

Executive Summary

Direct Investigation Report

Government's Control of Illicit Fuelling Activities

Introduction

The prevalence of illicit fuelling activities in Hong Kong has long been a matter of public concern. Premises carrying out such illegal operations (commonly known as “illegal filling stations”) are found in various districts, and some of them are even close to residential neighbourhoods. These stations generally lack fire protection and firefighting equipment and pose fire safety threats to the public. Against this background, the Office of the Ombudsman launched this direct investigation to examine the Government's measures to combat illicit fuelling activities, with a view to exploring areas for improvement.

Our Comments

2. At present, the Fire Services Department (“FSD”) combats illicit fuelling activities under relevant legislations (including the Fire Services (Fire Hazard Abatement) Regulation, Dangerous Goods Ordinance (“DGO”) and Dangerous Goods (General) Regulations) from the fire safety perspective, mainly through surprise inspections, complaint handling and inter-departmental joint operations. To this end, FSD has set up an Anti-illicit Fuelling Activities Task Force (“Task Force”). Moreover, FSD combats the use of dangerous goods vehicles (“DGV”) for illicit fuelling activities through the licensing regime for DGV. FSD also mounts publicity campaigns against such illicit activities through various channels and platforms.

3. After examining its work, we consider FSD to have conscientiously endeavoured, within the confines of existing legislation and manpower resources, to combat illicit fuelling activities through enforcement action and the licensing regime for DGV, so as to protect public safety. Nevertheless, illegal filling stations remain prevalent in view of their huge demand and profitability. To deter such operations and on the basis of existing legislation, we have identified the following areas for improvement in FSD's manpower resources, enforcement action, statutory penalties, and publicity and education.

Manpower Resources

4. The Task Force comprises only seven members, including a supervisor and other members divided into three teams. In 2020 each team conducted an average of around 1.17 inspections per working day. In addition to inspections, the Task Force is also responsible for gathering intelligence and conducting joint operations with relevant departments, mainly the Customs and Excise Department (“C&ED”) and the Hong Kong Police Force (“HKPF”). However, there were as many as 350 black spots associated with illegal filling stations where the Task Force had carried out inspections and enforcement action. Constrained by relatively tight manpower, FSD should review the Task Force’s existing staff establishment and, based on actual circumstances, explore the need for its adjustment through internal redeployment and/or seeking additional resources from the Government, so as to cope with its heavy workload.

Enforcement Action

5. In recent years, some illegal filling stations have been run in more flexible modes to evade FSD’s enforcement action. For instance, the diesel for sale is stored in fuel tanks or barrels on board a goods vehicle, and the stock of diesel at the illegal filling station is kept below the statutory exempt quantity. We also notice that under the current DGV licensing regime, a licence holder intending to use his/her DGV for operating an illegal filling station could engage a third party to run the business on-site. This would make it difficult for FSD to establish the licence holder’s involvement, thereby reducing the chance of licence suspension or revocation.

6. Concurrently with this direct investigation, FSD has been undertaking an exercise to amend the DGO and its subsidiary legislation. The amendments include reducing substantially the statutory exempt quantity for storage and conveyance of diesel from 2,500 litres to 500 litres. The amendments are expected to be implemented in the first quarter of 2022. We believe that such measure would be conducive to stepping up control of illicit fuelling activities by FSD. Nevertheless, given the various modes adopted by operators to evade regulation, coupled with the prevalence of illegal filling stations, FSD should continue to strengthen its enforcement efforts. We recommend that FSD, where manpower reallocation is practicable, consider increasing the frequency of surprise inspections and joint operations with C&ED and/or HKPF.

Penalties

7. Between 2016 and 2021 (up to 30 June), no offenders were sentenced to imprisonment after being convicted of participating in illicit fuelling activities. The maximum fines imposed by the court ranged from \$5,000 to \$50,000, which were insufficient to create an adequate deterrent effect in comparison with the profits derived from operating illegal filling stations. We are pleased to note that among the legislative amendments already made, the maximum levels of fines under relevant legislation have been amended to increase the deterrent effect. We recommend that FSD continue to monitor whether the amended penalties are effective in deterring illicit fuelling activities. Where the effect is unsatisfactory, FSD should timely consider further legislative amendments to raise the penalties.

