

Executive Summary

Direct Investigation Report

Marine Department's Arrangements for Private Vessel Moorings

Foreword

Local vessels are allowed to anchor at any safe and suitable positions within Hong Kong waters¹ according to their daily operational needs. There is no need to seek approval or designation of space from the Marine Department ("MD"). The Government will also ensure sufficient typhoon shelter spaces within Hong Kong waters for local vessels to berth during inclement weather. Meanwhile, MD has designated 43 areas for private vessel moorings ("PM areas") within Hong Kong waters. Vessel owners may apply for written permissions from MD for laying private moorings ("PMs") in those areas as fixed spaces ("PM spaces") for mooring their private vessels.

Our Findings

2. In recent years, with the steady increase in the number of pleasure vessels in Hong Kong, the demand for PM spaces is on the rise. This direct investigation has found inadequacies on the part of MD in regulating the subletting activities of PMs, and in its arrangements for allocation of PM spaces. As the demand for PM spaces exceeds the supply, it has indirectly engendered other problems such as illegal mooring buoys, occupation of typhoon shelters and the berth renting business of shipyards.

(I) Problems in Regulation of PM Subletting

(1) Lack of Enforcement Action Resulting in 40% of Unauthorised PMs

3. Before December 2017, the written permissions issued by MD contained a standard clause stipulating that the PM space was for the exclusive use of a "designated vessel".² In other words, it would be a breach of permit condition if the PM was sublet/lent for use by another vessel, and MD might revoke the written permission or even prosecute the PM owner. However, MD's investigation in 2013 found that more

¹ Except where it is prohibited for the purpose of anchorage.

² Except for the written permissions issued to yacht clubs.

than 40% of PMs³ were not used for mooring the PM owners’ vessels. It reflects that subletting/lending is quite common. Information shows that the market rent of a PM can be as high as several thousand dollars, or even over \$10,000 per month, which is many times higher than the administration fee charged by MD.⁴

4. Our investigation has revealed that between 2008 and 2013, MD had taken no enforcement action against subletting cases. MD has turned a blind eye to unauthorised subletting for years, rendering the relevant clause practically useless.

(2) Inability to Regulate Subletting Activities under Existing Legal Framework

5. In 2013, after seeking legal advice, MD held that its former condition of “designated vessel” is ultra vires. Consequently, MD removed the relevant condition in December 2017. During our investigation, MD indicated that since PM subletting was permitted under existing legislation, there was actually no problem in it. MD also considered such activities were similar to other legitimate economic activities (such as transporting ice for fishing vessels) carried out in Hong Kong waters. Moreover, as PMs are private property, “subletting of PMs does not involve profiteering from public resources”.

6. We certainly do not accept such views. While PMs are private property, the locations in the waters available for laying PMs are limited public resources. If MD allows subletting of PMs, the owners can still rent out the PMs for profits even when they do not need to use them, and our precious public resources will continue to be occupied by people with vested interests but no actual needs. As a result, the owners can run a lucrative business at zero risk while those on the waiting list of PM spaces can only keep waiting. Moreover, anyone can “jump the queue” and gain priority in using the PM spaces so long as he/she is willing to pay a high rent, thus disrupting the original “first-come, first-served” system.

³ Excluding the moorings laid by yacht clubs.

⁴ MD charges the fee for each PM on a monthly basis, and the details are as follows:

Location of PM spaces	In Causeway Bay, Aberdeen West and Aberdeen South Typhoon Shelters	In all other Typhoon Shelters and elsewhere within the limits of Victoria Port	Elsewhere in Hong Kong waters
Vessel length			
5 metres and under	\$270	\$140	\$73
8 metres and under	\$475	\$270	\$140
11 metres and under	\$670	\$405	\$210
Over 11 metres	\$670 plus \$210 for every 3 metres exceeding 11 metres	\$405 plus \$140 for every 3 metres exceeding 11 metres	\$210 plus \$140 for every 3 metres exceeding 11 metres

7. In our view, what is “legal” is not necessarily “reasonable”. If subletting of PMs is not illegal under the existing legal framework, MD should review and consider amending the relevant legislation.

(II) Arrangements for Allocation of PM Spaces and Waiting List

(1) Low Turnover Rates with Cases Waiting for over 10 Years

8. Demand for PM spaces in some popular districts has exceeded supply. As at 30 June 2018, 41 of the 43 PM areas⁵ had been fully occupied, and there were more than 500 outstanding cases on the waiting list. In eight PM areas, the applicants at the top of the waiting lists had been waiting for more than a decade, with the longest waiting time being 14 years.

9. For written permissions issued before February 2018, there was no validity period specified, meaning that the applicants could use the PM spaces for as long as they want. Moreover, as MD no longer prohibits the renting/lending of PMs, there would be even less incentive for owners to surrender their PM spaces, thereby significantly diminishing the chance of natural turnover of those spaces. Information from MD shows that written permissions for PMs in various districts had been issued for an average of 20 to 35 years.

