

LEGISLATIVE COUNCIL BRIEF

Marine Fish Culture Ordinance (Chapter 353)

MARINE FISH CULTURE (AMENDMENT) BILL 2002

INTRODUCTION

At the meeting of the Executive Council on 19 March 2002, the Council ADVISED and the Chief Executive ORDERED that the Marine Fish Culture (Amendment) Bill 2002 at **Annex A** should be introduced into the Legislative Council to empower the Director of Agriculture, Fisheries and Conservation (DAFC) to approve transfer of fish culture licences.

BACKGROUND AND ARGUMENT

General Background

2. Marine fish culture involves the growing of fish fry to marketable size. Under the Ordinance, marine fish culture is only permitted in specific areas within Hong Kong waters designated as fish culture zones. This restriction regulates fish culture operations so as to avoid interfering with navigational channels, obstructing users of typhoon shelters and public piers, occupying areas of water better used for recreational and other purposes, and damaging scenic areas. At present, there are 26 fish culture zones in Hong Kong occupying 209 hectares (0.12%) of Hong Kong waters. Since 1991, no new fish culture zones have been designated because of competing uses of Hong Kong waters.

3. Within the fish culture zones, all fish culture operations must be licensed by DAFC. The licences confer on the licensees certain rights,

including the use of water for marine fish culture and protection from interference and damage caused by other uses of waters in and around the zones. There are also licence conditions which ensure that the fish culture operations of the licensees do not adversely affect other activities in the vicinity. At present, there are some 1 300 fish culture licences and permits, providing employment for about 2 300 persons. It is estimated that mariculture production contributed to 13% of Hong Kong's live marine fish consumption in 2001.

Present situation

4. At present, fish culture zones are occupied mostly by family-based operations run by old mariculturists. Due to their small-scale, these operations usually lack efficiency and have become less profitable in recent years as a result of increased operating costs. Family-based mariculturists lack the means and knowledge to invest in modern and environmentally friendly practices to upgrade their operations. Many of them are not always in active operation. However, there is little incentive for them to surrender their licences because they have to clear the licensed area including dismantling the rafts at their own expense. Apart from the loss of capital investment of the rafts and cages, they incur substantial clearance cost. These expenses are much higher than the annual licence fee (on average about \$2,000).

5. Some progressive, large-scale and company-based marine fish culture operators are eager to expand their operations. There are also new comers who would like to enter the fish culture business. However, they cannot obtain new licences to operate new culture farms as the Administration is no longer issuing any new licences in order to avoid overcrowding of fish culture farms and to protect the environment. The progressive mariculturists and new comers are willing to take over the licences and operation of the old mariculturists, but cannot do so because the Ordinance prohibits transfer of fish culture licences.

The Proposal

(a) Transfer of licences

6. We propose to empower DAFC to approve transfer of fish culture licenses subject to the payment of a prescribed fee and the imposition of any conditions as he thinks fit. To forestall speculation, a licence will not be allowed for transfer if it has only been held by the applicant for less than two years. If DAFC refuses to approve transfer of a licence, he should notify the applicant in writing of his decision and the reasons of the refusal. We also propose that any person aggrieved by DAFC's decision to refuse transfer of a licence may lodge an appeal to the Administrative Appeals Board ("AAB") against the decision. We also intend to take the opportunity to transfer the authority to determine appeals against DAFC's decision to cancel or refuse to grant or renew a licence or permit under the Ordinance from the Chief Executive to the AAB as the latter now handles most appeals of a similar nature.

7. Legalizing transfer of licences will provide an incentive for older mariculturists to transfer their licences to progressive mariculturists or new comers as they will be able to benefit financially from the transfer and do not need to clear the licensed area. At the same time, new comers and progressive mariculturists can obtain licences to operate fish culture activities. As they are more willing to invest in new husbandry practices and upgrade fish culture operations, they will help enhance the competitiveness and ensure the sustainability of the industry.

(b) Technical amendments

8. We propose to take the opportunity to improve some provisions of the Ordinance in order to provide additional safeguards against any abuse of power by enforcement officers and to maintain the deterrent effect of the Ordinance. Major improvements include –

- (a) requiring DAFC or his authorized officer to obtain a search warrant before he exercises the power of search and seizure already provided for in the Ordinance;

- (b) setting out more clearly the circumstances under which items seized can be sold and forfeited;
- (c) empowering DAFC or his authorized officer to require any person who is suspected to have committed or is about to commit an offence under the Ordinance to produce proof of identity so as to facilitate enforcement actions; and
- (d) updating the penalty provisions so as to maintain the deterrent effect of the Ordinance.

THE BILL

9. The main provisions are –

- (a) **Clause 4** adds a **new section 8A** to provide for the establishment of a mechanism for processing applications for transfer of fish culture licences by the DAFC;
- (b) **Clause 5** repeals and replaces –
 - (i) **section 16** to provide that any appeals against a decision of the DAFC should be made to the AAB;
 - (ii) **section 17** to provide that a warrant should first be obtained from a magistrate before the DAFC or an authorized officer can conduct a search on any vessel or raft unless it is not practicable to do so;
 - (iii) **section 18** to require that an application has to be made to a magistrate for the forfeiture of any thing seized and detained or the proceeds of sale thereof, but DAFC may return such thing or proceeds to the owner or dispose of such thing; and

- (iv) **section 19** to confer on the DAFC and authorized officers a power to require a person to give his name and address and to produce his proof of identity for inspection; and
- (c) **Clause 6** repeals and replaces **section 21** to add a new penalty provision for the offence of failure to produce proof of identity and to revise the penalty provisions to maintain the deterrent effect of the Ordinance.

