

**FREIGHT CONTAINERS (SAFETY) (AMENDMENT)
ORDINANCE 2006**

CONTENTS

Section Page

PART 1

PRELIMINARY

- | | | |
|----|--------------------|------|
| 1. | Short title | A835 |
| 2. | Commencement | A835 |

PART 2

**AMENDMENTS TO THE FREIGHT CONTAINERS
(SAFETY) ORDINANCE**

- | | | |
|-----|---|------|
| 3. | Long title amended | A835 |
| 4. | Application | A837 |
| 5. | Conditions of use | A837 |
| 6. | Approval of containers individually | A839 |
| 7. | Approval by design type | A839 |
| 8. | Approval issued under the Convention outside Hong Kong ... | A841 |
| 9. | Validity of approval | A841 |
| 10. | Fixing of safety approval plate | A843 |
| 11. | Section added | |
| | 10A. Removal of safety approval plate | A843 |
| 12. | Examination of containers | A845 |
| 13. | Applications for approval of examination procedures | A847 |
| 14. | Containers displaying an examination date that has passed ... | A849 |
| 15. | Section added | |
| | 17A. Offences under sections 14 to 17 | A849 |

Section	Page
16. Powers of Director and inspectors	A849
17. Offences under section 4	A849
18. Offences under sections 14 to 17	A851
19. Appeals	A851
20. Schedule amended	A851
21. Structural safety requirements and tests	A851
22. Safety approval plate	A853

PART 3

CONSEQUENTIAL AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY) (APPLICATIONS FOR APPROVAL OF CONTAINERS) REGULATION

23. Interpretation	A855
24. The manner that applicant shall present container for examination.....	A855
25. Notification of modification to approved individual container	A855
26. The manner that applicant shall present prototype container for examination	A857
27. Production of new series of containers in accordance with approved design type	A857
28. Duties of person who has been issued with approval in respect of container design type	A859
29. Giving reasons of refusal	A859

PART 4

CONSEQUENTIAL AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY) (ARRANGEMENTS FOR AUTHORIZED PERSONS) ORDER

30. Functions of authorized person	A859
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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 14 OF 2006



Donald TSANG
Chief Executive
22 June 2006

An Ordinance to amend the Freight Containers (Safety) Ordinance.

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Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Freight Containers (Safety) (Amendment) Ordinance 2006.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

PART 2

**AMENDMENTS TO THE FREIGHT CONTAINERS
(SAFETY) ORDINANCE**

3. Long title amended

The long title of the Freight Containers (Safety) Ordinance (Cap. 506) is amended by repealing “in use in Hong Kong,”.

4. Application

Section 3(1) is repealed and the following substituted—

“(1) Except as provided in subsection (2) and sections 5(1A), 6(5) and 13(1), this Ordinance applies in relation to any container in Hong Kong, whether it is manufactured in Hong Kong or elsewhere.”.

5. Conditions of use

(1) Section 4(1)(c) is amended by repealing “in accordance with” and substituting “within the meaning of”.

(2) Section 4(1)(d) is repealed and the following substituted—

“(d) the container is examined in accordance with a procedure prescribed or approved under section 12; and”.

(3) Section 4(2) is repealed and the following substituted—

“(2) Where it is an express term of a bailment or lease of a container that the bailee or lessee shall be responsible for ensuring that—

- (a) the container has a valid safety approval plate fixed to it in accordance with section 10 or the Convention, he shall not use or permit the container to be used unless a valid safety approval plate is fixed to the container in accordance with section 10;
- (b) the container is maintained, he shall not use or permit the container to be used unless the container is properly maintained within the meaning of section 11;
- (c) the container is examined, he shall not use or permit the container to be used unless the container is examined in accordance with a procedure prescribed or approved under section 12; and
- (d) all markings on the container showing maximum operating gross weight are consistent with the maximum gross weight information on the safety approval plate, he shall not use or permit the container to be used unless all markings on the container showing maximum operating gross weight are consistent with the maximum gross weight information on the safety approval plate.”.

