Government's responsibility for compensating to the families of the marine disaster victims.

45. STH said that he would relay Mr Albert CHAN's view to the Secretary for Justice as making compensation to victims of the incident by the Government would involve legal considerations. Expressing strong dissatisfaction with STH's response, Mr Albert CHAN requested for putting on record his view that STH should be condemned his lack of social conscience and evasion from the responsibility for making compensation to the victims' families.

46. Mr WONG Kwok-hing welcomed STH's willingness to meet with the families of the victims in person. Mr WONG urged the Administration to step up assistance to the families. Ms Emily LAU Wai-hing also urged STH to meet with victims families to listen to their demands. Mr CHAN Han-pan noted that MD had not yet got in touch with the families of the victims and explained the findings of the CoI report to them. Pointing out that the victims' families lacked knowledge in their legal rights, and in initiating legal procedures against the Government if they so wished, Mr CHAN urged the Administration to provide appropriate assistance to them.

47. STH took note of members' views. Deputy Secretary for Transport and Housing (Transport) 5 said that on the day of the collision incident, the Administration deployed about 100 clinical psychologists and social workers to offer assistance to the injured and families of the deceased including counselling

as well as emotional and financial support through various charity funds. Social Welfare Department and THB had been keeping in touch with victims' family members and following up their specific needs.

48. Mr WONG Kwok-hing asked whether the Administration would consider setting up a fund for assisting families of the victims in taking legal action against MD by using the cost saved due to the cessation of fireworks display on the National Day. In response, STH said that the cost of fireworks display was financed by sponsor of the event and not the Government.

49. In response to the query of Mr TANG Ka-piu, D of Marine said that MD was conducting a study on the feasibility of introducing a Marine Accident Victims Assistance Fund which had commenced in April 2013 and was scheduled for completion by the end of 2013.

Member's motion

50. After discussion, the Chairman invited members to consider the motion proposed by Dr Fernando CHEUNG Chiu-hung which was tabled at the meeting. Members agreed to proceed to deal with the motion. Mr Albert CHAN Wai-yip proposed amendment to the motion. The wording of the motion moved by Dr Fernando CHEUNG, as amended by Mr Albert CHAN was as follows –

"就南丫島海難事件，調查委員會指出當局執法錯漏百出。本事務委員會對於運輸及房屋局局長及海事處處長遲來的道歉表示極度失望和遺憾，並促請當局必須以獨立及專業的原則進行調查及制度改革，違規官員應承擔責任。此外，政府應向海難死傷者家屬作出賠償。"

(Translation)

"That, with regard to the marine disaster that happened near Lamma Island, the Commission of Inquiry pointed out that there were a lot of errors and omissions on the part of the authorities in taking enforcement actions. This Panel expresses its extreme disappointment with and regret for the belated apologies offered by the Secretary for Transport and Housing and the Director of Marine, and it urges the authorities to uphold the principles of independence and professionalism in conducting investigations and making reforms to the systems and that officials not performing their duties properly should be held responsible. In addition, the Government should provide compensation to families of those who died or were injured in this marine disaster."

51. The Chairman put the motion to vote. Ten members voted in favour of the motion, and no member voted against it. The Chairman declared that the

motion was carried.

V Proposals to enhance dark smoke control on vessels

(LC Paper No. CB(1)1073/12-13(05) —Administration's paper on proposals to enhance dark smoke control on vessels)

52. Principal Assistant Secretary for Transport and Housing (Transport) ("PASTH") briefed members on the proposals to amend the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and the Shipping and Port Control Ordinance (Cap. 313) to strengthen enforcement against dark smoke emission from vessels in Hong Kong waters by providing an objective benchmark for taking prosecution actions. In gist, the Administration proposed that Cap. 548 and Cap. 313 be amended to give effect to adopting the Ringelmann Chart as a reference to measure dark smoke emissions from vessels and to make it an offence for a vessel (i.e. a local vessel in respect of Cap. 548 and an ocean going vessel ("OGV") in respect of Cap. 313) to emit dark smoke which was as dark as or darker than shade 2 on the Ringelmann Chart for three minutes or more continuously at any one time.

