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Secretary for Security
(Attn : Mr David Wong
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24 January 2002

BY FAX
Fax No. : 2868 9159
Total no. of page(s) : 6

Dear David,

Dangerous Goods (Amendment) Bill 2000

As regards your paper of January 2002 and the 9th draft of CSAs (English version), we have the following comments.

Section 12(2)(e) of the Dangerous Goods Ordinance ("DGO")

It is noted that clause 8 is amended by adding "aircraft" after "vessel" in section 12(2)(f) of the DGO to make it consistent with subsections (b) and (e). However, it is also noted that the term "aircraft" is omitted in the reference to "power to stop, board and search and any person on board such vessel or vehicle and prevent any person from approaching or boarding such vessel or vehicle until such vessel or vehicle has been searched" in section 12(2)(e). Would it be desirable to add "aircraft" to the appropriate place in the provision?

Merchant Shipping (Safety) Ordinance (Cap. 369)

In paragraph 11 of your paper, you mention that section 22 of the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation ("MS(S)(DG&MP)Regulation") is a possible defence provision. In this connection, it is noted that the term "dangerous goods" in section 1 of the MS(S)(DG&MP)Regulation (**Annex I**) is not the same as that to be amended, in the Merchant Shipping (Safety) Ordinance ("MS(S)Ordinance"), under the Bill. In such case, would you clarify the availability of the defence provision under

section 22 of the MS(S)(DG&MP)Regulation to a person who has failed to perform certain duties arising from the new definition of "dangerous goods" under the MS(S)Ordinance?

Further to the issue of adequate protection for the innocent party, it is noted that the new definition of "dangerous goods" applies, in particular, to Part VIII of the MS(S)Ordinance (**Annex II**). Do you consider, in the light of the Members' concern about the new definition of "dangerous goods", that the innocent parties are also adequately protected under the MS(S)Ordinance?

Since members wish to decide by 28 January 2002 whether there is a need for further meeting to discuss the Bill, we should be grateful for your reply, in both languages, to reach us by tomorrow.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

Encl

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[附屬法例]

[Subsidiary]

商船(安全)(危險貨物及海洋污染物)規例

MERCHANT SHIPPING (SAFETY) (DANGEROUS GOODS AND MARINE POLLUTANTS) REGULATION

(第 369 章第 101 及 107 條)

(Cap. 369, sections 101 and 107)

(第 413 章第 3 條)

(Cap. 413, section 3)

[1994 年 12 月 2 日]

[2 December 1994]

第 1 部

PART I

一般條文

GENERAL

1. 釋義

1. Interpretation

(1) 在本規例中，除文意另有所指外——
“加上耐久標記”(durably marked)指按照本規例加上標籤或其他標記，而且在包裝於海中浸漬超過 3 個月後仍可予辨識，而“耐久”(durable)須按此解釋；
“代理人”(forwarder)指將危險貨物或海洋污染物交付船舶或該船舶的代理人的人；
“付運人”(shipper)指將危險貨物或海洋污染物委託以海路運輸的人，不論該人是主事人或是另一人的代理人；
“包裝物”(package)指在《海運危險貨物規則》中所規定的個別包裝或容器，並包括貨物集裝箱、輕便液罐、液罐集裝箱、液罐車輛或其他車輛或其他裝載危險貨物或海洋污染物以作付運的貨物單元，而“緊包裝”(packaging)須按此解釋；
“正確技術名稱”(correct technical name)指足以識別貨物危險特性的貨物描述，包括在《海運危險貨物規則》內所描述的專有名稱；
“危險貨物”(dangerous goods)指——
(a) 在《海運危險貨物規則》或國際海事組織的其他出版物中，歸類為就海上運輸而言屬危險的貨物；及
(b) 如在海上海運時，其性質可能是危險的任何其他物質或貨物，並包括空容器及先前曾用於運輸危險貨物的空桶或空貨櫃的剩餘物，但如該等容器、空桶或貨櫃——
(i) 已予清潔及使乾燥；
(ii) 已消除氣體或液體(按情況而定)；或
(iii) 在先前裝載放射性物質後，已予清潔及要為封閉，
則屬例外，然而危險貨物並不包括在運輸貨物或物質的船舶上，作為該船舶設備或備用品一部分的貨物；

(1) In this Regulation, unless the context otherwise requires—
“RCII Code” (《散化規則》) means the 1993 edition of the IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
“Bulk Cargoes Code” (《散貨規則》) means the 1991 edition of the IMO Code of Safe Practice for Solid Bulk Cargoes;
“correct technical name” (正確技術名稱) means a description of the goods sufficient to identify their dangerous characteristics, including any proper name described in the IMDG Code;
✓ “dangerous goods” (危險貨物) means—
(a) goods classified in the IMDG Code or any other IMO publication as dangerous for carriage by sea; and
(b) any other substance or goods the properties of which might be dangerous if such substance or goods were carried by sea, and includes empty receptacles, and residues in empty tanks or cargo holds, which have been used previously for the carriage of dangerous goods, except where such receptacles, empty tanks or cargo holds have been—
(i) cleaned and dried;
(ii) gas freed or ventilated as appropriate; or
(iii) where the previous contents were radioactive substances, cleaned and adequately closed,
but shall not include goods forming part of the equipment or stores of the ship in which goods or substances are carried;