(4) Section 4 is amended by adding—

“(2A) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.”.

(5) Section 4(3) is amended by repealing “section 20” and substituting “subsection (2A)”.

(6) Section 4(3) is amended by repealing “(1)(b) to (e) or (2)(i) to (iv)” and substituting “(1)(b), (c), (d) or (e) or (2)(a), (b), (c) or (d)”.

(7) Section 4(3)(a), (b) and (c) is amended, in the Chinese text, by repealing “應” and substituting “須”.

(8) Section 4(3) is amended, in the Chinese text, by repealing “受託保管或” and substituting “委託保管或”.

(9) Section 4(3) is amended, in the Chinese text, by repealing “即為有效的” and substituting “即可以此作為”.

6. Approval of containers individually

(1) Section 5 is amended by adding before subsection (1)—

“(1A) This section applies in relation to any container, whether it is manufactured or used in Hong Kong or elsewhere.”.

(2) Section 5(1) is amended by repealing “the Director or to”.

(3) Section 5(2) is amended by repealing “and by payment of the prescribed fee”.

(4) Section 5 is amended by adding—

“(2A) The fee payable to an authorized person in respect of an application under this section shall be—

(a) of such amount as may be specified by the authorized person; and

(b) payable in such manner, and within such period, as may be specified by the authorized person.”.

(5) Section 5(3) is amended by repealing “prescribed manner” and substituting “manner specified by the authorized person”.

(6) Section 5(4) is amended by repealing “Director or”.

(7) Section 5(5) is amended by repealing everything after “experienced” and substituting “to exercise the powers and perform the functions conferred on an authorized person under this section to be an authorized person.”.

7. Approval by design type

(1) Section 6(1) is amended by repealing “the Director or to”.

(2) Section 6(2) is amended by repealing “and by payment of the prescribed fee”.

(3) Section 6 is amended by adding—

“(2A) The fee payable to an authorized person in respect of an application under this section shall be—

(a) of such amount as may be specified by the authorized person; and

(b) payable in such manner, and within such period, as may be specified by the authorized person.”.

(4) Section 6(3) is amended by repealing “prescribed manner” and substituting “manner specified by the authorized person”.

(5) Section 6(4) is amended by repealing “Director or”.

(6) Section 6(5) is amended by repealing everything after “valid approval” and substituting “for the purposes of this Ordinance in respect of every container of the design type series, whether the container is manufactured or used in Hong Kong or elsewhere.”.

(7) Section 6(6) is amended by repealing “granted” and substituting “issued”.

(8) Section 6(6)(a) is amended by repealing “Director” and substituting “authorized person who has issued the approval”.

(9) Section 6(6)(b) is amended by repealing “Director” and substituting “authorized person who has issued the approval”.

(10) Section 6(7) is amended by repealing everything after “experienced” and substituting “to exercise the powers and perform the functions conferred on an authorized person under this section to be an authorized person.”.

8. Approval issued under the Convention outside Hong Kong

(1) Section 7(1) is amended by repealing “, territory or area” and substituting “or place”.

(2) Section 7(2)(a) is amended by repealing everything after “the authority” and substituting—

“of—

(i) a government of a country which has ratified, accepted, approved or acceded to the Convention; or

(ii) a government of a place to which the Convention applies; and”.

9. Validity of approval

(1) Section 9(2)(b) is amended by repealing “(whether or not it was issued by the Director)”.

(2) Section 9(2) is amended by repealing everything after “subsection (1)” and substituting a full stop.

(3) Section 9 is amended by adding—

“(2A) A declaration may be made under subsection (2) only if the container does not comply with any requirement of this Ordinance.”.

10. Fixing of safety approval plate

(1) Section 10(1) is amended by repealing “may” and substituting “shall”.

