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LEGISLATIVE COUNCIL BRIEF

MERCHANT SHIPPING (LOCAL VESSELS) (DWELLING VESSELS) REGULATION

MERCHANT SHIPPING (LOCAL VESSELS) (FERRY TERMINALS) REGULATION

INTRODUCTION

This paper briefs Members on two Regulations made under the Merchant Shipping (Local Vessels) Ordinance, Cap. 548 to improve the safety, control and regulation of local vessels. The Regulations will be tabled at the Legislative Council at its sitting on 11 July 2001.

BACKGROUND

2. The port of Hong Kong has been served by vessels shuttling between different locations within Hong Kong waters for different purposes, e.g. carrying of passengers or cargoes. These are termed local vessels which are distinguished from the ocean-going vessels engaged in international voyages.

3. Over the years, local vessels have not been controlled or regulated systematically by a set of laws. Instead, their administration is governed by requirements scattered in various Ordinances and their subsidiary legislation. This was not user-friendly to owners and operators of local vessels.

4. In July 1999, the Legislative Council enacted the Merchant Shipping (Local Vessels) Ordinance, Cap. 548 (the "Ordinance") which consolidated the provisions previously set out in different Ordinances into one piece of legislation dedicated for local vessels and introduced other changes necessary to meet the modern requirements for the local shipping industry. Implementation of the Ordinance entails the introduction of a number of subsidiary legislation.

PROPOSAL

5. We plan to make a total of ten pieces of subsidiary legislation under the Ordinance, and two of them are to be tabled at the Legislative Council on 11 July 2001 (work on the other eight is on-going). They are -

(a) **Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation (Annex A)**

6. The purpose of this new Regulation is to set out requirements for the regulation and control of dwelling vessels in the waters of Hong Kong. These requirements are currently provided for in the Shipping and Port Control (Dwelling Vessels) Regulations, Cap 313 sub. leg. ("DVR") and the Shipping and Port Control (Dwelling Vessels) (Closed Areas) (Consolidation) Order, Cap. 313 sub. leg. ("Order"). This new Regulation consolidates the DVR and the Order into one regulation. On the commencement of the new Regulation and other subsidiary legislation made under the Ordinance, the DVR and the Order will be repealed.

7. The new Regulation makes provisions for the following -

- (i) The regulation and control of dwelling vessels in Hong Kong waters including the renewal, transfer and cancellation of licence; change of vessel ownership; contravention of licence condition; replacement of an unsafe vessel; areas closed for entry and stay by a vessel; removal, seizure and detention of a vessel; and the sale of a detained vessel, etc.

The Regulation models largely on existing provisions of the DVR in relation to the above matters except:

- Under the DVR, the Director of Marine is empowered to declare by order closed areas into which entry of dwelling vessels is prohibited. Such areas are scattered over various parts of Hong Kong waters but in fact dwelling vessels are only permitted by licence to stay in two typhoon shelters not specified as closed areas, i.e. Causeway Bay Typhoon Shelter and Cheung Chau Typhoon Shelter. The new Regulation codifies this current arrangement;
- Under the DVR, the Director of Marine is not required to issue a detention notice for the seizure or detention of a dwelling vessel in respect of which a removal notice issued by the Director ordering removal of the vessel from a closed area or prescribed area has not been complied with. To increase the transparency of the process, the new Regulation

requires the Director of Marine to issue a detention notice as soon as practicable after he seizes or detains a dwelling vessel; and

- Under the DVR, after the seizure and detention of a dwelling vessel the Director of Marine is empowered to proceed directly to the sale of the vessel by public auction or the forfeiture of the properties on board. It is proposed that under the new Regulation, the opportunity for claims of the vessel and property on board will be provided before the Director of Marine takes the above actions; and

- (ii) Introduction of a new procedure for the appeal of decisions made under the new Regulation to the Administrative Appeals Board.

(b) Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Annex B)

8. Currently, provisions for the administration of both local vessels and non-local vessels within the ferry terminals (i.e. the Hong Kong-Macau Ferry Terminal and the China Ferry Terminal) are laid down in the Shipping and Port Control (Ferry Terminals) Regulations, Cap. 313 sub. leg. ("FTR"). The new Regulation seeks to maintain the control on local vessels when the FTR no longer applies to these vessels upon commencement of the Ordinance and its subsidiary legislation. It achieves this by drawing on the current provisions of the FTR on the following -

- (i) The control of local vessels' access to and berthing at the terminals;
- (ii) The requirements for the vessel owner, his agent or the coxswain to make a return showing the particulars of each voyage of a ferry vessel and to comply with directions given by the Director of Marine when entering, leaving or being in a terminal; and
- (iii) A "pass" system to control the restricted areas within the terminals.

LEGISLATIVE TIMETABLE

9. The legislative timetable for the two Regulations is -

Publication in the Gazette	6 July 2001
Tabling at the Legislative Council	11 July 2001

Implementation

To be appointed by the
Secretary for Economic
Services

BASIC LAW IMPLICATIONS

10. The Department of Justice advises that the Regulations do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

11. The Department of Justice advises that the Regulations are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

12. The Regulations will not affect the current binding effect of the Ordinance.

ECONOMIC IMPLICATIONS

13. The Regulations, as stipulated, particularly for those that merely draw on the existing provisions, are not expected to give rise to economic implications.

FINANCIAL AND STAFFING IMPLICATIONS

14. The Regulations will not have additional financial and staffing implications for Government.

ENVIRONMENTAL IMPLICATIONS

15. There are no environmental implications.

PUBLIC CONSULTATION

16. The Provisional Local Vessel Advisory Committee and its

relevant sub-committees/working group which comprise a wide-cross section of representatives from the local shipping industry are consulted during the drafting process. They give support to the Regulations. We briefed the LegCo Panel on Economic Services on the Regulations at its meeting on 28 May 2001. The Panel gave in-principle support to the Regulations.