Effectiveness of adopting the Ringelmann Chart

53. Dr Fernando CHEUNG Chiu-hung queried about the reason for using shades of gray of different intensity as a criterion for assessing dark smoke emission from vessels. Dr CHEUNG referred to the news report that a day's emission of sulphur dioxide by the "Mariner of the Seas" which berthed at the Kai Tak Cruise Terminal in June 2013 was equivalent to the emission by 12 000 vehicles on the road. He opined that invisible substances such as sulphur dioxide in the emission from vessels might be even more harmful than dark smoke. He commented that the proposal was inadequate for the effective control the actual harm of the emissions from vessels. He expressed doubt whether Administration was genuinely concerned about the health of the public.

54. Assistant Director/Port Control, Marine Department ("AD/PC of MD") said that current standards for regulating the sulphur content of emission from OGVs berthing in Hong Kong waters were in line with international standards. The Environmental Protection Department ("EPD") had launched a three-year incentive scheme starting from September 2012 to encourage OGVs operators to switch to cleaner fuel by waiving half of the port dues. In addition, ENB had been preparing for a legislative proposal to require all OGVs to use low sulphur fuel when at berth in Hong Kong waters. MD had been working closely together with ENB for the control of sulphur dioxide, respirable suspended particulates and other air pollutants from vessel emission. Under the law, MD would take action against dark smoke emission from vessels if the emission was

in such a quantity that it became a nuisance to the public. AD/PC of MD explained that at present the nuisance in respect of dark smoke emission from vessels was not defined in the statutes. The current proposal aimed at strengthening enforcement by providing an objective benchmark for taking prosecution actions.

55. Mr TANG Ka-piu enquired about the statistics on unsuccessful prosecution due to the lack of an objective standard in defining nuisance caused by dark smoke emission from vessels in the past. Regarding the setting of the threshold for the offence in dark smoke emission at three minutes, Mr TANG asked whether stricter control could be applied to cargo vessels and passenger-carrying vessels which plying regularly in the harbour. Mr TANG asked whether the frequency of the incidence of dark smoke emission was related to the length that the vessel had been in service.

56. AD/PC of MD said that MD received about 40 complaints a year on average and took prosecution action in two cases successfully in 2012. MD had made reference to overseas practice and considered it appropriate to adopt the three minutes as the threshold for the offence in dark smoke emission. Excessive dark smoke emission from vessels was usually caused by incomplete combustion of fuel oil in the vessel engine. The age of the vessel alone did not necessarily lead to dark smoke emission.

57. Noting that section 51 of Cap. 313 stated that the Chief Executive in Council might make regulations for controlling the emission of smoke from vessels, Dr Kenneth CHAN Ka-lok asked whether the Administration would take the opportunity to make regulations for the control of emission of dark smoke from vessels.

58. PASTH said that the Administration considered it sufficient to amend Cap. 313 to give effect to adopting the Ringelmann Chart as reference to measure dark smoke emission from vessels objectively and that regulations made specifically for the purpose were not necessary in the meantime. Notwithstanding, the Administration would keep in view the need for making regulations specifically for the control of dark smoke emission and if necessary, consult LegCo on proposal for such regulations.

59. Mr Albert CHAN Wai-yip expressed doubt about the effectiveness of enforcement actions at night as it would be difficult to detect dark smoke by visual survey. AD/PC of MD said that it would be difficult to detect dark smoke at night at open sea. However, coastal waters near residential areas at night were often sufficiently bright for spotting dark smoke emission from vessels. Under the law, if the emission constituted nuisance, members of the public could notify MD for enforcement and MD would follow up every complaint.

60. Mr Albert CHAN suggested that closed-circuit television ("CCTV") cameras should be installed at locations along the several major navigation routes taken by vessels in the harbour. This could help spotting contravention in dark smoke emission as well as unsafe navigation. AD/PC of MD said that the Administration had already installed CCTV cameras covering certain waters for the purpose of marine traffic management. In the course of investigating complaints about vessel emission, MD would check the CCTV recordings if the location of the vessel was within the coverage of CCTVs.

61. Ms Cyd HO Sau-lan expressed doubt about the reliance of MD officers on visual survey for assessing the level of dark smoke emission from vessels. Ms Cyd HO opined that the Administration should also set objective standards in inspecting ships in order to ascertain whether low sulphur fuel was actually being used.

62. PASTH said that MD had been assessing the dark smoke emission from vessels by making reference to the Ringelmann Chart since 2007 and accumulated substantial experience in visual survey over the years. The Ringelmann Chart had provided an objective benchmark for taking prosecution actions. On using low sulphur fuel, MD would support the various initiatives of ENB including the proposed requirement for OGVs to switch to low sulphur fuel when at berth in Hong Kong waters. AD/PC of MD said that MD had included dark smoke emission as one of the items for inspection in the annual survey of vessels.

