

# Executive Summary

## Direct Investigation Report

### Problem of Alleged Illegal Operation of Kaito Ferry Service

#### Introduction

In recent years, excursions to the outlying islands and remote local spots have become popular pastimes of the public, and kaito is the major mode of marine transport for passengers commuting to and from remote coastal destinations. Kaito service operators are required to obtain kaito ferry service licences from the Transport Department (“TD”). Nevertheless, the media has reported on the problem of unlicensed kaito from time to time. Our site visits also revealed prevalence of illegal kaito service operated by local vessels.

2. The Marine Department (“MD”) is responsible for the licensing of local vessels and ensuring marine safety, while TD is empowered by relevant legislation to regulate licensed kaito ferry services. Given the thriving demand for kaito service, it is incumbent upon the authorities to step up monitoring this form of marine transport and curbing illegal carriage of passengers, so as to ensure public safety.

3. After examining the authorities’ enforcement against illegal operation of kaito service, this Office has the following observations and recommendations.

#### Our Findings

***(I) MD’s Patrols Ineffective to Deter Illegal Carriage of Passengers by Local Vessels***

#### ***Frequency of Special Patrols Relatively Low***

4. Between 2017 and 2020, the average number of special patrols conducted by MD targeting illegal carriage of passengers by local vessels was 45.5 per year, or less than once per week across the territory. They were mostly conducted on weekends. MD’s decoy operations to collect evidence<sup>Note</sup> during the same period were even more

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<sup>Note</sup> Referring to operations in which MD officers posing as passengers to collect evidence on local vessels engaged in point-to-point transport service.

sporadic at less than once per year. We consider the frequency of MD's patrols against illegal carriage of passengers too low in the past.

5. We are pleased to note that MD significantly intensified its patrols and decoy operations against illegal carriage of passengers in the second half of 2021. With the prevalence of illegal kaito service in recent years, MD needs to further increase the frequency of special patrols and decoy operations (especially at the waterfronts and piers where more kaito routes or popular recreation spots are located), as part of its measures to combat illegal carriage of passengers. Not only will such action lead to better regulatory results, it can also clearly convey to the public MD's determination of enforcement against illegal carriage of passengers by local vessels.

### **Inspections and Investigation Work of Vessels Need Improvement**

6. Our investigation revealed that in a case even when a vessel inspected was suspected of violating marine legislation and the persons on the vessel only gave simple explanations, MD officers did not follow up or make further enquiries to verify their justifications. MD officers should improve the investigation process and stringently enforce the statutory provisions and MD's licensing requirements so as to enhance the effectiveness of patrols and deter illegal carriage of passengers.

7. Admittedly, upon detecting a suspected breach, whether a patrol officer should accept the justification given by the persons concerned depends on the actual circumstances on board and the officer's own judgement. We suggest MD to consolidate its experience of patrols, decoy operations and prosecutions, and draw up guidelines on inspection of vessels for detecting common irregularities found in the carriage of passengers associated with kaito service for reference and compliance by patrol officers. It should also remind the operators and the public to adhere to the relevant safety standards.

### ***(II) MD Failing to Clarify Meaning of Using Class IV Vessel Exclusively "for Pleasure Purposes by Owner/Charterer"***

8. MD asserted that Class IV vessels are not allowed to be used for the provision of kaito ferry service. Nevertheless, based on media reports and the observation of our site visits, Class IV open cruisers are often used for unauthorised kaito service. The situation was also confirmed by the outcomes of MD's decoy operations in the second half of 2021. The potential risks to public safety are of concern.

9. Pursuant to marine legislation, a Class IV vessel shall only be used by the owner or the person to whom it is let exclusively for pleasure purposes. However, we note that some operators used Class IV pleasure vessels for unauthorised kaito service. They used the pretext of operating sightseeing tours as a cover when in fact they had been providing point-to-point passenger service and charging a fare per head. In the two inspection cases observed during our site visits, the coxswains of the pleasure vessels claimed the purpose of their journey to be “sightseeing” and “rock viewing” respectively. In both cases, MD officers did not query whether there was any breach of the provision of using a vessel “exclusively for pleasure purposes” by the owner or charterer. Meanwhile, the law stipulates that a Class IV vessel should only be used to carry the owner or charterer of the vessel and their relatives and friends for pleasure purposes. If a charterer carries his/her customers (who are not the company’s members/employees or their relatives and friends) for reward, it is unclear whether such activities comply with the statutory provision. The general public may not be entirely sure on the meaning of pleasure purposes as permitted for Class IV vessels. There is also ambiguity regarding whether such passengers are covered by the third party risks insurance of the vessels.

10. At present, the meaning of using Class IV vessels exclusively “for private pleasure purposes” is not defined by the laws. We consider that MD have the responsibility to explain clearly how to comprehend and comply with the statutory provision of “using exclusively for pleasure purposes” by owner or charterer. In particular, MD should provide owners, agents and coxswains of Class IV vessels with examples to illustrate the carriage of passengers permitted or not permitted under the legislation. This will not only facilitate the compliance by owners, agents and coxswains, but also provide frontline MD officers with further guidelines for more effective enforcement.

### ***(III) TD Lacking Effective Measures to Assist the Public to Identify Unlicensed or Illegal Kaito Service***

11. There is no definition of “kaito” or “kaito service” under the legislation. To tackle the existing problem of illegal kaito service, TD should provide the public with clear and explicit information about which modes of marine transport service are regarded as kaito service requiring a TD licence, and in what circumstances kaito service or passenger service is regarded as illegal. The information will help local vessel owners and prospective marine transport operators better understand the laws and the

authorities' requirements, so as to avoid illegal carriage of passengers. More importantly, it will assist the public to distinguish between legal and illegal kaito or passenger service and urge them not to opt for illegal service for their own safety.