PUBLICITY

17. A press release will be issued on 7 July 2001. A spokesman will be made available to answer public and media enquiries.

ENQUIRY

18. Any enquiry on this brief can be addressed to Mr K M LEE, Assistant Director of Marine (2852 4403) or Miss Polly CHOY, Assistant Secretary for Economic Services (2537 2842).

Economic Services Bureau
7 July 2001

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MERCHANT SHIPPING (LOCAL VESSELS)(DWELLING VESSELS) REGULATION

(Made under section 89 of the Merchant Shipping
(Local Vessels) Ordinance (Cap. 548))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

2. Interpretation

In this Regulation, unless the context otherwise requires –

"closed area" (禁區) means an area of the waters of Hong Kong specified in Schedule 1;

"licence" (牌照) means -

- (a) a licence issued under the repealed Regulations and in force immediately before the commencement of this Regulation; or
- (b) a licence issued under this Regulation;

"licensed dwelling vessel" (已領牌住家船隻) means a dwelling vessel in respect of which a licence has been issued and is for the time being in force, and "unlicensed dwelling vessel" (未領牌住家船隻) shall be construed accordingly;

"licensee" (持牌人) means -

- (a) a person to whom a licence for the time being in force is issued; or
- (b) a person to whom a licence for the time being in force

is transferred under section 7;

"period of validity" (有效期), in relation to a licence, means the period from the date of issue of the licence up to and including the date of expiry of the licence, both dates as specified in the licence;

"prescribed area" (訂明範圍) means an area of the waters of Hong Kong specified in Schedule 2;

"repealed Regulations" (已廢除規例) means the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.).

3. Licensing of dwelling vessels

(1) A licence issued under the repealed Regulations and in force immediately before the commencement of this Regulation shall, subject to the provisions of this Regulation, continue in force until the expiry of its period of validity.

(2) No person shall use a vessel as a dwelling vessel in a prescribed area, or cause or permit a dwelling vessel to enter or remain in a prescribed area, unless -

- (a) a licence has been issued in respect of the vessel and is for the time being in force; and
- (b) the provisions of this Regulation and the conditions specified in the licence are complied with.

(3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(4) If an unlicensed dwelling vessel enters or remains in a prescribed area, or if a licensed dwelling vessel enters or remains

in a prescribed area in contravention of any provision of this Regulation or any condition specified in the licence issued in respect of the vessel for the time being in force, the person in control of the vessel commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(5) The Director may, on the issue of a licence under section 4(3)(a) pursuant to an application for renewal or under section 7(6)(a) pursuant to an application for transfer, specify in the licence such conditions as he considers necessary or desirable in the interests of safety or discipline.

(6) The Director may, at any time while a licence is in force, make such amendments or additions to the conditions specified in the licence as he considers necessary or desirable in the interests of safety or discipline and request that the licence be delivered to him for amendments or additions to be made under this subsection.

(7) A person who, without reasonable excuse, fails to comply with a request made by the Director under subsection (6) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

4. Renewal of licences

(1) The licensee of a licensed dwelling vessel may, at any time during the period of 3 months immediately before the expiry of the period of validity of the licence issued in respect of the vessel, apply for the licence to be renewed.

(2) An application for the renewal of a licence shall be made to the Director in a form specified by him, and shall give such

particulars regarding the applicant, the owner of the vessel in respect of which the licence is issued, and every person normally dwelling on the vessel at the time of the making of the application, as the Director may require.

(3) The Director may determine an application for the renewal of a licence made under subsection (1) -

- (a) by issuing a licence to the applicant in accordance with subsection (5); or
- (b) by refusing to renew the licence.

(4) If an application for the renewal of a licence is made under subsection (1) and the period of validity of the licence expires before the determination of the application, the licence shall continue in force until the determination of the application, the withdrawal of the application or the cancellation of the licence under section 8, whichever occurs first.

(5) A licence issued under subsection (3)(a) -

- (a) shall be in a form determined by the Director;
- (b) shall be subject to such conditions as the Director may specify under section 3(5); and
- (c) subject to the provisions of this Regulation, shall be in force for its period of validity, which shall expire on the first anniversary of the expiry of the period of validity of the licence sought to be renewed.

(6) No fee shall be payable in respect of the renewal of a licence.

(7) The licensee of a licensed dwelling vessel shall surrender the licence issued in respect of the vessel to the Director -

- (a) upon the renewal of the licence under this section;
- (b) upon the expiry of the period of validity of the licence or, where the licence continues in force by virtue of subsection (4) or section 7(5), upon the licence ceasing to be in force; or
- (c) upon the cancellation of the licence under section 8, whichever occurs

first.

(8) A licensee who contravenes subsection (7) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

5. Owner to notify Director of change in ownership

(1) If, at any time while a licence is in force, a change occurs in the ownership of the dwelling vessel in respect of which the licence is issued, the new owner of the vessel shall, within 72 hours after the occurrence of the change, notify the Director of the change in a form specified by the Director and deliver the licence to the Director for amendment.

(2) On receipt of a notification of a change in ownership given under subsection (1), the Director shall cause the particulars of the change to be noted, free of charge, on the licence issued in respect of the vessel concerned.

(3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

6. Painting of licence number and other particulars on vessel

(1) The licensee of a licensed dwelling vessel shall, at all times while the licence issued in respect of the vessel is in force, ensure -

(a) that the licence number specified in the licence and such other particulars of the licence as the Director may specify are painted on the vessel; and

(b) that the painting of the licence number and other particulars on the vessel under paragraph (a) is done and maintained in such manner as the Director may specify.