Penalty levels

63. Members noted that the number of vessels with visible emission as noted in the monitoring surveys conducted by MD had dropped from 40.8% in 2007 to 1.2% in 2012. Mr YIU Si-wing enquired about the accuracy of the apparently large reduction in the said period. Mr YIU asked whether the varying penalties for local vessels and OGVs were in line with international practice, and whether it was appropriate to apply the same penalties for local vessels and river trade vessels.

64. AD/PC of MD said that MD took actions such as issuing advice letters and warnings to vessel owners even when the dark smoke emission from the vessels lasted for less than three minutes. MD conducted dark smoke tests for local vessels during their applications for issue or renewal of a certificate of survey annually or biennially and would ensure that the vessel's emission did not exceed the acceptable level before issuing a certificate of survey. Recognizing the importance of vessel maintenance, vessel owners and operators had stepped up efforts in this respect in past few years. These measures as well as other educational and publicity efforts had contributed to the said reduction in the number of vessels with visible emission. As regards penalties, the proposal for

setting the maximum fines for OGVs at a higher level than that for local vessels and river trade vessels was made on the ground that the power ratings of engines fitted on board OGVs were relatively larger and hence the proportionally more dark smoke emission in the event of improper engine maintenance. AD/PC of MD said that it was appropriate that penalties for river trade vessels and local vessels were the same because the power ratings of engines and sizes of both types of vessels were similar.

On-shore power facilities at Kai Tak Cruise Terminal

65. Ms Cyd HO Sau-lan said that whilst there was space at the Kai Tak Cruise Terminal for the installation of facilities for providing on-shore power to cruise liner berthing at the Terminal, such facilities had yet to be installed as there were two sets of international standards for providing on-shore power. Ms HO opined that the Administration should consider providing facilities for both sets of standards. Dr Kenneth CHAN Ka-lok urged the Administration to speed up the provision of on-shore power facilities at the Terminal. PASTH undertook to relay members' views on-shore power to Commerce and Economic Development Bureau as well as ENB, which were responsible for taking forward on-shore power facilities at the Terminal.

Concerns of the industry

66. Mr James TIEN Pei-chun said that Members of the Liberal Party had all along been concerned with the dark smoke emission from vessels in the harbour which had a negative impact on the health of the public and the international image of Hong Kong. Mr James TIEN expressed support for strengthening the control on emission from vessels. He asked whether the Government would render any assistance to operators of local vessels in switching to more expensive low sulphur fuel. He opined that such assistance could be in the form of subsidy or permission to operators of ferry service to increase fares.

67. Mr Frankie YICK Chi-ming declared that he was a director of the 'Star' Ferry, Limited and expressed support for the proposal. Mr YICK pointed out that many local ferry operators were facing difficulty in their operation and suggested that the Administration should step up its consultation with them on the proposal as he found that some operators were not even aware of the proposal. Mr YICK said that a common problem faced by vessels operators was the need to change the engine of their vessels because engine parts were no longer available for replacement. The industry in general supported the use of low sulphur fuel and had been exploring new technologies for cleaner emissions. Echoing James TIEN, Mr YICK asked whether the Administration would provide assistance to vessel operators by way of subsidy for purchases of vessel engines and new ships for replacement or by allowing them to increase fares. He opined that the Administration should help the public understand that environment protection

came with a price.

68. AD/PC of MD said that the Administration took note of Mr YICK's views. He further said that the current proposal did not place additional requirement on vessel engines and that if vessel operators properly maintained the vessel engines, they could meet the proposed requirement for controlling dark smoke emission. On the assistance given to the industry at present, PASTH said that EPD had launched a three-year incentive scheme starting from September 2012 to encourage OGVs operators to switch to cleaner fuel by waiving half of the port dues.

69. The Chairman enquired whether river trade vessels from the Mainland could comply with the proposed requirement. AD/PC of MD said that if a vessel was properly operated and maintained, it would not emit dark smoke. Operators of river trade vessels were well aware of the requirement and had expressed confidence that they could comply with the requirement.

70. The Chairman concluded that members in general supported the proposal.

VI Any other business

71. There being no other business, the meeting was adjourned at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
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