The provisions of the Ordinance proposed to be amended are extracted at **Annex B**.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be –

Publication in the Gazette	28 March 2002
First Reading and commencement of Second Reading debate	17 April 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

11. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT OF THE LEGISLATION

13. The Bill will not affect the current binding effect of the Marine Fish Culture Ordinance.

FINANCIAL AND STAFFING IMPLCIATIONS

14. There are no additional financial or staffing implications arising from the Bill. The resources required to process applications for transfer of fish culture licences will be absorbed by the Agriculture, Fisheries and Conservation Department.

ECONOMIC IMPLICATIONS

15. Our proposal to legalise transfer of licences will facilitate the marine fish culture industry to enhance its competitiveness and become more efficient through better economy of scale and adoption of modern husbandry practices. More employment opportunities may also be created.

ENVIRONMETNAL IMPLICATIONS

16. The mariculture industry can cause pollution if the traditional approach of using trash fish for feeding is continued. We envisage that the progressive mariculturists and new comers are more receptive to modern and environmentally friendly culture techniques and should be more willing to invest in this area. Our proposal to legalize transfer of fish culture licences may therefore help improve the culture environment. Government will also continue to encourage and consider requiring mariculturists to switch from the traditional trash fish feeding to more environmentally friendly practices.

PUBLIC CONSULTATION

17. We have consulted the marine fish culture industry and the concerned Provisional District Boards. They generally support our proposals. We have also explained to the Legislative Council Panel on Food Safety and Environmental Hygiene the policy intention of the major proposals. The Panel supports the proposals.

PUBLICITY

18. A press release will be issued when the Bill is published in the Gazette on 28 March 2002. A spokesman will be available to answer media enquiries.

ENQUIRIES

19. Enquiries on this brief should be referred to Mrs Ingrid YEUNG, Principal Assistant Secretary for the Environment and Food, on telephone number 2136 3399.

Environment and Food Bureau
26 March 2002

Annex A

**MARINE FISH CULTURE (AMENDMENT)
BILL 2002**

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A BILL

To

Amend the Marine Fish Culture Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Marine Fish Culture (Amendment) Ordinance 2002.

2. Interpretation

Section 2 of the Marine Fish Culture Ordinance (Cap. 353) is amended by adding -

" "proof of identity" (身分證明文件) has the meaning assigned to it by section 17B(1) of the Immigration Ordinance (Cap. 115);

"relevant proceeds" (有關售賣得益) means proceeds from the sale of relevant property under section 18(2);

"relevant property" (有關財產) means a raft or other thing seized and detained under section 17;

"withdrawal" (撤回) includes abandonment.".

3. Grant of licences and renewal thereof

Section 8 is amended -

- (a) in subsection (3), by adding "upon payment of the prescribed fee and" after "renewed,";
- (b) by repealing subsection (5).

4. Section added

The following is added -

"8A. Transfer of licences

- (1) A licence shall not be transferred except as provided in this section.
- (2) An application for the transfer of a licence shall be -
- (a) made to the Director by the licensee in such form and manner as the Director may specify; and
 - (b) accompanied by the prescribed fee.
- (3) The Director may determine an application under subsection (2) by -
- (a) approving the transfer of the licence to the intended transferee subject to such reasonable variation of the conditions of the licence as the Director thinks fit; or
 - (b) refusing to approve the transfer of the licence -
 - (i) on any ground specified in section 8(6) which would have entitled him to refuse to grant or renew a licence;
 - (ii) on the ground that the licensee has contravened any provision of this Ordinance or any regulation made under this Ordinance or any conditions of the licence, as the case may be;
 - (iii) if the licence was held by the licensee for less than 2 years;
 - (iv) in the case where the intended

transferee is or was a holder of a licence, on the ground that the intended transferee has contravened any provision of this Ordinance or any regulation made under this Ordinance or any conditions of the licence mentioned in this subparagraph, as the case may be;

(v) if the Director reasonably concludes that false or misleading information was furnished by the licensee or the intended transferee in connection with the application.

(4) Where the Director refuses to approve the transfer of a licence under subsection (3)(b), he shall send to the licensee a notice of the refusal and state in the notice the reasons for the refusal.

(5) A licence the subject of an application under subsection (2) (including a licence to which subsection (6) applies) shall continue in force against the licensee unless and until the licence is transferred to the intended transferee under subsection (3)(a).

(6) Where but for this subsection a licence the subject of an application under subsection (2) would expire before the determination of the application under subsection (3), then the licence shall continue in force according to its terms and conditions until -

- (a) the application is withdrawn;
- (b) the licence is cancelled under section 9; or
- (c) the determination of the application under

subsection (3),
whichever first occurs.".

5. Sections substituted

Sections 16, 17, 18 and 19 are repealed and the following substituted -

"16. Right of Appeal

- (1) Any person aggrieved by a decision made in respect of him by the Director to -
- (a) refuse to grant or renew a licence under section 8(6);
 - (b) refuse to approve the transfer of a licence under section 8A(3)(b);
 - (c) cancel a licence under section 9(1);
 - (d) refuse to grant a permit under section 14(1);
or
 - (e) cancel or refuse to renew a permit under section 14(2),

may appeal to the Administrative Appeals Board against that decision.

- (2) Where an appeal is made under subsection (1) against a decision of the Director to -

- (a) cancel a licence or permit, the decision shall not become effective pending;
- (b) refuse to renew a licence or permit, the licence or permit (if expired) shall be deemed to continue in force according to its terms and conditions until; or
- (c) refuse to grant the transfer of a licence (including a licence to which section 8A(6)

applies), the licence shall continue in force pending,

the determination of the appeal by the Administrative Appeals Board.