(2) A licensee who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(3) A person who, without reasonable excuse, damages, obliterates or defaces the licence number or any of the particulars painted on a licensed dwelling vessel in accordance with subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

7. Licence to be transferred only in certain circumstances

(1) A licence shall not be transferred, except as provided in this section.

(2) Where the licensee of a licensed dwelling vessel dies at any time during the period of validity of the licence issued in respect of the vessel, the surviving spouse, parent, parent-in-law, or eldest

child over the age of 16 years, of the deceased licensee, in that order, may apply to the Director for the licence to be transferred to him until the expiry of its period of validity, if he was dwelling on the vessel at the time when a licence was first issued in respect of the vessel under the repealed Regulations.

(3) Where the persons dwelling on a licensed dwelling vessel comprise members of more than one family and the licensee of the vessel and members of his family cease to dwell on the vessel at any time during the period of validity of the licence issued in respect of the vessel, a person, other than the licensee or a member of his family, may apply to the Director for the licence to be transferred to him until the expiry of its period of validity, if he is nominated by the family or families continuing to dwell on the vessel so to apply and if he was dwelling on the vessel at the time when a licence was first issued in respect of the vessel under the repealed Regulations.

(4) Subject to subsection (6), the Director may determine an application for the transfer of a licence made under subsection (2) or (3) -

- (a) by transferring the licence to the applicant until the expiry of its period of validity; or
- (b) by refusing to transfer the licence.

(5) If an application for the transfer of a licence is made under subsection (2) or (3) and the period of validity of the licence expires before the determination of the application, the licence shall continue in force until the determination of the application, the withdrawal of the application or the cancellation of the licence under section 8, whichever occurs first.

(6) If an application for the transfer of a licence is made under subsection (2) or (3) and the period of validity of the licence expires before the determination of the application, the Director may determine the application -

- (a) by issuing a licence to the applicant in accordance with subsection (7), in which case the Director shall be deemed to have determined the application in the manner provided in subsection (4)(a); or
- (b) by refusing to issue such a licence, in which case the Director shall be deemed to have determined the application in the manner provided in subsection (4)(b).

(7) A licence issued under subsection (6)(a) -

- (a) shall be in a form determined by the Director;
- (b) shall be subject to such conditions as the Director may specify under section 3(5); and
- (c) subject to the provisions of this Regulation, shall be in force for its period of validity, which shall be of the same length as the portion of the period of validity of the licence sought to be transferred that remained unexpired at the time of the making of the application for transfer.

(8) If, in the circumstances described in subsection (2) or (3), there is no person who may apply for the transfer of the licence in question under the relevant subsection, the licence in question shall lapse and the Director may require any person in possession of that licence to surrender it.

8. Discretion to cancel licence

Without prejudice to section 12, the Director may, at any time while a licence is in force, cancel the licence for contravention of any condition specified in the licence or of any provision under this Regulation.

9. Licence to be kept on board and produced for inspection

(1) A licence shall, at all times while it is in force, be kept on board the dwelling vessel in respect of which it is issued and be produced on demand to any authorized officer by the licensee or any person normally dwelling on the vessel.

(2) A person who, without reasonable excuse, fails to produce a licence when called upon to do so by an authorized officer commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

10. Issue of duplicate licence if original destroyed, etc.

Where a licence for the time being in force is destroyed, defaced or lost, the Director may, if he is satisfied as to the destruction, defacement or loss, issue a duplicate licence free of charge, and the duplicate licence shall have the same force and effect as the original licence and shall be regarded for all purposes of this Regulation as if it were the original licence.

11. Penalty for fraudulent alteration or use of licence

A person who fraudulently alters or uses a licence, or permits a licence to be fraudulently altered or used, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

12. Contravention of condition of licence

If the licensee of a licensed dwelling vessel contravenes, without reasonable excuse, any condition specified in the licence issued in respect of the vessel for the time being in force, he commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

13. Replacement of unsafe vessels

(1) The Director may permit the licensee of a licensed dwelling vessel to replace the vessel with another vessel if the Director is satisfied -

- (a) that the vessel to be replaced is unsafe and will be surrendered to the Director for destruction or disposal under subsection (3);
- (b) that the replacement vessel is safe;
- (c) that the dimensions of the replacement vessel are no larger than those of the vessel to be replaced; and
- (d) that the licensee and the persons normally dwelling on the vessel to be replaced provide a service to other vessels in the vicinity.

(2) The Director may require a replacement vessel to be examined,

free of charge to the licensee, by a person authorized by him to ensure that it complies with paragraphs (b) and (c) of subsection (1).

(3) Where the Director permits the replacement of a vessel under this section, the vessel shall be surrendered by the licensee to the Director for destruction or disposal.

(4) A licensee who fails to surrender a vessel in accordance with subsection (3) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

14. Director may require information

(1) The Director may, from time to time, request the licensee of a licensed dwelling vessel to inform him of the name, age and identity card number of any person normally dwelling on the vessel at the time of the making of the request, and of the relationship of such person to the licensee.

(2) A licensee who, having been requested to give information under subsection (1), fails to do so or gives information which he knows or reasonably ought to know to be false in a material particular, commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

15. Closed areas

(1) No person shall cause or permit a dwelling vessel to enter or remain in a closed area.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

16. Dwelling vessels in closed area or unlicensed dwelling vessels in prescribed area

(1) The Director may by notice order that a dwelling vessel in a closed area be removed from the closed area or that an unlicensed dwelling vessel in a prescribed area be removed from the prescribed area.