(6) 若港註冊船舶的船長，如在海面上接獲遇險訊號或從任何途徑接獲有船隻或航空器遇險的資料，而無法或在特殊情況下認為前往協助遇險的人是不合理或不必要的，則須安插將一項陳述記入正式航海日誌內，或如沒有正式航海日誌，則須就其不前往協助該等人士的理由安插於其他紀錄。

(7) 須備有正式航海日誌的港註冊船舶的船長，須將每個遇險訊號，或有船隻、航空器或人在海上遇險的訊息記入或安插於正式航海日誌內。

(8) 任何船長如沒有遵從第(6)或(7)款，即屬犯罪，可處罰款 \$2,000。

85. 在冰附近小心航行

(1) 香港註冊船舶的船長在有報告指出其航道上或附近有冰時，在夜間須以安全速度行駛或更改其航向，以充分避開報告所述的冰及危險區。

(2) 任何船舶的船長如違反第(1)款，即屬犯罪，可處罰款 \$10,000。

86. 發出轉舵命令的方法

(1) 任何在香港註冊船舶上的人不得在船舶向前航行時——

(a) 發出包含“右舵”或“右方”字眼或任何相等於“右舵”或“右方”字眼的轉舵或操舵命令，除非他的意圖是將船首移向右方；或

(b) 發出包含“左舵”或“左方”字眼或任何相等於“左舵”或“左方”字眼的轉舵或操舵命令，除非他的意圖是將船首移向左方。

(2) 任何人違反第(1)款，即屬犯罪，可處罰款 \$2,000。

第 VIII 部
危險品

87. 有關危險品的罪行

(1) 任何人以船舶運送危險品或如該人並非該船隻的船東或船長而在船舶上承運危險品，而沒有——

第 14 條

認可法例條，由香港特種行政區政府印務局印製

(6) If the master of a ship registered in Hong Kong, on receiving at sea a signal of distress or information from any source that a vessel or aircraft is in distress, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to go to the assistance of the persons in distress, he shall forthwith cause a statement to be entered in the official log-book, or if there is no official log-book cause other record to be kept, of his reasons for not going to the assistance of those persons.

(7) The master of every ship registered in Hong Kong for which an official log-book is required shall enter, or cause to be entered, in the official log-book every signal of distress or message that a vessel, aircraft or person is in distress at sea.

(8) Any master who fails to comply with subsection (6) or (7) commits an offence and is liable to a fine of \$2,000.

85. Careful navigation near ice

(1) The master of a ship registered in Hong Kong, when ice is reported on or near his course, shall at night either proceed at a safe speed or change his course so as to keep amply clear of the ice reported and of the area of danger.

(2) The master of any ship who contravenes subsection (1) commits an offence and is liable to a fine of \$10,000.

86. Method of giving helm orders

(1) No person on any ship registered in Hong Kong shall, when the ship is going ahead—

(a) give a helm or steering order containing the word “starboard” or “right” or any equivalent of “starboard” or “right” unless he intends that the head of the ship shall move to the right; or

(b) give a helm or steering order containing the word “port” or “left” or any equivalent of “port” or “left” unless he intends that the head of the ship shall move to the left.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of \$2,000.

✓ PART VIII
DANGEROUS GOODS

87. Offences in respect of dangerous goods

(1) Any person who sends by, or, not being the owner or master of the vessel, carries in, any ship any dangerous goods without—

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Issue 14

- (a) 在載有該危險品的容器或包裝外面清楚標明該危險品的性質；及
- (b) 在將該危險品送往船舶何處或載該危險品登船之時或之前，就以下事項向該船舶的船東或船長給予書面通知——
 - (i) 該危險品的性質；及
 - (ii) 該危險品的運送人或承運人的姓名或名稱及地址。

即屬犯罪，可處罰款 \$20,000；

但如該人令裁判官或法庭信納——

- (i) 他是付運該物品的代理人；及
- (ii) 他並不知悉，亦沒有理由懷疑他所付運的物品是危險品。

則可處罰款 \$5,000。

(2) 任何人如——

- (a) 明知而以船舶運送或承運任何具虛假說明的危險品；或
- (b) 對危險品的運送人或承運人作虛假描述。

即屬犯罪，可處罰款 \$50,000。

88. 危險品的堆裝

任何船舶的船東或船長如懷疑任何包裝或容器載有危險品，則可拆開該包裝或容器運上船舶，並可要求將其開檢，以確定其內含物。

89. 危險品的沒收

(1) 凡——

- (a) 在船舶上運送或承運，或企圖運送或承運危險品，而沒有——
 - (i) 按照第 87(1)(a) 條對危險品予以標記；或
 - (ii) 按照第 87(1)(a) 條給予通知；