(3) Where -

- (a) an appeal has been made under this section; and
- (b) the period of validity of the licence or permit to which the appeal relates would have expired but for subsection (2)(b) or (c),

then the licensee or permittee, as the case may be, shall be liable for the fee prescribed -

- (c) for the period from the day the licence or permit would have expired to the day of the determination of the Administrative Appeals Board or withdrawal of the appeal, whichever first occurs; and
- (d) on a pro rata basis, irrespective of the outcome of the appeal.

17. Power of search, seizure, etc.

(1) Where a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that any vessel, raft or impoundment within the waters of Hong Kong is being or has been used in connection with any offence under this Ordinance, he may issue a warrant authorizing the Director or any authorized officer to -

- (a) board and search any such vessel or raft, or enter any such impoundment; and
- (b) seize and detain any such raft or any thing

which the Director or an authorized officer reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(2) The Director or an authorized officer may exercise any of the powers referred to in subsection (1)(a) or (b) without a warrant issued under this section if -

- (a) he has reasonable grounds for suspecting that any vessel, raft or impoundment is being or has been used in connection with any offence under this Ordinance; and
- (b) it would not be reasonably practicable to obtain such a warrant in respect of the vessel, raft or impoundment before exercising those powers.

(3) Subsections (1) and (2) shall not apply to -

- (a) any ship required to be provided with a certificate referred to in section 3(1) of the Merchant Shipping Ordinance (Cap. 281); and
- (b) any vessel for the time being used for any purpose by the Central People's Government, the Government or any state.

(4) If any raft or impoundment is found sunken, stranded, abandoned or adrift within or outside a fish culture zone, the Director or an authorized officer may seize and detain such raft or any thing found on or in such raft or within or forming part of such impoundment.

(5) The Director or an authorized officer may exercise any of the powers under this section with the assistance of any other persons as he thinks fit.

(6) Within 14 days of the seizure and detention under

this section of any raft or any other thing, the Director or an authorized officer shall -

- (a) subject to paragraph (b), serve a notice on the person whom he believes to be the owner thereof; or
- (b) if the identity and address of the owner thereof is not known to him, publish a notice in the Gazette,

in which he shall specify -

- (c) his intention to apply for forfeiture of the raft or thing, or the proceeds thereof if the same has been sold under section 18(2); and
- (d) the owner may, within 30 days from the date of service or publication, as the case may be, of the notice, submit a claim in writing to the Director for the return of the raft or thing, or the proceeds thereof, as the case may be.

(7) In this section -

"thing" (物件) includes -

- (a) any fish, equipment or other thing found on board the vessel or on or in the raft or within the impoundment, as the case may be; and
- (b) any net or structure forming part of the impoundment,

upon which the Director or an authorized officer has exercised his power under subsection (1) or (2).

18. Power of sale and forfeiture

(1) Subject to subsections (3) and (7), any relevant

property is liable to forfeiture whether or not any person has been charged with an offence under this Ordinance which relates to the relevant property.

(2) If the Director or an authorized officer reasonably concludes that any relevant property is of a perishable nature or of such a nature that it is difficult to store or is likely to deteriorate before the conclusion of any proceedings under this Ordinance, then he may cause the relevant property to be sold in such manner as he thinks fit, irrespective of whether a claim for its return has been made under section 17(6)(d).

(3) Without prejudice to the generality of subsection (2), on receipt of a claim under section 17(6)(d), the Director or an authorized officer may return to the owner -

- (a) any relevant property, upon payment of any reasonable expenses or disbursement incurred in respect of the seizure and detention of the relevant property; or
- (b) any relevant proceeds, after deduction of any reasonable expenses or disbursement incurred in respect of the seizure, detention and sale of the relevant property concerned.

(4) After the expiry of the period for making a claim under section 17(6), the Director or an authorized officer may, in proceedings where an offence under this Ordinance is prosecuted or in separate proceedings under this Ordinance, apply to a magistrate for the forfeiture of any relevant property or relevant proceeds where -

- (a) no such claim is made; or
- (b) the relevant property or relevant proceeds

have not been returned under subsection (3).

(5) Upon hearing an application under subsection (4), a magistrate may order that any relevant property or relevant proceeds –

- (a) be forfeited to the Government if the magistrate is satisfied that an offence against this Ordinance has been committed;
- (b) be returned to the owner subject to such conditions that the magistrate may specify in the order; or
- (c) be disposed of in such manner and subject to such conditions that the magistrate may specify in the order.

(6) Where an application is made under subsection (4) for the forfeiture of any relevant property or relevant proceeds, otherwise than in proceedings where an offence under this Ordinance is prosecuted, the Director or an authorized officer shall forthwith notify in writing the owner thereof, unless the owner has indicated in writing to the Director that notification is not required or if the identity and address of the owner is not known to him.

(7) Notwithstanding subsections (1) to (6), if the Director or an authorized officer reasonably concludes that any relevant property is of no appreciable value or of small value, he may cause the relevant property to be destroyed or otherwise disposed of in such manner as he thinks fit.

(8) Any relevant property ordered to be forfeited under this section may be destroyed or otherwise disposed of as determined by the Director or an authorized officer.

19. Power of inspection and arrest

(1) If the Director or an authorized officer has reasonable grounds for suspecting that a person has committed or is about to commit an offence under this Ordinance, he may, without warrant and on proof of his identity, stop the person or, where the person is on board a vessel, stop and board the vessel for the purposes of requiring that person to -

- (a) give his name and address; and
- (b) produce his proof of identity for inspection.

(2) A person who, without reasonable excuse, fails to give his name and address or to produce his proof of identity when required to do so under subsection (1) or gives a false or misleading name or address commits an offence.

(3) The Director or an authorized officer may, without warrant, arrest a person who -

- (a) contravenes subsection (2); or
- (b) is reasonably suspected to have committed or is about to commit an offence under section 6 or 11.