(2) A notice given under subsection (1) -

- (a) shall be addressed to the owner or licensee of the vessel or generally to all persons normally dwelling on the vessel;
- (b) shall be served by affixing it to the mast or any other prominent part of the vessel;
- (c) shall order the person or persons to whom the notice is addressed to remove the vessel or cause it to be removed from the closed area or the prescribed area, as the case may be, within such time (being not less than 14 days) as is specified in the notice; and
- (d) shall give a brief description of the powers exercisable by the Director under this Regulation if the vessel is not removed as ordered by the notice.

(3) A person who, without reasonable excuse, fails to comply with a notice given under subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(4) If a vessel is not removed as ordered by a notice given under subsection (1), the Director may do any or all of the following -

- (a) seize the vessel;

- (b) remove the vessel or cause it to be removed from the closed area or the prescribed area, as the case may be;
- (c) detain the vessel.

(5) Where a vessel has been seized and detained under subsection (4), and regardless of whether the vessel has been removed under that subsection, the Director may remove any person or property found on the vessel and may take possession of any property found on the vessel.

(6) As soon as practicable after seizing and detaining a vessel under subsection (4), and regardless of whether the vessel has been removed under that subsection, the Director shall serve a notice of the seizure and detention on the persons whom the Director believes to be the owner and the licensee of the vessel, and on every person whom the Director believes to be the owner or otherwise entitled to the possession of any property on board the vessel.

(7) A notice served under subsection (6) shall be deemed to have been duly served on the person on whom it is to be served -

- (a) if the notice is delivered to the person concerned;
- (b) if the notice is sent by registered post addressed to that person at the place of residence or business of that person, if any, last known to the Director; or
- (c) (where it cannot be served in accordance with paragraph (a) or (b)) if the notice is published in the Gazette.

(8) A notice served under subsection (6) shall -

- (a) state the names (if known to the Director) of the persons whom the Director believes to be the owner and the licensee of the vessel;
- (b) state the name (if known to the Director) of every

person whom the Director believes to be the owner or otherwise entitled to the possession of any property on board the vessel;

- (c) describe the vessel and the place at which it was seized;
- (d) describe the property on board the vessel;
- (e) give the reason for the seizure and detention of the vessel;
- (f) specify the position where the vessel is secured, anchored or moored during its detention;
- (g) specify the action (if any) required to secure the release of the vessel or any property on board the vessel; and
- (h) specify the period (being not less than 14 days) within which a claim may be submitted to the Director for the release of the vessel or any property on board the vessel, and the place at which such a claim may be submitted.

(9) The Director may, for the purposes of subsection (8)(g), specify any action required to secure the release of a vessel or any property on board the vessel, and any such action may include the payment of any expense incurred as a result of or in connection with any action taken or caused to be taken by the Director under this section in respect of the vessel or the property in question, as the case may be.

(10) A person who obstructs the Director in the exercise of any of the powers conferred by subsection (4) or (5) commits an offence

and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

17. Release of detained vessels, etc.

(1) A claim for the release of a vessel that is the subject of a notice served under section 16(6), or for the release of any property on board the vessel, may be submitted to the Director, subject to compliance with the following requirements -

- (a) the claim shall be submitted, in the case of a claim for the release of the vessel, by the owner or licensee of the vessel and, in the case of a claim for the release of any property on board the vessel, by the person who is the owner or otherwise entitled to the possession of the property in question; and
- (b) the claim shall be submitted within the period and at the place specified in the notice.

(2) If a claim is submitted to the Director for the release of a vessel that is the subject of a notice served under section 16(6) or for the release of any property on board the vessel, and if the Director is satisfied that the claim is submitted in accordance with the requirements set out in subsection (1) and that the action specified in the notice under section 16(8)(g) in respect of the vessel or the property in question, as the case may be, has been carried out, then the Director shall release the vessel or the property in question, as the case may be, to the claimant.

18. Sale of detained vessels, etc.

(1) If a vessel that is the subject of a notice served under section 16(6) is not released pursuant to section 17(2), the Director may sell the vessel by public auction or otherwise as he thinks fit.

(2) The proceeds of sale of a vessel sold under subsection (1), after deducting all expenses incurred as a result of or in connection with the seizure, removal, detention and sale of the vessel, shall be paid to the owner of the vessel if he claims them within 1 year after the date of the sale, or forfeited to the Government if the owner of the vessel does not claim them within that period.

(3) A vessel that the Director is unable to sell under subsection (1) may be destroyed or otherwise disposed of as the Director thinks fit.

(4) If any property on board a vessel that is the subject of a notice served under section 16(6) is not released pursuant to section 17(2), such property shall become the property of the Government free from the rights of any person and may be disposed of by the Director as he thinks fit.

19. Appeals

(1) Any person aggrieved by a decision of the Director -

- (a) to specify any condition in a licence under section 3(5);
- (b) to make any amendment or addition to the conditions specified in a licence under section 3(6);
- (c) to refuse to renew a licence under section 4(3)(b);
- (d) to refuse to transfer a licence under section 7(4)(b);

- (e) to cancel a licence under section 8;
- (f) to refuse to permit the replacement of a vessel under section 13;
- (g) to specify any action required to secure the release of a vessel or any property on board the vessel under section 16(9); or
- (h) to refuse to release a vessel or any property on board the vessel under section 17(2),

may, within 14 days after the day on which he is informed of the decision, appeal to the Administrative Appeals Board against the decision.

(2) If a decision referred to in paragraph (a), (b), (c), (d), (e) or (f) of subsection (1) is appealed against under that subsection, the decision concerned shall be suspended in its operation from the day on which notice of the appeal is lodged until the appeal is disposed of, withdrawn or abandoned, unless such suspension would, in the opinion of the Director, be contrary to the public interest and the notice of that decision contains a statement to that effect.