(b) 運送或承運，或企圖運送或承運危險品，而——

- (i) 該危險品的說明是虛假的；或
- (ii) 運送人或承運人的姓名或名稱是虛假的。

則裁判官或法庭可命令將危險品沒收如官方所有，然後以他認為適合的方式處置。

(2) 即使有以下情況出現，裁判官或法庭仍可根據第 (1) 款作出命令——

- (a) 危險品的擁有人——
 - (i) 可能沒有犯第 87 條所訂有關危險品的罪行；或

- (a) marking distinctly their nature on the outside of the container or package containing them; and
- (b) giving written notice of
 - (i) the nature of such goods; and
 - (ii) the name and address of the sender or carrier thereof,
 to the owner or master of the ship at or before the time of sending them to be shipped or taking the same on board the ship.

commits an offence and is liable to a fine of \$20,000.

Provided that if any such person satisfies the magistrate or court that he—

- (i) was an agent in the shipment of the goods; and
- (ii) was not aware of, and had no reason to suspect, that the goods shipped by him were dangerous goods,

he is liable to a fine of \$5,000.

(2) Any person who—

- (a) knowingly sends by, or carries in, any ship any dangerous goods under a false description; or
- (b) falsely describes the sender or carrier of any dangerous goods,

commits an offence and is liable to a fine of \$50,000.

88. Stowage of dangerous goods

The owner or master of any ship may refuse to take on board any package or container which he suspects to contain dangerous goods and may require it to be opened to ascertain its contents.

89. Forfeiture of dangerous goods

(1) Where any dangerous goods—

- (a) have been sent or carried, or attempted to be sent or carried, on board any ship without—
 - (i) being marked in accordance with section 87(1)(a); or
 - (ii) a notice having been given in accordance with section 87(1)(b);

(b) have been sent or carried, or attempted to be sent or carried—

- (i) under a false description; or
- (ii) with the name of the sender or carrier falsely declared,

a magistrate or court may order that the dangerous goods be forfeited to the Crown and thereafter disposed of in such manner as he thinks fit.

(2) A magistrate or court may make an order under subsection (1)

notwithstanding that—

- (a) the owner of the dangerous goods—
 - (i) may not have committed an offence under section 87 in respect of the dangerous goods; or

(ii) 可信並非在裁判官或法庭席前和可能沒有接獲該法律程序的通知費；或

(b) 裁判官或法庭可能沒有關於該危險品的擁有權的證據；

但裁判官或法庭在作出沒收及處置危險品的命令前，可規定向危險品的擁有人或代理人給予該法律程序的通知。

(ii) may not be before the magistrate or court and may not have notice of the proceedings; or

(b) there may be no evidence before the magistrate or court in respect of the ownership of the dangerous goods;

Provided that the magistrate or court may require notice of such proceedings to be given to the owner or shipper of the dangerous goods before making an order for their forfeiture and disposal.

90. 處長可拒絕給予出港證

如任何客船上有危險品而其堆裝方式不能達致處長滿意的程度，則處長可拒絕給予出港證。

90. Director may refuse clearance

The Director may refuse a port clearance to any passenger ship if there are on board any dangerous goods which are not stowed to his satisfaction.

91. 處理懷疑為危險物品的權力

當任何危險品，或船舶的船長或船東認為是危險品的任何物品被運送到或帶上船舶上，而沒有按照第 87(1)(a) 條予以標記，或沒有根據第 87(1)(b) 條給予通知，該船長或船東在該及一切情況，包括船舶上的人及財產所承受的風險，以及保護海洋環境的需要後，可按他認為適合的方式對該物品連同盛載該物品的包裝或盛器作再處置；而該船舶的船長或船東均無須因此處置該物品而承擔任何民事或刑事法律責任。

91. Power to deal with goods suspected of being dangerous

When any dangerous goods, or any goods which in the opinion of the master or owner of the ship are dangerous goods, have been sent or brought aboard any ship without being marked in accordance with section 87(1)(a) or without any notice under section 87(1)(b) having been given, the master or owner may, having regard to all the circumstances, including the risk to persons and property on board the ship and the need to protect the marine environment, dispose of those goods together with any package or receptacle in which they are contained in such manner as he thinks fit; and neither the master nor the owner of the ship shall be subject to any liability, civil or criminal, for so disposing of the goods.

92. 有關危險品的其他成文法則的保留條文

本節有關運載危險品的條文是增補而非取代或限制其他有關運載危險品的成文法則。

92. Saving for other enactments relating to dangerous goods

The provisions of this Part relating to the carriage of dangerous goods shall be in addition to and not in substitution for, or in restraint of, any other enactment relating to the carriage of dangerous goods.

第 IX 部
規例

PART IX
REGULATIONS

93. 碰撞規例

(1) 經濟局局長可訂立規例，防止發生海上碰撞。(由 1996 年第 20 號第 9 條修訂；由 1997 年第 362 號法律公告修訂)

93. Collision regulations

(1) The Secretary for Economic Services may make regulations for the prevention of collisions at sea. (Amended 20 of 1996 s. 9)

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