(4) If any person who may be arrested under this section forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the Director or an authorized officer may use all means necessary to effect the arrest.

(5) Where the Director or an authorized officer arrests a person under this section, he shall forthwith take the person to the nearest police station or hand him over to the custody of a police officer to be dealt with in accordance with the Police Force Ordinance (Cap. 232).".

6. Section substituted

Section 21 is repealed and the following substituted -

"21. Penalties

(1) Any person who commits an offence under section 6 or 7 is liable to a fine at level 6 and to imprisonment for 1 year, and in the case of a continuing offence to a further daily penalty of \$1,500.

(2) Any person who commits an offence under section 11 is liable to a fine at level 6 and to imprisonment for 1 year.

(3) Any person who commits an offence under section 12, 13 or 20 is liable to a fine at level 4 and to imprisonment for 6 months.

(4) Any person who commits an offence under section 19(2) is liable to a fine at level 2.".

7. Regulations

Section 22 is amended -

(a) in subsection (1), by repealing paragraphs (a) and (b) and substituting -

"(a) the application for and the grant, renewal and transfer of licences, and the fees payable in respect thereof;

(aa) the application for and the grant and renewal of permits, and the fees payable in respect thereof;

(b) the period of validity for which -

(i) licences may be granted, renewed or transferred; and
(ii) permits may be granted or renewed;" ;

(b) in subsection (2) -

- (i) by repealing "of \$3,000" and substituting "at level 3";
- (ii) by repealing "\$100" and substituting "\$300".

8. Section added

The following is added -

"24. Transitional

(1) Any right of appeal subsisting under section 16 immediately before the commencement of this section shall be treated as being a right of appeal to the Administrative Appeals Board under section 16 as amended by the Marine Fish Culture (Amendment) Ordinance 2002 (of 2002) ("the amending Ordinance").

(2) Any appeal pending under section 16 immediately before the commencement of this section shall be treated and disposed of as if it were an appeal pending to the Administrative Appeals Board under section 16 as amended by the amending Ordinance.".

9. Consequential amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

[s. 9]

CONSEQUENTIAL AMENDMENTS

Marine Fish Culture Regulations

1. Applications for licences and permits

Regulation 3(1) of the Marine Fish Culture Regulations (Cap. 353 sub. leg.) is amended by adding "in such form and manner as he may specify" after "the Director".

2. **Regulation added**

The following is added -

"3A. Transfer of licence

(1) Upon receipt of an application under section 8A(2) of the Ordinance, the Director may require the applicant or the intended transferee to furnish such further information in connection with the application as he thinks necessary.

(2) Where an application under section 8A(2) of the Ordinance is granted -

(a) if the period of validity of the licence remains unexpired, the intended transferee shall hold the licence for the unexpired period from the day immediately following the day of the determination of the application by the Director; or

(b) if the period of validity of the licence expires before the determination of the application by the Director or would have expired but for section 8A(6) of the Ordinance, a new licence shall be issued to the intended transferee by the Director, upon payment of the fee payable for the grant of a licence prescribed by regulation 10(1), which shall take effect -

(i) on the day immediately following the day of the determination; and

(ii) for a period of 12 months or such lesser period as may be indicated by the Director at the time of the determination.

(3) If the period of validity of a licence the subject of an application under section 8A(2) of the Ordinance would have expired before the determination of the Director but for section 8A(6) of the Ordinance, then the licensee shall be liable for the prescribed fee for the licence -

- (a) for the period from the day when the licence would have expired until the day of the determination of the application by the Director, withdrawal of the application or cancellation of the licence under section 9 of the Ordinance, whichever first occurs; and
- (b) on a pro rata basis,

unless section 16(3) of the Ordinance applies.".

**3. Period of licences and permits
and renewal thereof**

Regulation 4(1) is amended by repealing "section 16(4)(b)" and substituting "sections 8A(6) and 16(2)(b) and (c)".

4. Fees

Regulation 10 is amended by adding -

"(1A) The fee payable for the application for the transfer of a licence shall be \$180.".

5. Offences and penalties

Regulation 11 is amended -

- (a) in paragraph (1) -
 - (i) by repealing "of \$500" and substituting "at level 1";
 - (ii) by repealing "\$50" and substituting "\$140";
 - (b) in paragraph (2), by repealing "of \$1,000" and substituting "at level 2".

Administrative Appeals Board Ordinance

6 . Schedule amended

The Schedule to the Administrative Appeals Board Ordinance
(Cap. 442) is amended by adding -

"59.	Marine Fish Culture Ordinance (Cap. 353)	A decision of the Director of Agriculture, Fisheries and Conservation -
		(a) to refuse to grant or renew a licence under section 8(6);
		(b) to refuse to grant the transfer of a licence under section 8A(3)(b);
		(c) to cancel a licence under section 9(1);
		(d) to refuse to grant a permit under section 14(1);
		(e) to cancel or refuse to renew a permit

under section
14(2)...".