10. We consider that MD should examine its arrangement in allocating PM spaces and consult the stakeholders with a view to increasing their turnover. For example, a validity period should be specified in all the written permissions, and upon expiry of the permissions the PM spaces concerned will be reallocated. MD should also explore other methods in allocating PM spaces (such as balloting and tender).

(2) Administration Fee Not Adjusted for 24 Years

11. MD has not adjusted the administration fee for PMs since 1995⁶. MD emphasises that the fee is reviewed annually according to the Government’s established mechanism, and that the principle of cost recovery is in line with the relevant legislation. Nevertheless, the existing administration fee is far below the market rates of PMs, making subletting of PMs a profitable business. In our view, if MD cannot increase

⁵ The newly built Hei Ling Chau PM Area is not included.

⁶ During the period between 1998 and 2004, the Government had frozen the fee.

the administration fee under the existing legal framework, it should explore other possible charging mechanisms and modes.

(3) Yacht Clubs Allowed to Lay Large Number of PMs for Profits

12. We are particularly concerned about the situation that four yacht clubs (together they hold more than 800 PM spaces) have been allowed to lay and rent out large numbers of PMs for profits. MD is in effect subsidising those yacht clubs with precious public resources. We consider it necessary for MD to review whether the existing arrangements are appropriate. For example, it should consider whether periodic open tenders are necessary.

(4) Unclear Targets for Inspections

13. MD has not set any targets for its inspections of PMs. As a result, the number of spot checks conducted every year fluctuated significantly. Between 2014 and 2016, MD inspected only 121 to 449 PMs each year. Given that there are nearly 2,000 PMs throughout the territory, the number of inspections was hardly adequate.

(III) Enforcement against Illegal Mooring Buoys Lacked Deterrent Effects

14. Our investigation found that MD's enforcement against illegal mooring buoys lacked deterrent effects. Offenders could get away without any consequences so long as they temporarily removed the buoys⁷ in question before the date specified on the Removal Notice. Moreover, because of difficulties in gathering evidence, MD had never instituted any prosecutions in the past.

15. This Office considers that MD should review its enforcement strategies and consider shortening the notice period and exploring other methods (e.g. deploying decoys) to track down the owners of illegal buoys. It should also examine the viability of detaining the vessels moored to illegal buoys or prosecuting the vessel owners.

⁷ Take Pak Sha Wan in Sai Kung as an example, MD discovered 455 illegal mooring buoys in five years. Nearly 70% of those buoys were removed by their owners after the Department had posted a Removal Notice.

(IV) pontoons “Occupying Berthing Spaces” at Typhoon Shelters for Profits

16. There had been media reports that pontoons were being used to occupy berthing spaces at Kwun Tong Typhoon Shelter for providing berthing services to yachts for a fee. Our field observations also discovered a number of yachts berthing at landing pontoons or flat top work barges. MD asserted that it was not illegal for pontoons to provide water, electricity and berthing services to yachts for a fee. It had not received any complaints about threats or blackmail. Since November 2018, however, the Police had joined hands with MD in strengthening patrols and conducted joint operations at Kwun Tong Typhoon Shelter to prevent illegal behaviour in the Shelter.

17. Our concern is whether the right of other vessels to the fair use of typhoon shelters had been affected. We recommend that MD closely monitor the situation and join forces with the Police to combat illegal practices that affect the use of typhoon shelters by vessels.

(V) Shipyards Profiteered by Renting out Berthing Spaces against Regulations

18. The sites of local shipyards are leased out by the Lands Department (Lands D) in the form of short term tenancies. There were media reports that several shipyards allegedly violated the land use conditions by renting out slipways for yachts to berth. While enforcement of short term tenancies is Lands D’s responsibility, we are concerned that if shipyards often rent out their slipways, maintenance and support services for local vessels would suffer in the long run.

Recommendations

19. In the light of the above, The Ombudsman makes ten improvement recommendations to MD:

- (1) to review and consider amending the relevant legislation so that MD can re-enforce the requirement that restricts the use of PMs to only “designated vessels”;
- (2) to review the waiting situation and examine ways to expedite the turnover of PM spaces (e.g. specifying a validity period in permissions);

- (3) to review the allocation arrangement for PM spaces and explore whether other methods (such as balloting) should be used to allocate PM spaces;
- (4) to review the charging mechanism for laying PMs;
- (5) to review the situation in which yacht clubs hold for a long time a huge number of PM spaces for profits, and consider the need for periodic public tenders;
- (6) to review the current arrangement for conducting spot checks of PMs and consider setting inspection targets;
- (7) to review the current enforcement strategies against illegal mooring buoys and consider shortening the notice period;
- (8) to take active measures to track down owners of illegal mooring buoys (such as by deploying decoys), and examine the viability of detaining vessels berthed at illegal buoys or prosecuting the vessel owners;
- (9) to closely monitor whether the fair chance of using typhoon shelters would be affected by those fee-charging pontoons for berthing; and join forces with the Police to combat illegal activities to drive away other vessels; and
- (10) to discuss further with Lands D long-term measures to monitor shipyards and prevent them from renting out berthing spaces.

Office of The Ombudsman
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