(2) Section 10(2)(c)(ii) is amended by adding “a procedure prescribed or approved under” after “with”.

11. Section added

The following is added immediately after section 10—

“10A. Removal of safety approval plate

(1) An owner of a container or, where section 4(2) applies, the bailee or lessee of the container, shall remove the safety approval plate fixed to the container if—

(a) the container has been modified in a manner—

(i) which would make it unable to meet the structural safety requirements and test standards specified in Schedule 1; and

(ii) which would render the information on the safety approval plate incorrect or inaccurate in a material respect;

(b) the container is removed from service and it—

(i) is not properly maintained within the meaning of section 11; or

(ii) is not examined in accordance with a procedure prescribed or approved under section 12; or

(c) the approval issued in respect of the container ceases to be valid under section 9(2) or (3).

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(3) It shall be a defence to any proceedings under subsection (2) for contravention of subsection (1) that at the time of the contravention a bailment or lease was in force in respect of the container and—

- (a) in the case of an owner, that it was an express term of the bailment or lease that the bailee or lessee, as the case may be, should be responsible for ensuring compliance with subsection (1);
- (b) in the case of a bailee, that he had become a bailor under a further bailment and that it was an express term of the further bailment that the further bailee should be responsible for ensuring compliance with subsection (1);
- (c) in the case of a lessee, that he had become a lessor under a further lease and that it was an express term of the further lease that the further lessee should be responsible for ensuring compliance with subsection (1).”.

12. Examination of containers

(1) Section 12(1) is amended by repealing everything after “of this Ordinance,” and before “a procedure for the examination” and substituting—
“the Director may—

- (a) in relation to any container or class of containers that is approved under section 5 or 6, by order in the Gazette, prescribe; or
- (b) in relation to any container or class of containers that is issued with an approval referred to in section 5, 6 or 7, by a notice in writing to the applicant in an application under section 13, approve.”.

(2) Section 12(4) is repealed and the following substituted—

“(4) Where—

- (a) the owner, bailee or lessee is—
 - (i) resident in; or
 - (ii) established or incorporated in,a contracting party other than Hong Kong; and
- (b) the government of that contracting party or a person authorized by the government to act on its behalf has prescribed or approved an examination procedure in relation to a container for the purposes of the Convention,

an examination carried out in accordance with that procedure shall be deemed to be an examination carried out in accordance with a procedure prescribed or approved under subsection (1).”.

(3) Section 12 is amended by adding—

- “(4A) In subsection (4), “contracting party” (締約方) means—
- (a) a country the government of which has ratified, accepted, approved or acceded to the Convention; or
 - (b) a place to which the Convention applies.”.

13. Applications for approval of examination procedures

(1) Section 13(1) is repealed and the following substituted—

“(1) The owner or, where section 4(2)(c) applies, the bailee or lessee of a container specified in subsection (1A) may in writing apply to the Director for approval under section 12(1)(b) of a proposed examination procedure in relation to the container.

(1A) An application made under subsection (1) in respect of a container (whether manufactured or used in or outside Hong Kong) may be made by—

- (a) an owner, bailee or lessee whose container—
 - (i) is approved under section 5; or
 - (ii) is manufactured in accordance with a design type approved under section 6;
- (b) an owner, bailee or lessee who is—
 - (i) resident in Hong Kong; or
 - (ii) established or incorporated in Hong Kong; or
- (c) an owner, bailee or lessee who is—
 - (i) resident in; or
 - (ii) established or incorporated in, a country or place the government of which has not made any arrangement for prescribing or approving an examination procedure in relation to containers for the purposes of the Convention.”.

(2) Section 13(2) is repealed and the following substituted—

“(2) An application under subsection (1) shall—

- (a) contain or be accompanied by the information or documents specified by the Director by notice published in the Gazette; and
- (b) be accompanied by the prescribed fee.

(2A) A notice under subsection (2) is not subsidiary legislation.”.

