

## **PILOTAGE ADVISORY COMMITTEE WORKING GROUP**

### **Proposed Amendment to Pilotage (Dues) Order, Cap. 84D**

#### **Purpose**

The purpose of this paper is for members' comments and discussion on the proposed amendment to Paragraph 4 of Part 2 of the Pilotage (Dues) Order, Cap. 84D to meet present pilotage needs.

#### **Background**

2. The Pilotage (Dues) Order, Cap. 84D provides for the amounts of standard pilotage dues, additional pilotage dues and other pilotage dues payable for pilotage services performed by licensed pilots.

3. Paragraph 4 of Part 2 of the Schedule provides that:

*“An additional pilotage due of \$700<sup>1</sup> per half an hour or part thereof shall be payable for any pilot service performed, where a pilot is required to proceed outwards beyond a pilot boarding area, from the time the ship passes a pilot boarding area outwards until the ship passes a pilot boarding area inwards.”*

4. On its suitability of applying to present pilotage services beyond pilot boarding stations, the Hong Kong Pilots Association Limited (HKPA) has consulted its legal advisor on the charging of additional pilotage dues under Paragraph 4 of Part 2 of the Schedule to Cap. 84D for the two scenarios below:

- a. When a pilot is required to travel by pilot boat outwards beyond a pilot boarding area to board an inbound ship and then pilot the ship inwards, past the pilot boarding area, to transit Hong Kong or go to an anchorage or a berth within Hong Kong waters; and

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<sup>1</sup> In the PAC meeting held on 14 January 2019, it was agreed to amend this additional due from \$700 to \$1400 per half hour or part thereof.

- b. When a pilot is required to pilot a ship outwards beyond a pilot boarding area, either to an anchorage or an area close to the Hong Kong Boundary and then disembark the ship and travel by pilot boat past the pilot boarding area to base.

5. HKPA was being advised that, as the law is currently drafted, the law does not cover all circumstances of now-a-day pilotage services such as the scenarios quoted in paragraph 4 above.

### **Request from HKPA**

6. HKPA will present the following proposals, option 1 & 2, raised by them.

7. HKPA suggested that pilots should be reasonably remunerated for the extra times and efforts in performing pilotage services in the two scenarios described in paragraph 4 above. HKPA opined that Cap. 84D should be suitably amended to accommodate all pilotage services performed in Hong Kong and suggested adding a new paragraph after paragraph 4 of Part 2. HKPA offered the following two options –

**Option 1 :** 4A. Where a pilot boards or disembarks from a ship otherwise than at a pilot boarding area, an additional pilotage of [\$] per half an hour or part thereof shall be payable for any pilotage service performed:

- a. Where a pilot is required to proceed outwards beyond a pilot boarding area, from the time the pilot passes a pilot boarding area outwards until the ship passes a pilot boarding area inwards; and
- b. Where the ship is required to proceed outwards beyond a pilot boarding area, from the time the ship passes a pilot boarding area outwards until the pilot passes a pilot boarding area inwards.

**Option 2 :** 4A. Where a pilot boards or disembarks from a ship otherwise than at a pilot boarding area, an additional pilotage due of [\$] per half an hour or part thereof shall be payable for any pilotage service performed from the time the pilot passes a pilot boarding area outwards until the pilot passes a pilot boarding area inwards.

### **Marine Department's Views**

8. Marine Department (MD) is of the view that while the pilots should be suitably remunerated, it is the basic principle of present legislation that remuneration should be payable for any pilotage service performed, provided that it is just and reasonable.

9. Cap. 84D does not cover the two scenarios raised by HKPA. Paragraph 4 of Part 2 covers scenario that pilotage service is performed where a pilot is required to pilot a ships to proceed outwards beyond a pilot boarding area and then later on return onboard the ship inwards passing a pilot boarding area. Paragraph 4 includes an element of "the ship passes a pilot boarding area" for both the outward and inward trip. As Paragraph 4 is currently drafted, it would not be applicable if the pilot does not pass a pilot boarding area while onboard the ship, such as returning to base on pilot boat after providing pilotage service to that ship.

10. As such, MD shares the view of HKPA that Cap. 84D should be amended to provide for additional due to be payable in the pilotage service scenarios raised by HKPA.

### ***Charging Principle***

11. However, following the principle of the Pilotage Ordinance, Cap. 84, additional pilotage dues should only be payable in direct relationship with the pilotage service performed. Additional pilotage dues in Part 2 of the schedule to Cap. 84D are payable for pilotage service performed in the following scenarios –

- a. special tasks, such as movement of oil rig or dead ship (para. 1 & 2);
- b. adverse weather (para. 3);
- c. proceeded outwards beyond a pilot boarding area

- (para. 4);
- d. required to board at a specific location (para. 5, 5A, 5B & 8);
- e. pilot being detained (para. 6);
- f. on notice of less than 3 hours (para. 7).

12. MD opines that HKPA's suggestion in paragraph 7 above contained an element of levying the additional pilotage due when pilotage service is not being performed, i.e. the time for conveyance of the pilot on the pilot boat. This is not in line with the charging principle adopted by Cap. 84.

### *Ambiguity in use of words*

13. MD proposes the following point for members' consideration.

14. The term "Pilot boarding area" is only used in paragraph 4 of part 2 in the schedule to Cap. 84D whereas "pilot boarding station" is being used in other parts of the applicable law<sup>2</sup>. Hence, it is suggested considering the necessity and opportunity in amending the term used in paragraph 4 from "pilot boarding area" to "pilot boarding station" (PBS) so as to bring it in line with use of words in other parts of the law.

### *Provision for additional dues*

15. In order to dovetail with the existing charging principle, MD proposes an alternative option below for members' consideration.

### *Option 3*

- a. Keep existing paragraph 4 as it is still applicable to some pilotage services provided now-a-day;
- b. Make new provision for an additional due be payable for the period between the time of the ship passes a pilot boarding area (station) and the time of the pilot board/disembark from the ship, using the same level of due as provided under paragraph 4, i.e. \$700<sup>3</sup> per half hour or part thereof; and
- c. Make new provision for an addition due be payable for pilotage service performed requiring the pilot to board/disembark from a

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<sup>2</sup> Section 10A, 10C, 10E, 10F and Schedule 2 of the Pilotage Ordinance (Cap. 84); Regulation 3, 16<sup>th</sup> & 17<sup>th</sup> Schedule of the Shipping and Port Control Regulations (Cap. 313A); and Section 56 and Schedule 3 of the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F).

<sup>3</sup> At the PAC meeting held on 14 January 2019, it was agreed to amend this additional due from \$700 to \$1400 per half hour or part thereof.

ship at a location beyond the pilot boarding area (station).

### **Discussion**

16. Members are requested to discuss and comment on the proposed options in paragraphs 7 and 15 above; and the point for consideration in paragraph 14 above.

### **Advice Sought**

17. Members' comments and advice are sought on the need and appropriateness of amending Cap. 84D.

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September 2019