Publicity and Education

8. We notice that FSD mainly relies on traditional media and platforms for publicity and public education, with less use of new media for enhancing the public's vigilance against illicit fuelling and encouraging them to report such activities. FSD's publicity and education initiatives are aimed at the general public, less often oriented to the potential customers of illegal filling stations, i.e. professional drivers. Hence, we recommend that FSD, on the basis of existing publicity campaigns, explore ways for diversifying the channels and methods of publicity and public education, with a view to encouraging the public to report illicit fuelling activities, and promoting awareness of the hazards posed by illegal filling stations among potential customers.

Exploring the feasibility of introducing control-at-source improvement measures

9. Our investigation shows that some oil companies in Hong Kong sell Euro V diesel¹ at wholesale prices to customers for their own use and distributors for resale. However, neither FSD nor the oil companies concerned have any idea about the identity of the clients purchasing diesel from the distributors. As such, even if the diesel is obtained for operating illegal filling stations, FSD would be unable to trace those cases. Moreover, the legislation enforced by FSD does not regulate, in any form, the supply and sale of dangerous goods (including Euro V diesel), nor does it empower FSD to mandate oil companies or distributors to provide client information for tracking the flow of transactions. In other words, under the existing regulatory framework, while FSD

¹ Euro V diesel is light diesel oil. According to the Environmental Protection Department's website, since 1 December 2007, Euro V diesel has been exclusively offered at all local fuel filling stations. Since 1 July 2010, the Government has tightened the statutory specifications of motor vehicle diesel to Euro V level.

has endeavoured to combat illicit fuelling activities, its hands are tied in terms of stemming the supply of fuels for illegal filling stations, and hence its effort can hardly tackle the root of the problem. To address the problem of illegal filling stations at root, a more effective approach is to attempt to stem the supply of fuels for these stations.

10. In our view, the Government may evaluate the effectiveness of the aforesaid improvement measures after implementation for a certain period of time. If the results are unsatisfactory, we recommend that the Government explore the feasibility of introducing control-at-source improvement measures, so as to combat illicit fuelling activities at the source of supply. The existing market of Euro V diesel involves many operators and stakeholders in the sector. When implementing the recommendation, the Government would need to achieve the effect of combating illicit fuelling activities at source on the one hand, and minimise the impact on the sector on the other. We appreciate that the formulation of related improvement measures would be complex, and their successful implementation may require the professional expertise and experience of multiple departments. Therefore, should the need for a study arise, we recommend that consideration may be given to the Security Bureau (“SB”) in taking the lead to carry out the feasibility study. It may consider designating the responsibilities and duties of relevant departments, as well as setting up an inter-departmental collaboration mechanism. In undertaking the study in the future, SB may consider suitable arrangements having regard to the distribution market of diesel at that time.

Our Recommendations

11. In sum, this Office has made the following recommendations to FSD and SB:

FSD

- (1) review the existing staff establishment of the Task Force and, based on the actual circumstances, explore the need for its adjustment to cope with the heavy workload;
- (2) after implementing the recommendation in **paragraph 11(1)**, consider increasing the frequency of surprise inspections and joint operations with C&ED and/or HKPF;

- (3) continue to review the amended penalties for greater deterrence against illegal fuelling activities; and
- (4) explore ways for diversifying the channels and methods of publicity and public education, so as to encourage the public to report illicit fuelling activities and promote awareness of the hazards posed by illegal filling stations among potential customers.

SB

- (5) review the measures in paragraph 11(1) to (4) after implementation for a certain period of time and, if the results are still unsatisfactory, explore the feasibility of introducing control-at-source improvement measures, so as to combat illicit fuelling activities at the source of supply.

**Office of The Ombudsman
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