14. Containers displaying an examination date that has passed

Section 15(1) is amended by adding “a procedure prescribed or approved under” before “section 12”.

15. Section added

The following is added—

“17A. Offences under sections 14 to 17

(1) A person on whom a notice has been served under section 14(1), 15(1) or 16(1) in respect of a container shall not use the container, or permit it to be used, in contravention of any term of the notice.

(2) A person to whom permission is given by the Director under section 14(2), 15(2) or 16(3) in respect of a container shall not do, or permit to be done, anything in relation to the container which is contrary to any condition of that permission.

(3) No person shall, without the permission of the Director, remove any container which has been detained under section 14(1), 15(1) or 16(1).

(4) A person on whom a notice has been served under section 16(2) shall comply with the requirements specified in the notice.

(5) A person who without reasonable excuse contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(6) A person who without reasonable excuse fails to comply with a request made by the Director under section 17(1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.”.

16. Powers of Director and inspectors

Section 19(5) is amended by adding “within the meaning of section 11” after “maintained”.

17. Offences under section 4

Section 20 is repealed.

18. Offences under sections 14 to 17

Section 21 is repealed.

19. Appeals

Section 24(1)(a) is repealed.

20. Schedule amended

Section 29 is amended, in new item 38 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442), by repealing paragraph (a).

21. Structural safety requirements and tests

(1) Schedule 1 is amended, within the square brackets, by adding “10A,” before “14”.

(2) Schedule 1 is amended, under the heading “**Construction**”, by repealing paragraph (3).

(3) Schedule 1 is amended, under the heading of “1. LIFTING”, in the first column of table (A), by repealing everything after “**Internal loading:**” and substituting—

“1. A uniformly distributed load such that the combined weight of a container and test load is equal to 2 R.

2. In the case of a tank-container, where the test weight of the internal load plus the tare weight is less than 2 R, a supplementary load uniformly distributed over the length of the tank is to be applied to the container, such that the combined weight of the internal load, tare weight and supplementary load is equal to 2 R.

Externally applied forces:

Such as to lift the combined weight of 2 R in the manner prescribed (under the heading TEST PROCEDURES).”.

(4) Schedule 1 is amended, under the heading of “1. LIFTING”, in the first column of table (B), by repealing everything after “**Internal loading:**” and substituting—

“1. A uniformly distributed load such that the combined weight of a container and test load is equal to 1.25 R.

2. In the case of a tank-container, where the test weight of the internal load plus the tare weight is less than 1.25 R, a supplementary load uniformly distributed over the length of the tank is to be applied to the container, such that the combined weight of the internal load, tare weight and supplementary load is equal to 1.25 R.

Externally applied forces:

Such as to lift the combined weight of 1.25 R in the manner prescribed (under the heading TEST PROCEDURES).”

(5) Schedule 1 is amended, under the heading of “2. STACKING”, in the first column of the table, by repealing everything after “**Internal loading:**” and before “**Externally applied forces:**” and substituting—

“1. A uniformly distributed load such that the combined weight of a container and test load is equal to 1.8 R.

2. In the case of a tank-container, it may be tested in tare condition.”

(6) Schedule 1 is amended, under the heading of “5. LONGITUDINAL RESTRAINT (STATIC TEST)”, in the first and second columns of the table, by repealing everything after “**Internal loading:**” and before “**Externally applied forces:**” and substituting—

“1. A uniformly distributed load such that the combined weight of a container and test load is equal to R.

2. In the case of a tank-container, where the test weight of the internal load plus the tare weight is less than R, a supplementary load uniformly distributed over the length of the tank is to be applied to the container, such that the combined weight of the internal load, tare weight and supplementary load is equal to R.

The container having the prescribed INTERNAL LOADING shall be restrained longitudinally by is equal to the maximum securing the 2 bottom corner fittings or equivalent corner structures at one end to suitable anchor points.”

22. Safety approval plate

Schedule 2 is amended, in section 2(d)(i), by adding “or place” after “country”.