Explanatory Memorandum

The object of this Bill is to amend the Marine Fish Culture Ordinance (Cap. 353) ("the principal Ordinance") to -

- (a) establish a mechanism for processing applications for transfer of fish culture licences by the Director of Agriculture, Fisheries and Conservation ("the Director") (clause 4);
- (b) repeal and replace section 16 to provide that any appeals against a decision of the Director shall be made to the Administrative Appeals Board (clause 5);
- (c) repeal and replace section 17, new section 17 provides that a warrant shall first be obtained from a magistrate before the Director or an authorized officer conducting a search on any vessel or raft unless it is not practicable to do so; and notification be given to the owner of any thing seized and detained (clause 5);
- (d) repeal and replace section 18, new section 18 provides that applications shall be made to a magistrate for the forfeiture of any thing seized and detained or the proceeds thereof but the Director may, at his discretion, return such thing or proceeds to the owner or dispose of such thing under certain circumstances (clause 5);
- (e) repeal and replace section 19, new provisions are introduced to confer on the Director and authorized officers the power to require a person to give his

name and address and to produce his proof of identity for inspection when investigating suspected offences under the principal Ordinance (clause 5);

- (f) repeal and replace section 21 by adding a new penalty provision for the offence of failure to produce proof of identity and to revise the existing penalties to maintain the deterrent effect of the principal Ordinance (clause 6);
- (g) amend section 22 by empowering the Chief Executive in Council to make regulations for the transfer of licences (clause 7);
- (h) introduce transitional provisions to deal with appeals lodged before the amendment of section 16 of the principal Ordinance (clause 8); and
- (i) make consequential amendments to the Marine Fish Culture Regulations (Cap. 353 sub. leg.) and the Administrative Appeals Board Ordinance (Cap. 442) (clause 9).

**MARINE FISH CULTURE (AMENDMENT)
BILL 2002**

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:	L.N. 331 of 1999
Section:	2	Heading:	Interpretation	Version Date:	01/01/2000

In this Ordinance, unless the context otherwise requires-

"authorized officer" (獲受權人員) means a public officer authorized under section 3;

"Director" (署長) means the Director of Agriculture, Fisheries and Conservation; (Amended L.N. 331 of 1999)

"fish" (魚、魚類) means any marine fish, crustacean or mollusc, other than an oyster;

"fish culture" (魚類養殖) means any operation involving the maintenance, propagation or promotion of growth of fish in captivity within the waters of Hong Kong;

"fish culture zone" (魚類養殖區) means an area of the waters of Hong Kong designated to be a fish culture zone under section 5(a);

"impoundment" (圍塘) means an enclosure of an area of the waters of Hong Kong by means of a net or other removable, permeable structure used or designed for the purpose of fish culture;

"licence" (牌照) means a licence granted or renewed under section 8;

"licensee" (持牌人) means the holder of a licence;

"permit" (許可證) means a permit granted or renewed under section 14;

"permittee" (持證人) means the holder of a permit;

"raft" (魚排) means a floating structure or object, including any cage, net or other device attached thereto, used or designed for the purpose of fish culture;

"site" (場地) means a site within a fish culture zone specified under section 5(b);

"vessel" (船隻) includes-

- (a) any ship, boat or any other description of vessel used in navigation; and
- (b) any other movable structure that is not used in navigation and not constructed nor adapted for use in navigation, but does not include a raft;

"waters of Hong Kong" (香港水域) means waters of Hong Kong within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1). (Replaced 26 of 1998 s. 44)

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:	
Section:	8	Heading:	Grant of licences and renewal thereof	Version Date:	30/06/1997

- (1) Subject to this Ordinance, the Director may grant to any person, a licence, and renew such licence, to engage in fish culture within a fish culture zone.
- (2) The form of application for the grant or renewal of a licence and the form of the licence shall be specified by the Director.
- (3) A licence may be granted, and may be renewed, subject to such conditions as the Director thinks fit.
- (4) The Director shall specify in a licence-
 - (a) the site in respect of which the licence is valid;
 - (b) the area of the rafts or impoundments permitted under the licence; and
 - (c) the conditions to which the licence is subject.
- (5) A licence shall not be transferable.
- (6) The Director may refuse to grant or renew a licence if it appears to him-
 - (a) that, having regard to the size or location of a fish culture zone, the grant or renewal of a licence would cause overcrowding of the fish culture zone or would otherwise not be in the best interests of fish culture;
 - (b) that any raft or impoundment used or to be used by the applicant for the purpose of fish culture does not comply with any of the provisions of this Ordinance or any regulations made thereunder.
- (7) Where the Director refuses to grant or renew a licence under subsection (6) he shall send to the applicant a notice of the refusal and state in the notice the reasons for the refusal.

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:	65 of 1999
Section:	16	Heading:	Right of appeal	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 65 of 1999 s. 3

- (1) Any person aggrieved by a decision of the Director to cancel a licence or permit, or to refuse to grant or renew a licence or permit, may, within 21 days after the receipt of a notice under section 8(7), 9(2) or 14(3), as the case may be, or within such further period as the Chief Executive may in any particular case allow, appeal by way of petition to the Chief Executive.
- (2) The Chief Executive may, when considering an appeal under subsection (1), confirm, vary or reverse the decision.
- (3) The decision of the Chief Executive on any such appeal shall be final.
- (4) Where an appeal is lodged in accordance with subsection (1)-
 - (a) against a decision of the Director to cancel, or to refuse to grant, a licence or permit, the decision shall not become effective pending the determination of the appeal by the Chief Executive; or
 - (b) against a decision of the Director to refuse to renew a licence or permit, the licence or permit (if expired) shall be deemed to continue in force according to its terms and conditions until the determination of the appeal by the Chief Executive, and if the effect of the decision of the Chief Executive is that the licence or permit shall be renewed by the Director, until such time as is necessary to renew the licence or permit.