(3) If a decision referred to in paragraph (g) of subsection (1) is appealed against under that subsection, then, as against the person making the appeal -

- (a) the period within which a claim may be submitted to the Director for the release of the vessel concerned or any property on board that vessel, specified in the notice served in respect of that vessel under section 16(6), shall not begin to run until the appeal is disposed of, withdrawn or abandoned; and
- (b) the notice shall otherwise have effect subject to the

outcome of the appeal.

(4) If a decision referred to in paragraph (h) of subsection (1) is appealed against under that subsection, the decision concerned shall be suspended in its operation from the day on which notice of the appeal is lodged until the appeal is disposed of, withdrawn or abandoned.

20. Amendment of Schedules

The Director may, by notice published in the Gazette, amend either or both of the Schedules.

SCHEDULE 1

[ss. 2 & 20]

CLOSED AREAS

All waters of Hong Kong except Causeway Bay Typhoon Shelter and Cheung Chau Typhoon Shelter.

SCHEDULE 2

[ss. 2 & 20]

PRESCRIBED AREAS

Causeway Bay Typhoon Shelter

Cheung Chau Typhoon Shelter

Secretary for Economic Services

29 JUNE 2001

Explanatory Note

This Regulation provides for the regulation and control of dwelling vessels in the waters of Hong Kong following the repeal of the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.) and the Shipping and Port Control (Dwelling Vessels) (Closed Areas) (Consolidation) Order (Cap. 313 sub. leg.).

2. Section 3 provides, inter alia, that a licence issued under the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.) and in force immediately before the commencement of this Regulation shall, subject to this Regulation, continue in force until its expiry.

3. Section 4 provides for the manner in which a licence may be renewed.

4. Section 7 provides for the manner in which a licence may be transferred.

5. Sections 16 to 18 empower the Director of Marine ("the Director") to order that a dwelling vessel in a closed area, as defined in this Regulation, be removed from the closed area or that an unlicensed dwelling vessel in a prescribed area, as defined in this Regulation,

be removed from the prescribed area, and confer on the Director the power to take certain specified action against the vessel if it is not so removed.

6. Section 19 sets out a mechanism for appeal to the Administrative Appeals Board.

MERCHANT SHIPPING (LOCAL VESSELS) (FERRY TERMINALS) REGULATION

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MERCHANT SHIPPING (LOCAL VESSELS) (FERRY TERMINALS) REGULATION

(Made under section 89 of the Merchant Shipping
(Local Vessels) Ordinance (Cap. 548))

PART 1

PRELIMINARY

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

2. Interpretation

In this Regulation, unless the context otherwise requires –

"authorized officer" (獲授權人員) means a public officer authorized in writing by the Director for the purposes of this Regulation and a police officer on duty within a terminal;

"ferry vessel" (渡輪船隻) means a local vessel which plies regularly from a terminal for the conveyance of passengers -

- (a) between Hong Kong and Macau; or
- (b) between Hong Kong and any other place in China,

whether or not the vessel also carries cargo;

"pass" (通行證) means a pass issued under section 12 or a replacement pass issued under section 24;

"pass holder" (通行證持有人、通行證的持有人) means -

- (a) in relation to a pool pass, the authorized officer or the person to whom it is issued; and
- (b) in relation to a standard pass or a temporary pass, the person in whose name the pass is issued;

"pool pass" (共用通行證) means a pool pass issued under section 12;

"prescribed fee" (訂明費用), in relation to any matter, means the fee prescribed by regulations made under section 88 of the Ordinance in relation to that matter;

"restricted area" (限制區域) means an area deemed to be a restricted area for the purposes of this Regulation under section 10;

"standard pass" (標準通行證) means a standard restricted area pass issued under section 12(1)(b);

"temporary pass" (臨時通行證) means a temporary restricted area pass issued under section 12(1)(c);

"terminal" (終點碼頭) means a terminal deemed to be established for the purposes of this Regulation under section 3;

"vehicle" (車輛) means a vehicle intended or adapted for use on roads.

3. Establishment of terminals

(1) A terminal the boundaries of which are declared under regulation 3 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.) is deemed to be established for the purposes of this Regulation.

(2) A terminal shall include -

- (a) all land and water within the boundaries of the terminal; and
- (b) any building, street, pier or pontoon within the said boundaries.

PART 2

CONTROL OF TERMINALS GENERALLY

4. Terminals under control of Director

- (1) A terminal shall be under the control of the Director.
- (2) Except with the permission of the Director, no local vessel shall enter a terminal.
- (3) The Director may close the whole or a part of a terminal for such period as he may specify.
- (4) The Director may, by notice or sign exhibited in a terminal, prohibit access to the whole or a part of the terminal, at such time as he may specify, by a local vessel or class of local vessels.

5. Vessels to use terminals

- (1) A ferry vessel shall berth at a terminal unless the Director otherwise directs.
- (2) Except with the permission of the Director -
 - (a) no person shall embark on or disembark from; and
 - (b) no cargo shall be loaded on or discharged from,

a local vessel within a terminal other than at a place in the terminal which is allocated to the local vessel for that purpose by the Director.

6. Owners, agents or coxswains to comply with requirements of Director

(1) The owner, his agent or the coxswain of a local vessel in a terminal or entering or leaving a terminal shall comply with the directions given to him by the Director.

(2) Without prejudice to the generality of subsection (1), the Director may direct the owner, his agent or the coxswain of a local vessel in a terminal -

- (a) to anchor or secure the local vessel at any place in the terminal;
- (b) to move the local vessel from any place in the terminal to any other place therein;
- (c) to remove the local vessel from the terminal for such period as the Director may specify.

