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For Advice

Dumping at Sea Bill

Introduction

This paper seeks Members' comments on the Dumping at Sea Bill, which is a localised legislation to replace the Dumping at Sea (Overseas Territories) Order 1975, to enable Hong Kong to continue to abide by the provisions of the London Convention on the Prevention of Marine Pollution by the Dumping of Wastes at Sea (hereafter called the London Convention) after 30 June 1997.

Background

2. The dumping at sea of waste is governed by an international treaty called the London Convention which was applied to Hong Kong by Her Majesty's Government in 1975. At the same time, the Privy Council made the Dumping at Sea (Overseas Territories) Order 1975 which extended the provisions of the Dumping at Sea Act (1974) to Hong Kong and other dependent territories. Since then, Hong Kong has carried out its obligations under the London Convention by applying the provisions of this Order even though the legislation in the United Kingdom was repealed and replaced by the Food and Environmental Protection Act 1985.

3. Following the signing of the Joint Declaration, a programme to localise United Kingdom legislation applied to Hong Kong has been underway. In addition to localising the provisions of the 1975 Order, the draft Dumping at Sea Bill also proposes to remedy a number of deficiencies in the operation of the control scheme based on the Order which have been identified over the years.

The Bill

4. The Bill incorporates existing provisions of the 1975 Order which prohibits marine dumping activities except under and in accordance with a permit. The draft Bill specifies that the waste producer (typically the dredging contractor) or the owner of a vessel, aircraft or marine structure intended for scuttling should apply for a permit for dumping activities. The dumping operator is not allowed to load for dumping or incineration at sea or to dump or incinerate at sea unless he is satisfied that the waste producer has a permit as required.

5. The draft Bill at Annex also seeks to address some deficiencies in the operation of the control scheme based on the Order through the following provisions:

(a) Marine Pollution Abatement Notice

6. The need for an abatement notice is to provide a means of combatting the significant quantities of suspended solids, and other waste materials which may be released during dredging, borrowing, marine stockpiling, and other maritime construction activities. The pollution effect is similar to dumping, but unlike dumping the problem can be avoided with appropriate work supervision. A full permit control system, therefore, is not considered to be necessary. We propose that the Director of Environmental Protection (DEP) be given the authority to serve abatement notices in respect of marine pollution caused by the dumping or release of waste and other matters from these activities. This is similar to the nuisance abatement notices under the Air Pollution Ordinance and the Noise Control Ordinance. The abatement notice provision will enable DEP to respond to problems which have actually occurred and impose requirements for reducing or eliminating the pollution. Failure to comply with the abatement notice will be an offence. We intend to implement these controls within two years of the Bill becoming law once a technical memorandum establishing the procedures for issuing abatement notices has been promulgated.

(b) Designation of Marine Dumping Areas

7. The London Convention requires that the detailed characteristics of a dumping site and the possible environmental effects should be considered in determining the suitability for the purpose of marine dumping. The designation of the areas is covered in this Bill whilst the environmental acceptability aspects are covered in the Environmental Impact Assessment Bill.

(c) Power to Take Preventive Actions

8. There are no existing provisions to enable enforcement officers to take preventive action against impending offences. Powers are now provided in the draft Bill to enable enforcement officers to take preventive action against impending offences, such as loading a barge with waste materials without a dumping permit and without reasonable explanation that the materials are intended for purposes other than dumping. The enforcement officers would be empowered to stop and detain a vessel in order to make investigations and to prevent an offence from being committed.

(d) Penalty for Contravening the Legislation

9. The existing fine for contravening the legislation is \$5,000. It is proposed to raise the level of penalties to \$200,000 plus six months of imprisonment in the Bill to make the penalty commensurate with the seriousness of the offence and to bring the penalties in line with those under other environmental legislation, such as the Waste Disposal Ordinance and the Water Pollution Control Ordinance.

(e) Control on Waste Producers and Dumping Operators

10. At present, either the waste producer or dumping operator can apply for a dumping permit. Hence, the liabilities of the two parties involved in dumping activities are not clear. To overcome this problem, we need to better define the role and responsibility of both the waste producers and dumping operators. In this connection, a dumping permit will only be issued to the waste producers. When applying to DEP for a permit, the waste producer will have to provide detailed information on the source, nature and quantity of waste to be dumped, the dumping operator, the vessels to be employed and other relevant information. When considering the waste producer's application, DEP would pay due regard to all relevant factors including the conduct of the dumping operator and the suitability of the vessel to be used. If the dumping operator and /or the vessel is found to be unacceptable, the application will be rejected and the waste producer has to reapply with another dumping operator. With this screening process, irresponsible operators can be prevented from carrying out authorised dumping operations. They may also be prosecuted for contravention of permit conditions.

Consultation

11. We have applied the provisions of the 1975 Order in Hong Kong for 19 years. The Bill only seeks to introduce a piece of local legislation to enable continuation of these controls after 30 June 1997. Hence separate consultation is not considered necessary at this stage. However, as the system of abatement notices is a new feature in the control framework, affected parties will be consulted on the technical memorandum which establishes the procedures for issuing abatement notices when a dumping operation causes marine pollution. We intend to implement this system of abatement notices within two years of the Bill becoming law and after consultation with relevant parties.

Legislative Timetable

12. We intend to submit the draft Bill to ExCo in November 1994 and introduce it to LegCo for First Reading later that month.

Advice Sought

13. Members are invited to comment on the the Dumping at Sea Bill at Annex.