(Amended 65 of 1999 s. 3)

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:
Section:	17	Heading:	Power of search, seizure, etc.	Version 30/06/1997 Date:

- (1) Subject to subsection (2), if the Director or an authorized officer has reason to suspect that any vessel or raft or impoundment within the waters of Hong Kong is being or has been used in or for or in connection with the commission of any offence under this Ordinance, he may without warrant-
- (a) board and search any such vessel or raft; and
 - (b) seize and detain any such raft or impoundment, and any fish, equipment or other thing found on board any vessel or on or in any raft or within any impoundment which appears to him to be or to have been so used or that constitutes evidence of any such offence having been committed. (Replaced 18 of 1983 s. 2)
- (2) Subsection (1) shall not apply to-
- (a) any ship required to be provided with a certificate referred to in section 3(1) of the Merchant Shipping Ordinance (Cap 281); and
 - (b) any vessel for the time being used for any purpose by Her Majesty's Government, the Government of Hong Kong or any State.
- (3) The Director or an authorized officer may seize and detain any raft or impoundment found sunken, stranded, abandoned or adrift within or outside a fish culture zone and any fish, equipment or other thing found on or in any such raft or within any such impoundment. (Replaced 18 of 1983 s. 2)

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:
Section:	18	Heading:	Power of sale or other disposal	Version 30/06/1997 Date:

- (1) Subject to subsection (4), the Director or an authorized officer may sell in such manner as the Director or an authorized officer sees fit, any raft or impoundment and any fish, equipment or other thing found on board any vessel or on or in any raft or within any impoundment, seized and detained under section 17.
- (2) Where any raft or impoundment and any fish, equipment or other thing to which this section applies is sold under subsection (1), the Director or an authorized officer may deduct from the proceeds of sale any reasonable expenses or disbursements incurred by the Director or an authorized officer in respect of the seizure, detention or the sale.
- (3) The proceeds of sale less any expenses or disbursements deducted under this section shall-
- (a) if the owner thereof is known or becomes known before the expiration of 6 months from the date of the sale, be paid to the owner;

(b) if the owner thereof is not known, be paid into the general revenue of Hong Kong after the expiration of 6 months from the date of the sale.

(4) Notwithstanding subsection (1), if any raft or impoundment and any fish, equipment or other thing to which this section applies is of no appreciable value or of value so small in the opinion of the Director or an authorized officer as to render impracticable the sale thereof, the Director or an authorized officer may cause such raft or impoundment and any fish, equipment or other thing to be destroyed or otherwise disposed of in such manner as the Director or an authorized officer sees fit.

(5) The powers conferred on the Director or an authorized officer under this section may be exercised whether or not any person is or will be prosecuted for an offence under this Ordinance and whether or not any person has been convicted of any such offence.

(Replaced 18 of 1983 s. 3)

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:
Section:	19	Heading:	Power of arrest	Version 30/06/1997 Date:

(1) The Director or an authorized officer may arrest any person whom he has reasonable grounds to believe has contravened any of the provisions of section 6 or 11.

(2) If any person forcibly resists an endeavour to arrest him under this section, or attempts to evade such arrest, the person effecting the arrest may use all reasonable means necessary to effect the arrest.

(3) Every person arrested under this section shall, as soon as the circumstances permit and in any event within 24 hours of his arrest, be given into the custody of a police officer.

(4) Whenever an arrested person is given into the custody of a police officer the provisions of sections 51 and 52 of the Police Force Ordinance (Cap 232) shall apply.

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:
Section:	21	Heading:	Penalties	Version 30/06/1997 Date:

(1) Any person who commits an offence under section 6 is liable to a fine of \$20000 and to imprisonment for 1 year, and in the case of a continuing offence to a further daily penalty of \$500.

(2) Any person who commits an offence under section 11 is liable to a fine of \$20000 and to imprisonment for 1 year.

(3) Any person who commits an offence under section 7, 12, 13 or 20 is liable to a fine of \$5000 and to imprisonment for 6 months.

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Chapter:	353	Title:	MARINE FISH CULTURE ORDINANCE	Gazette Number:	65 of 1999
Section:	22	Heading:	Regulations	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The Chief Executive in Council may make regulations for all or any of the following matters-
(Amended 65 of 1999 s. 3)

- (a) the application for and the grant and renewal of licences and permits, and the fees payable in respect thereof;
- (b) the period for which licences and permits may be granted and renewed;
- (c) the control of fish culture;
- (d) the marking of the boundaries of fish culture zones and sites;
- (e) the equipment to be installed and used on rafts and within impoundments;
- (f) the construction, dimensions, marking and lighting of rafts and impoundments;
- (g) the structures that may be erected on rafts, and the removal of illegal structures;
- (h) the mooring and anchoring of rafts;
- (i) the inspection of rafts, impoundments and sites;
- (j) the inspection of fish maintained in rafts and within impoundments;
- (k) the size, species or numbers of fish which may be kept in rafts and within impoundments;
- (l) the returns and reports to be rendered and accounts, registers, books, records and plans to be kept by licensees, and the manner of rendering or keeping them;
- (m) the seizure and detention of rafts or impoundments, and of any fish, equipment or other thing, to which section 17 applies; (Replaced 18 of 1983 s. 4)
- (mm) the sale or other disposal or destruction under section 18 of rafts or impoundments, and of any fish, equipment or other thing seized and detained under section 17; (Added 18 of 1983 s. 4)
- (n) generally for the better carrying out of the provisions and purposes of this Ordinance.

(2) Regulations made under this section may provide that any contravention of any such regulations shall be an offence, and may prescribe penalties therefor not exceeding a fine of \$3000 and imprisonment for 6 months, and in the case of a continuing offence a further daily penalty of a fine not exceeding \$100.

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Chapter:	353A	Title:	MARINE FISH CULTURE REGULATIONS	Gazette Number:	
Regulation:	3	Heading:	Applications for licences and permits	Version Date:	30/06/1997

- (1) Application for the grant or renewal of a licence or permit shall be made to the Director.
- (2) Upon receipt of an application under paragraph (1), the Director may require the applicant to

furnish such further information in connection with the application as he thinks necessary.

(3) The fee prescribed by regulation 10(1) for the grant or renewal of a licence shall be payable on demand.