(3) The owner, his agent or the coxswain of a local vessel navigating within or entering or leaving a terminal shall, so far as practicable, have regard to the information or advice conveyed to him by an authorized officer.

7. Control of arrivals and departures of ferry vessels

The Director may, by notice in writing served on the owner, his agent or the coxswain of a ferry vessel, specify the time of arrival at, or departure from, a terminal of the ferry vessel,

either generally in respect of a series of arrivals or departures, or in respect of a particular arrival or departure, and the owner, his agent or the coxswain shall comply with the notice.

8. Returns by owners, agents or coxswains

The owner, his agent or the coxswain of a ferry vessel shall, at such times as the Director may require, submit to the Director a return showing, in respect of such period as may be specified by the Director, such particulars as the Director may require -

- (a) of each voyage made by the vessel;
- (b) of the cargo carried on each voyage of the vessel;
- (c) of the number of passengers carried on each voyage of the ferry vessel, and the category of the passengers for the purposes of section 29;
- (d) of the number of persons embarking and disembarking at each port of call during each voyage of the ferry vessel; and
- (e) relating to the manning or operation of the ferry vessel.

9. Embarkation and disembarkation

Except with the permission of the Director, no person shall embark on, or disembark from, a local vessel in a terminal -

- (a) whilst the local vessel is in motion;
- (b) otherwise than by an authorized gangway; or
- (c) by means of any other vessel.

PART 3

RESTRICTED AREAS

10. Restricted areas

An area declared under regulation 11 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.) to be a restricted area is deemed to be a restricted area for the purposes of this Regulation.

11. Prohibition of entry, etc. to restricted area without valid pass

(1) Subject to this Regulation and the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.), no person shall enter or remain in a restricted area.

(2) Notwithstanding regulation 12 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.), a person may enter or remain in a restricted area if he has on his person a valid pass issued to him in respect of that restricted area or is being escorted by an authorized officer having the authority of the Director to escort persons into that restricted area.

12. Issue of passes and grounds for refusal

(1) The Director may issue -

(a) a pool pass -

(i) to an authorized officer; or

(ii) to any other person where he is satisfied that the person requires immediate access to a restricted area by reason of the nature of the occupation or employment of the person;

(b) a standard pass to a person referred to in subsection (3) on application being made under section 13; or

(c) a temporary pass to a person referred to in subsection (3) on application being made under section 13.

(2) A pass shall be in such form and subject to such conditions as may be specified by the Director and may, in the discretion of the Director, give authority to an authorized officer to escort a person into a restricted area for which the pass is valid.

(3) The Director may issue a standard pass or a temporary pass to a person only if the Director is satisfied that -

(a) the person is a member of the crew of a ferry vessel permitted to use the terminal concerned; or

(b) the person requires frequent and regular access to the restricted area concerned by reason of the nature of his occupation or employment.

(4) The Director shall refuse to issue a pass if it appears to him that -

(a) the person requiring the pass is for any reason relating to or connected with the security of the

terminal concerned not a fit person to have access to the restricted area; or

- (b) access to the restricted area concerned is unnecessary by reason of the nature of the occupation or employment of the person requiring the pass.

13. Application for passes

An application for the issue of a standard pass or a temporary pass shall be -

- (a) made by a person requiring the pass or his employer on his behalf;
- (b) made to the Director in the form specified by him; and
- (c) accompanied by -
 - (i) the documents specified by the Director;
 - (ii) such other particulars as may be required by the Director; and
 - (iii) in the case of an application for a standard pass by a person who is not an authorized officer, the prescribed fee.

14. General provisions as to passes

- (1) A pass shall not entitle its holder to embark on a ferry vessel as a passenger.
- (2) A pass holder shall not transfer his pass to any other person.

(3) A pass holder shall produce his pass for examination on entering or leaving the terminal in respect of which the pass is issued, and at any time while he is in the terminal if so required by the Director.

15. Contents of passes and duration of validity thereof

A pass shall -

- (a) if so required by the Director, bear sufficient means of identification of the pass holder;
- (b) specify the restricted area or areas in respect of which it is issued;
- (c) indicate the period for which it is issued which -
 - (i) in the case of a pool pass or a standard pass, shall be for such period as may be specified therein;
 - (ii) in the case of a temporary pass, shall not be longer than 3 months; and
- (d) cease to be valid -
 - (i) on the expiration of the period for which it was issued;
 - (ii) upon its cancellation under section 16;
 - (iii) where the pass holder ceases to be employed by the person who was his employer at the date of the issue of the pass; or

- (iv) upon a demand by the Director under section 20 for the pass holder to surrender his pass.

16. Cancellation of passes

The Director -

- (a) shall cancel a pass if it appears to him that -
 - (i) in the case of a pass issued under section 12(3)(a), the pass holder has ceased to be a member of the crew of the ferry vessel permitted to use the terminal concerned;
 - (ii) the pass holder is, for any reason relating to or connected with the security of the terminal concerned, not a fit person to have access to the restricted area; or
 - (iii) access to the restricted area concerned is no longer necessary by reason of the nature of the occupation or employment of the pass holder; and
- (b) may cancel a pass -
 - (i) on the ground that a condition subject to which it was issued has been contravened;
 - (ii) on the ground that the pass holder or his employer has contravened a provision of this Regulation; or

- (iii) where he is satisfied that the pass has been lost, destroyed or defaced.

17. Procedure on cancellation of pass

(1) Where the Director cancels a pass under section 16, he shall notify the pass holder and, if he thinks fit, the employer (if any) of the pass holder, accordingly.