12. In the past, TD only required kaito service licensees to display the service details conspicuously on the vessels, but did not require them to affix any prominent label on the hulls of vessels. As such, the public could hardly recognise from the exterior look whether a vessel was the one specified on the kaito service licence. Following the launch of this direct investigation, TD has listed on its website the vessel numbers of vessels approved under respective licenses. Meanwhile, all kaito service licensees are required to display a label relatively large in size in the format prescribed by TD on the specified vessels conspicuously. We believe that with adequate publicity, the vessel number and the designated label will facilitate the public's easy identification of kaito ferries approved by the Government.

#### ***(IV) Overlooking Problem of Unlicensed Kaito Service***

13. While TD's contractors would conduct surveys at the berthing points of licensed kaito routes, vessels without a kaito service licence are not under their surveillance. Based on the existing surveillance, TD can hardly come to grips with the operation of unlicensed kaito service and the severity of the problem.

14. We are of the view that TD, which is responsible for granting kaito service licences and monitoring the service of licensed operators, should take the initiative to understand whether there are vessels providing unlicensed kaito service at various locations or routes and how such service is operated. If there is a serious problem of unlicensed kaito service at certain locations or routes, it indicates a high demand for public transport and that the levels of existing service approved by the Government are insufficient. When processing applications for kaito ferry service licence, TD can assess the supply and demand of the proposed kaito routes based on its survey results. If a licensed operator is found to have illegally used unspecified vessels to provide the relevant kaito service, TD should consider whether the licensee has in fact maintained a proper and efficient ferry service. Accordingly, TD should decide whether to revoke or renew the licence to ensure public safety.

15. Besides, the Hong Kong Police Force ("HKPF") stated that while its major duties are to maintain law and order and combat crimes at sea, the routine enforcement against illegal operation of kaito service is led by MD. Nevertheless, in monitoring the

carriage of passengers by local vessels, MD will not focus on whether the vessels are granted with any kaito ferry service licences. In other words, no department is currently dedicated to monitoring the issue of unlicensed kaito service.

16. TD, as the licensing authority of ferry service (including kaito service), should have monitored the situation of unlicensed kaito service. Upon detecting suspected illegal operation of kaito service, TD should make referrals promptly to HKPF to prevent the irregularities from persisting. On the other hand, unlicensed kaito service often involves other irregularities posing a potential threat to passenger safety. MD, when carrying out regular patrols, should keep watch for any vessels suspectedly engaging in unlicensed kaito service, and promptly refer those suspected cases to TD and HKPF for further action.

***(V) Need to Step up Publicity and Education to Raise Public Awareness of Safety in Using Kaito Service***

17. In choosing a kaito service, members of the public generally only consider the fares, route and timetable of the service. They may be unaware that kaito routes should obtain prior approval from TD as well as satisfy the conditions and restrictions on vessel operation and carriage of passengers prescribed by MD, and may overlook the safety of the journey. TD and MD, therefore, should step up publicity on kaito service provided by local vessels. Moreover, MD should raise public awareness of safety in using kaito service, drawing their attention to which classes of vessels are permitted to operate kaito service, the location of life jackets on board and the proper way to don a life jacket.

**Recommendations**

18. In view of the above, The Ombudsman has made ten recommendations for improvement to MD and TD:

***For enhancing deterrence against illegal carriage of passengers***

- (1) **MD** to conduct more frequent patrols and decoy operations targeting illegal carriage of passengers (especially at the waterfronts and piers where more kaito routes or popular recreation spots are located);

- (2) **MD** to draw up guidelines for frontline patrol officers on inspection of vessels for detecting the common irregularities found in carriage of passengers;
- (3) when carrying out regular patrols, **MD** to keep watch for any vessels suspectedly engaging in unlicensed kaito service and promptly refer those cases to TD and HKPF for further action;
- (4) **MD** to step up enforcement and draw up clear guidelines on tackling cases of breach of the statutory provisions for carriage of passengers and safety standards for life-saving appliances on board; and to remind the operators and the public to adhere to the requirements;

***For strengthening dissemination of information to assist the public identification of illegal carriage of passengers on vessel***

- (5) **MD** to explain clearly to the public how to comprehend and comply with the requirement that a vessel is to be used “exclusively for pleasure purposes” by its owner or charterer as specified in section 6 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, with specific examples to illustrate the carriage of passengers permitted or not permitted under the legislation;
- (6) **TD** to provide public with information about the elements of marine transport that constitute kaito service requiring such a licence from TD;
- (7) **TD** to step up publicity about the label of licensed kaito ferries and the operation of licensed kaito routes with specified vessels so as to assist the public’s easy identification of kaito ferries approved by the Government;

***For proactively addressing the problem of unlicensed kaito service***

- (8) **TD** to assess the supply and demand of kaito service, evaluate the problem of illegal kaito service (including operation of kaito routes with vessels not specified on the licences), and review the standard of the services of licensed kaito routes, so as to alleviate the situation of insufficient supply;

- (9) **TD** to implement measures for monitoring illegal kaito service to ensure prompt referral of suspected violations of the Ferry Services Ordinance to HKPF for further action; and

*For further protection of vessel passengers*

- (10) **MD** to step up publicity to raise awareness of passenger safety on chartered pleasure vessels and kaito ferries, including paying attention to which classes of vessels are permitted for kaito service, the location of life jackets on board and the proper way to don a life jacket.

**Office of The Ombudsman**  
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