PART 3

CONSEQUENTIAL AMENDMENTS TO THE FREIGHT
CONTAINERS (SAFETY) (APPLICATIONS FOR
APPROVAL OF CONTAINERS) REGULATION

23. Interpretation

Section 2 of the Freight Containers (Safety) (Applications for Approval of Containers) Regulation (Cap. 506 sub. leg. A) is amended by repealing the definition of “approving authority”.

**24. The manner that applicant shall present
container for examination**

Section 4 is amended by repealing “approving authority” and substituting “authorized person”.

**25. Notification of modification to approved
individual container**

(1) Section 5(1) is amended by repealing “(“modified container”), the owner of the modified container” and substituting “, the owner or, where section 4(2) of the Ordinance applies, the bailee or lessee, of the container (“modified container”)”.

(2) Section 5(1) is amended by repealing “approving authority” and substituting “authorized person”.

(3) Section 5(2)(c) is amended by repealing everything after “address” and substituting—

“of—

- (i) the owner and his agent (if any);
- (ii) the owner and, where there is a bailment, the bailee, and his agent (if any); or
- (iii) the owner and, where there is a lease, the lessee, and his agent (if any).”.

(4) Section 5(3) is amended by repealing “approving authority” and substituting “authorized person”.

(5) Section 5(3) is amended by repealing “owner requiring the owner” and substituting “owner, bailee or lessee or his agent requiring him”.

(6) Section 5(4) is amended by repealing “approving authority” and substituting “authorized person”.

(7) Section 5(4) is amended by repealing “owner requiring the owner” and substituting “owner, bailee or lessee or his agent requiring him”.

(8) Section 5(5)(a) is amended by repealing “owner” and substituting “owner, bailee or lessee or his agent”.

(9) Section 5(5)(b) is amended by repealing “approving authority” and substituting “authorized person”.

(10) Section 5(5) is amended by repealing “approving authority” and substituting “authorized person”.

(11) Section 5(5) is amended by repealing “(and if the approving authority is not the Director)”.

(12) Section 5(6) is amended by repealing “Where the approving authority” and substituting “Where the authorized person”.

(13) Section 5(6) is amended, in the English text, by repealing “that the approving authority” and substituting “that he”.

(14) Section 5(7) is amended by repealing “owner” and substituting “owner, a bailee or a lessee”.

(15) Section 5(7) is amended by repealing “approving authority” and substituting “authorized person”.

26. The manner that applicant shall present prototype container for examination

Section 7 is amended by repealing “approving authority” and substituting “authorized person”.

27. Production of new series of containers in accordance with approved design type

(1) Section 8(1) is amended by repealing “approving authority” and substituting “authorized person”.

(2) Section 8(2) is amended by repealing “approving authority” and substituting “authorized person”.

(3) Section 8(4)(b) is amended by repealing “approving authority” and substituting “authorized person”.

28. Duties of person who has been issued with approval in respect of container design type

(1) Section 9(1)(a) is amended by repealing “approving authority” and substituting “authorized person”.

(2) Section 9(1)(b) is amended by repealing “approving authority” where it twice appears and substituting “authorized person”.

(3) Section 9(2) is amended by repealing “approving authority” and substituting “authorized person”.

29. Giving reasons of refusal

Section 10 is amended by repealing “approving authority” and substituting “authorized person”.

PART 4

**CONSEQUENTIAL AMENDMENTS TO THE FREIGHT
CONTAINERS (SAFETY) (ARRANGEMENTS FOR
AUTHORIZED PERSONS) ORDER**

30. Functions of authorized person

Section 4(1)(c) of the Freight Containers (Safety) (Arrangements for Authorized Persons) Order (Cap. 506 sub. leg. C) is amended by repealing “withdrawal of approval” and substituting “a declaration that the approval issued in respect of the container under section 5 or 6 of the Ordinance is no longer valid”.