(2) A pass holder, upon receipt of a notice under subsection (1), shall, unless the notice relates to a pass which has been lost or destroyed, forthwith surrender his pass to -

- (a) the Director;
- (b) an authorized officer specified in the notice for the purpose; or
- (c) the employer of the pass holder if specified in the notice for the purpose,

as the case may be.

(3) An employer to whom a pass has been surrendered by virtue of a notice under subsection (1) shall forthwith surrender that pass to the Director or an authorized officer specified in the notice.

18. Action by employer where pass no longer required

The employer of a pass holder shall -

- (a) if the nature of the employment of the pass holder no longer requires that he has access to a restricted area specified in his pass; or

- (b) if the pass holder ceases, for any reason, to be employed by the employer,

without delay -

- (c) inform the Director accordingly;
- (d) take possession of the pass from the pass holder; and
- (e) surrender the pass to the Director.

19. Pass to be surrendered on cessation of employment

A pass holder who ceases to be employed by the person who was his employer at the date of the issue of the pass shall, immediately on the cessation of his employment, surrender his pass to that person.

20. Pass to be surrendered on demand

The Director may demand a pass holder to surrender his pass to the Director, and the pass holder shall forthwith comply with the demand.

21. Pass to be worn on outer clothing

A pass holder shall, when entering, remaining in or departing from a restricted area -

- (a) wear the pass affixed in a prominent position on his outer clothing;
- (b) comply with the conditions subject to which the pass is issued;

- (c) comply with all reasonable directions given to him by an authorized officer;
- (d) if the pass is a pool pass, carry on his person -
 - (i) an identity card issued to him under the Registration of Persons Ordinance (Cap. 177); or
 - (ii) a warrant card, valid travel document or other means of identification as may be approved by the Director.

22. Exemption for bona fide passengers

(1) subject to subsection (2), section 11(1) shall not apply to a bona fide passenger who -

- (a) is in the course of passage through a restricted area -
 - (i) having disembarked from a ferry vessel;
 - (ii) for the purpose of embarking on a ferry vessel of which he is a ferry passenger; or
 - (iii) having disembarked from, or for the purpose of embarking on, a helicopter of which he is a passenger;or
- (b) is awaiting an onward ferry voyage in an area reserved for transit or transfer passengers which is within a restricted area.

(2) A passenger shall not, by virtue of subsection (1), be exempt from the prohibition under section 11(1) unless -

- (a) being a departing passenger of a ferry vessel, he is in possession of a valid travel document and a valid passenger ticket issued by the owner, his agent or the coxswain of the vessel for passage on the vessel;
 - (b) being a departing passenger of a helicopter, he is in possession of a valid travel document and a valid passenger ticket issued by or on behalf of the owner, operator or pilot of the helicopter for passage on it; or
 - (c) being an arriving passenger or a transit or transfer passenger, he is in possession of a valid travel document.
- (3) A passenger ticket shall be in a form approved by the Director.

23. Lost pass

(1) If a pass has been lost the pass holder shall, without delay, report in writing the loss and the related circumstances to his employer (if any) or, where the pass holder has no employer or is himself an employer, to the Director.

(2) Where a report has been received by an employer as to the loss of a pass and the related circumstances, he shall, without delay, report in writing the loss and the related circumstances to the Director.

(3) A person who finds a pass shall, without delay, deliver it to the Director or to a police officer.

24. Issue of replacement pass

Where a pass has been lost, destroyed or defaced, the person to whom the pass had been issued or his employer may apply to the Director for the issue of a replacement pass and the Director, upon being satisfied as to the loss, destruction or defacement, may, upon payment of the prescribed fee, issue to the person a replacement pass which shall replace the pass which has been lost, destroyed or defaced.

PART 4

MISCELLANEOUS

25. Permission of coxswain to board or load cargo

(1) Subject to subsection (4), no person shall board, or load a vehicle or other cargo on, a local vessel except with the permission of the coxswain of the vessel.

(2) No person shall travel, or bring a vehicle or other cargo, on board a ferry vessel after being warned by the Director that the ferry vessel contains its full complement of passengers, vehicles or other cargo.

(3) No person shall, within a terminal, travel or bring a vehicle or other cargo, on board a local vessel other than a ferry vessel after being warned by the Director that the vessel contains its full complement of passengers, vehicles or other cargo.

(4) Subsection (1) shall not apply to an authorized officer.

26. Permission to remain on a ferry vessel

Subject to section 33 of the Immigration Ordinance (Cap. 115), no person shall remain on board a ferry vessel in a terminal except with the permission of the Director.

27. General prohibitions

No person shall, whilst within a terminal or on a local vessel within a terminal -

- (a) throw, deposit, leave or drop litter, paper or rubbish, except in bins or containers provided for the purpose;
- (b) throw, deposit, leave or drop anything capable of causing injury to person or damage to property;
- (c) throw any life buoy or equipment from the terminal or local vessel, except in a case of emergency;
- (d) open or remove, or climb over, any wall, fence railing, barrier, gate or post erected in the terminal;
- (e) beg;
- (f) fish.

28. Berthing fee

(1) Subject to subsection (2), the owner, his agent or the coxswain of a local vessel which berths in a terminal shall pay the prescribed fee for berthing in respect of the local vessel.

(2) No prescribed fee for berthing shall be payable in respect of the following local vessels -

- (a) a cargo lighter or junk working cargo to or from a terminal or to or from a vessel moored alongside a terminal;
- (b) a fresh water lighter, barge or other local vessel supplying fresh water to a vessel in a terminal;
- (c) a fuelling lighter or barge supplying fuel to a vessel or to a storage tank in a terminal;
- (d) a local vessel used to transfer passengers to or from a ferry vessel in a terminal;
- (e) any other local vessel or class of local vessels which the Director may exempt.