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Chapter:	353A	Title:	MARINE FISH CULTURE REGULATIONS	Gazette Number:	
Regulation:	4	Heading:	Period of licences and permits and renewal thereof	Version	30/06/1997
				Date:	

(1) Subject to section 16(4)(b) of the Ordinance, a licence or permit shall expire 12 months after the date on which it is granted or renewed or on such earlier date as may be specified in the licence or permit.

(2) Application for renewal of a licence or permit shall, except where the Director otherwise permits in any particular case, be made to the Director not later than 1 month before the date of the expiry thereof.

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Chapter:	353A	Title:	MARINE FISH CULTURE REGULATIONS	Gazette Number:	L.N. 520 of 1997
Regulation:	10	Heading:	Fees	Version	19/12/1997
				Date:	

(1) The fee payable for the grant or renewal of a licence shall be \$7.80 per square metre of the site area. (L.N. 34 of 1989; L.N. 361 of 1994; L.N. 520 of 1997)

(2) No fee shall be payable for the grant or renewal of a permit.

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Chapter:	353A	Title:	MARINE FISH CULTURE REGULATIONS	Gazette Number:	
Regulation:	11	Heading:	Offences and penalties	Version	30/06/1997
				Date:	

(1) Any licensee who contravenes regulation 5(1), or any licensee or permittee who contravenes regulation 7, commits an offence and is liable to a fine of \$500, and in the case of a continuing offence to a further daily penalty of \$50.

(2) Any licensee or permittee who contravenes regulation 6(1) or any permission granted for the

purposes of regulation 6(1) commits an offence and, without prejudice to regulation 6(3), is liable to a fine of \$1000.

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Chapter:	442	Title:	ADMINISTRATIVE APPEALS BOARD ORDINANCE	Gazette Number:	L.N. 90 of 2001
Schedule:		Heading:	SCHEDULE	Version	01/06/2001
				Date:	

Remarks:

Item 45 of this schedule has commenced operation since 19 June 2000 only in so far as it relates to a decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions. - see L.N. 131 of 2000.

[sections 3, 4 & 22]

Item	Ordinance	Decision
1.	Apprenticeship Ordinance (Cap 47)	A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power under the Ordinance.
2.	Boilers and Pressure Vessels Ordinance (Cap 56)	The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A.
3.	Employment Ordinance (Cap 57)	A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
4.	Factories and Industrial Undertakings Ordinance (Cap 59)	<ul style="list-style-type: none"> (a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation. (b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation. (c) Under section 9A- <ul style="list-style-type: none"> (i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace; (ii) a refusal by the Commissioner for Labour to cancel a prohibition notice; (iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice. (d) (Repealed 39 of 1997 s. 49)
5.	Quarries (Safety) Regulations (Cap 59 sub. leg.)	<ul style="list-style-type: none"> (a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1). (b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).
6.	Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap 59 sub. leg.)	<ul style="list-style-type: none"> (a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7. (b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9. (c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10.
7.	Weights and Measures Ordinance (Cap 68)	A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.
8.	Miscellaneous Licences Ordinance	The decision under section 5 of any officer authorized to issue a licence under the Ordinance as

	(Cap 114)	to the grant of a licence, the renewal of a licence or the revocation of a licence.
9.	Acetylating Substances (Control) Ordinance (Cap 145)	A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to- <ul style="list-style-type: none"> (a) the issue of a licence or permit; (b) the refusal to issue a licence or permit; (c) the cancellation or suspension of a licence or permit; (d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.
10.	Gambling Ordinance (Cap 148)	The decision under section 22 of the Commissioner for Television and Entertainment Licensing as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence.
11.	Chinese Temples Ordinance (Cap 153)	<ul style="list-style-type: none"> (a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1). (b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).
12.	Weapons Ordinance (Cap 217)	A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.
13.	Travel Agents Ordinance (Cap 218)	A decision of the Registrar of Travel Agents- <ul style="list-style-type: none"> (a) to refuse to grant a licence under section 12(1); (b) to impose conditions on a licence under section 11(1) or 18; (c) to refuse consent to a change of ownership or control under section 18(c); (d) to suspend or revoke a licence under section 19.
14.	Firearms and Ammunition Ordinance (Cap 238)	<ul style="list-style-type: none"> (a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32. (b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or deleting any premises from a dealer's licence at which business may be carried on. (c) The imposition of a condition of licence which is considered to be unreasonable. (d) A decision of the Commissioner referred to in section 34(1AA). (Added 14 of 2000 s. 33) (e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or 46C(3), which is considered to be

unreasonable. (Added 14 of 2000 s. 33)

15.	Massage Establishments Ordinance (Cap 266)	A decision of the licensing authority under section 6, 7, 8 or 9.
16.	Grant Schools Provident Fund Rules (Cap 279 sub. leg.)	A question of interpretation or application of the Rules.
17.	Subsidized Schools Provident Fund Rules (Cap 279 sub. leg.)	A decision of the Board under the Rules.
18.	Mining Ordinance (Cap 285)	The cancellation of an Authorized Buyer's Licence under section 41.
19.	Mining (General) Regulations (Cap 285 sub. leg.)	A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be payable.
20.	Dangerous Goods Ordinance (Cap 295)	A decision under section 9 of an officer authorized under the Ordinance to issue a licence- <ul style="list-style-type: none"> (a) to refuse to grant a licence; (b) to refuse to renew a licence; or (c) to revoke a licence.
21.	Dangerous Goods (General) Regulations (Cap 295 sub. leg.)	Prohibiting or imposing conditions on the continued use of a storage tank under regulation 127.
22.	Business Registration Ordinance (Cap 310)	<ul style="list-style-type: none"> (a) The service of a notice under section 3(4) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business. (b) The service of a notice under section 3(4AA) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business at a branch of a business. (c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to make an application for registration under a different name. (Replaced 3 of 1999 s. 19)
23.	Motor Vehicles (First Registration Tax) Ordinance (Cap 330)	A decision of the Commissioner for Transport under the Ordinance.
24.	Animals (Control of Experiments) Ordinance (Cap 340)	A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14.
25.	Chinese Permanent Cemeteries Rules (Cap 1112 sub. leg.)	A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board.

		Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purpose of section 22(5) of this Ordinance.
26.	Sewage Services Ordinance (Cap 463)	A decision of the Drainage Authority under the Ordinance. (Added 105 of 1994 s. 15)
27.	Timber Stores Ordinance (Cap 464)	A decision of the Director relating to- <ul style="list-style-type: none"> (a) an application for a licence under section 4; (b) an application for transfer of a licence under section 5; (c) the revocation, suspension, refusal to renew or transfer; amendment or variation of conditions of a licence under section 8. (Added 11 of 1995 s. 23)
28.	Marine Parks Ordinance (Cap 476)	A decision of the Country and Marine Parks Authority under section 11 or 22 of the Ordinance. (Added 37 of 1995 s. 36)
29.	Personal Data (Privacy) Ordinance (Cap 486)	A decision of the Privacy Commissioner for Personal Data- <ul style="list-style-type: none"> (a) to impose conditions on his consent to the carrying out of a matching procedure under section 32(1)(b)(i); (b) to refuse to consent to the carrying out of a matching procedure under section 32(1)(b)(ii); (c) to refuse under section 39(3) to carry out or continue an investigation initiated by a complaint; (d) not to delete under section 46(5) a matter from a report under the Ordinance; (e) not to serve an enforcement notice under section 47; (f) to serve an enforcement notice under section 50. (Added 81 of 1995 s. 73)
30.	Dutiable Commodities Ordinance (Cap 109)	A decision of the Commissioner of Customs and Excise under section 7, 26, 26A or 29. (Added 46 of 1996 s. 43)
31.	Dogs and Cats Ordinance (Cap 167)	<ul style="list-style-type: none"> (a) A decision by a police officer or an authorized officer under section 6(1)(c)(i) or (ii) to destroy a dog. (b) A decision by an authorized officer under section 9 in specifying the place or period of detention of a dog or cat or any other thing under this Ordinance. (c) A decision by an authorized officer under section 10 to vary the period of detention of a dog or cat or any other thing under this Ordinance. (d) A decision by an authorized officer under section 11(1) to refuse an application for the removal from detention under this Ordinance

- of a dog or cat or any other thing.
- (e) A decision by the Director under section 11(2) to order the forfeiture of a dog or cat or any other thing.
- (f) A decision by the Director under section 17(2) to impose any condition in granting an exemption under section 17. (Added 97 of 1997 s. 11)

33.	Child Care Services Ordinance (Cap 243)	A decision of the Director of Social Welfare- <ul style="list-style-type: none"> (a) under section 7(2), refusing an application for registration; (b) under section 9, cancelling a registration; (c) under section 11B(3), refusing an application for exemption from registration; (d) under section 11D, revoking an exemption from registration; (e) under section 15B(2), determining a person to be unsuited to act as a childminder; (f) under section 15C(4), refusing a request for the issue of a certificate; (g) under section 15D(4), refusing to make a declaration that a person should no longer be deemed unsuited to act as a childminder. (Added 38 of 1997 s. 19)
34.	Wild Animals Protection Ordinance (Cap 170)	A decision of the Director in relation to- <ul style="list-style-type: none"> (a) the granting of or the refusal to grant a permit or a special permit pursuant to section 13 or 15; or (b) the cancellation of a permit or a special permit under section 15A. (Added 77 of 1996 s. 22)
35.	Occupational Safety and Health Ordinance (Cap 509)	A decision of the Commission for Labour under Part III. (Added 39 of 1997 s. 49)
36.	Ozone Layer Protection Ordinance (Cap 403)	A decision of the Director of Environmental Protection under section 5, 6 or 7 or under provisions of the regulations that may be specified to be subject to an appeal under section 8. (Added 6 of 1997 s. 10)
39.	Volunteer and Naval Volunteer Pensions Ordinance (Cap 202)	A decision in a review under section 22. (Added 56 of 1997 s. 7)
40.	Child Care Services Regulations (Cap 243 sub. leg.)	A decision of the Director of Social Welfare under regulation 4 refusing an application for inclusion in a register or removing the name of a person from a register. (Added L.N. 272 of 1997. Amended 32 of 2000 s. 37)
41.	Prevention of Copyright Piracy Ordinance (Cap 544)	A decision of the Commissioner of Customs and Excise under section 11 or 12 of the Ordinance. (Added 22 of 1998 s. 43) <ul style="list-style-type: none"> (a) An attendance order made under section 74(1). (b) A variation of an attendance order made under section 74(2). (Added 8 of 2001 s. 31)
42.	Education Ordinance (Cap 279)	A direction by an authorized officer under section 14 of the Regulation. (Added L.N. 185 of 2000)
44.	Dangerous Dogs Regulation (Cap 167 sub. leg.)	

45.	Factories and Industrial Undertakings (Safety Management) Regulation (Cap 59 sub. leg. AF)	(a) A decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions. (b) A decision of the Commissioner for Labour under section 24(1) to require the appointment of a new safety review officer. (c) A decision of the disciplinary board under section 29(2) to reprimand a registered person, cancel the registration of a registered person or suspend the registration of a registered person. (Added L.N. 298 of 1999)
46.	Port Control (Cargo Working Areas) Regulations (Cap 81 sub. leg.)	A decision of the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21. (Added L.N. 280 of 1999)

Time within which appeals are to be made

An appeal under any item mentioned in this Schedule shall be made within 28 days after receipt of notice of the decision to which the appeal relates.

(Enacted 1994)