(3) Subject to subsection (4), the prescribed fee for berthing shall be paid in respect of each berthing of a local vessel.

(4) Where a local vessel leaves a berth in a terminal in compliance with a direction under section 6(2)(b) or (c), no fee shall be chargeable on the reberthing of the local vessel.

(5) Except with the permission in writing of the Director, no local vessel shall remain at a berth in a terminal for more than 24 hours.

(6) For the purpose of this section, a local vessel berths in a terminal when it comes alongside, or is in any way secured to, any part of the terminal.

(7) In this section -

"ferry vessel" (渡輪船隻) means a ferry vessel defined in section 2 of this Regulation or regulation 2 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.).

29. Embarkation fee

The owner of a ferry vessel or his agent shall pay the prescribed fee for passenger embarkation in respect of each passenger embarking on the vessel at a terminal.

30. Offences and penalties

(1) If without reasonable excuse section 4(2) or 5 is contravened, the coxswain of the local vessel commits an offence.

(2) If without reasonable excuse a notice or sign exhibited under section 4(4) is contravened, the coxswain of the local vessel commits an offence.

(3) The owner, his agent or the coxswain of a local vessel who, without reasonable excuse, fails to comply with a direction given to him under section 6 commits an offence.

(4) The owner, his agent or the coxswain of a ferry vessel who, without reasonable excuse, fails to comply with a notice served on him under section 7, or fails to submit a return under section 8, commits an offence.

(5) A person who, without reasonable excuse, contravenes section 9, 23(3) or 26 commits an offence.

(6) A person who contravenes section 25 or 27 commits an offence.

(7) A person who -

(a) being a pass holder, without reasonable excuse, contravenes section 14(3), 17(2), 19, 20, 21 or 23(1);

- (b) being an employer, without reasonable excuse, contravenes section 17(3), 18 or 23(2),

commits an offence.

(8) A person who -

- (a) makes use of or retains in his possession a pass which he knows or ought reasonably to know -
 - (i) has been cancelled; or
 - (ii) has ceased to be valid;
- (b) without reasonable excuse, defaces, alters or destroys a pass;
- (c) in, or in connection with, an application made under section 13 or 24 makes a statement or gives any information which he knows or ought reasonably to know is false in a material particular or recklessly makes a statement which is false in a material particular or knowingly omits any material particular;
- (d) being a pass holder, contravenes a condition subject to which the pass was issued,

commits an offence.

(9) A person who contravenes section 11(1) or 14(2) commits an offence.

(10) A person who -

- (a) commits an offence under subsection (1), (2), (3), (4), (5) or (6) is liable to a fine at level 1;
- (b) commits an offence under subsection (7) is liable to a fine at level 2;

- (c) commits an offence under subsection (8) is liable to a fine at level 3 and to imprisonment for 3 months;
- (d) commits an offence under subsection (9) is liable to a fine at level 4 and to imprisonment for 6 months.

31. Power to detain persons

An authorized officer may, if he has reasonable grounds for believing that a person has contravened section 11(1), without warrant arrest that person and forthwith take him to a police station there to be dealt with in accordance with the Police Force Ordinance (Cap. 232).

Secretary for Economic Services

29 JUNE 2001

Explanatory Note

This Regulation is made under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). It provides for the control of terminals for use by local vessels. It should be

noted that many provisions of this Regulation are taken from the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.) which regulate the establishment and control of terminals for use by vessels other than local vessels.

2. Part 1 (sections 1 to 3) is preliminary. Section 1 provides for the commencement of this Regulation while section 2 defines certain terms used in this Regulation. Section 3 provides that a terminal established under the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.) is deemed to be established for the purposes of this Regulation.

3. Part 2 (sections 4 to 9) relates to the control of terminals. Section 4 provides that a terminal is to be under the control of the Director of Marine ("Director"). Section 5 requires a ferry vessel to berth at a terminal while section 7 allows the Director to specify the time of arrival and departure of ferry vessels. The Director may also require the owner, his agent or the coxswain of a ferry vessel to submit a return showing the particulars of each voyage of the ferry vessel under section 8. Section 6 requires the owner, his agent or the coxswain of a local vessel to comply with the directions given by the Director. Further, under section 9, a person may only embark on, or disembark from, a local vessel in a terminal with the permission of the Director under certain circumstances.

4. Part 3 (sections 10 to 24) relates to the control of restricted areas within a terminal. Under section 10, a restricted area under the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg.) is deemed to be a

restricted area under this Regulation. Section 11 prohibits a person without a valid pass from remaining in a restricted area. This restriction does not, however, apply in the case of a bona fide passenger referred to in section 22. Section 12 sets out the different types of passes that may be issued by the Director. Sections 13 to 20, 23 and 24 relate to the application, contents, cancellation, surrender, reporting of loss and replacement of passes. The conditions for the use of passes in restricted areas are prescribed under section 21.

5. Part 4 (sections 25 to 31) sets out the miscellaneous provisions. Under section 25, no person may board, or load a vehicle or other cargo on a local vessel except with the permission of the coxswain. Under section 26, the permission from the Director is required for a person to remain on board a ferry vessel in a terminal. Section 27 prohibits a person from littering, throwing anything that may cause injury, throwing life buoy, begging or fishing from a local vessel within a terminal. Sections 28 and 29 govern the payment of fees for berthing and embarkation. Section 30 sets out the offence and penalty provisions. Finally, section 31 empowers an authorized officer to arrest a person whom he reasonably believes to have entered or remained in a restricted area without a valid pass.