

**LEGISLATIVE COUNCIL BRIEF**  
**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2008**

**INTRODUCTION**

At the meeting of the Executive Council on 29 January 2008, the Council ADVISED and the Acting Chief Executive ORDERED that the Statute Law (Miscellaneous Provisions) Bill 2008, at **Annex**, should be introduced into the Legislative Council.

**JUSTIFICATIONS**

2. The proposed amendments are listed below under four headings.

**(1) Various Ordinances containing offence provisions with the drafting formula “to the satisfaction of” an enforcement authority**

3. Under certain statutory provisions, failure to perform an act “to the satisfaction of” an enforcement authority constitutes a criminal offence. The Court of First Instance held that the drafting formula was too vague to enable a person to ascertain the elements of the offences under the provisions concerned. The proposed amendment will add a requirement that no offence is committed unless the authority has specified to the affected person the measures to be taken to its “satisfaction”, or the person has commenced the regulated activity “without writing to the Authority to ascertain, and ascertaining from the Authority, as to how the Authority is to be satisfied”. The burden of proof in either case will expressly be on the prosecution. Amendments that are supplementary to the proposed amendment will also be made to certain provisions.

**(2) Conveyancing and Property Ordinance (Cap. 219)**

4. The Law Society – prompted by two judgments, namely *Yiu Ping Fong & Anor v. Lam Lai Hing Lana*, HCMP No. 3617 of 1998 and *Guang Zhou Real Estate Development (Hong Kong) Co. Ltd. & Anor v. Summit Elegance Limited*, HCA 1531 of 1998 – proposed that a purchaser of a property cannot require a vendor to produce any documents made before the date for the statutory commencement of title or make any requisitions in respect of such documents.

5. The Law Society is concerned that these decisions are to the effect that, notwithstanding section 13 of the Conveyancing and Property Ordinance (which limits the period for deducing title back to a good root of title at least 15 years prior to the date of the sale and purchase agreement), a vendor has the duty to produce the “originals” of “all” title deeds and documents relating “exclusively” to the subject property to fulfil his duty to “give” a good title. This duty would theoretically include the duty to produce original title deeds that were made before the required intermediate root of title.

6. The Law Society has observed that solicitors, based on their previous interpretation of section 13(2) of the Conveyancing and Property Ordinance, had not been too concerned about obtaining the original pre-intermediate root title deeds. The practice has been to accept copies of title documents either certified by a solicitor or a Government public officer, or attested by two solicitors’ clerks.

7. Further to a Senior Counsel’s advice, the Law Society proposed that a new section 13A should be incorporated into the Conveyancing and Property Ordinance. The effect is that, unless the contrary intention is expressed, a purchaser of land shall be entitled to require from the vendor, for the purpose of giving title to that land, the delivery of the original of only (i) the Government lease if it relates exclusively to that land and (ii) any document that relates exclusively to that land and is required to be produced by the vendor as proof of title to that land (that is, a good root of title at least 15 years prior to the date of the sale and purchase agreement). The proposed amendment would help

to alleviate potential problems for many property owners.

### **(3) Legal Officers Ordinance (Cap. 87) and related amendments**

8. Under section 3(1) of the Legal Officers Ordinance, a legal officer, in respect of the matters mentioned in section 4(1), has all the rights of a barrister and a solicitor admitted under the Legal Practitioners Ordinance (Cap. 159). Under section 2 of the Legal Officers Ordinance, an officer lawfully performing the functions of any of the officers designated in Schedule 1 is a legal officer.

9. We propose to amend Schedule 1 by adding “Senior Public Prosecutor” and “Public Prosecutor” and deleting “Assistant Government Counsel”. Senior Government Counsel and Government Counsel in the Prosecutions Division of the Department of Justice will respectively adopt the new post titles of “Senior Public Prosecutor” and “Public Prosecutor” when this Bill comes into operation. The rank of “Assistant Government Counsel” is obsolete and will therefore be deleted from the Schedule. Related amendments will also be introduced.

### **(4) Miscellaneous minor and technical amendments**

10. The District Court Civil Procedure (General) Rules (Cap. 336 sub. leg. A) and the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B) were repealed following the enactment of the Rules of the District Court (Cap. 336 sub. leg. H). The Bill amends various Ordinances to replace references to the repealed Rules by references to the Rules of the District Court. The Bill also makes a minor and clerical amendment to the Rating Ordinance (Cap. 116).

## **OTHER OPTIONS**

11. The proposed changes can only be effected by legislative means. There is no other option.

## **THE BILL**

12. The Bill is divided into eight Parts.
13. Part 1 contains the short title and commencement clauses.
14. Parts 2 and 3 make amendments to various Ordinances and subsidiary legislation in which offences containing the drafting formula “to the satisfaction of” an enforcement authority are created. These provisions have to be amended for the reason given in paragraph 3.
15. Part 4 makes amendments that are supplementary to amendments made under Part 3.
16. Part 5 makes amendments to effect the change of post titles of prosecutors of the rank of “Senior Government Counsel” and “Government Counsel” in the Department of Justice.
17. Part 6 amends the Conveyancing and Property Ordinance (Cap. 219) to address the issue stated in paragraphs 4 to 7.
18. Part 7 amends various Ordinances and subsidiary legislation to remove obsolete references to the repealed District Court Civil Procedure (General) Rules (Cap. 336 sub. leg. A) and District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B).
19. Part 8 makes a minor and clerical amendment to the Rating Ordinance (Cap. 116).

## **LEGISLATIVE TIMETABLE**

20. The legislative timetable will be :

Publication in the Gazette	6 February 2008
First Reading and commencement of Second Reading debate	20 February 2008
Resumption of Second Reading	To be notified

debate, committee stage and Third Reading

## **IMPLICATIONS OF THE PROPOSAL**

21. The above-mentioned legislative proposals are in conformity with the Basic Law, including the provisions concerning human rights. It has no economic productivity, environmental, sustainability, financial or civil service implications. The Bill will not affect the current binding effect of the Ordinances being amended or their subsidiary legislation.

## **PUBLIC CONSULTATION**

22. The Legislative Council's Panel on Administration of Justice and Legal Services has been consulted on the legislative proposals at its meeting on 26 November 2007. The Panel has no objection to the proposals.

### **Various Ordinances containing offence provisions with the drafting formula "to the satisfaction of" an enforcement authority**

23. The Legislative Council's Panel on Administration of Justice and Legal Services was consulted on this proposal at meetings prior to, as well as on, 27 November 2006 and supports it.

### **Conveyancing and Property Ordinance (Cap. 219)**

24. Consultation on this proposal was also conducted among relevant parties including the Law Society of Hong Kong, the Hong Kong Bar Association, The Real Estate Developers Association of Hong Kong, The Hong Kong Conveyancing & Property Law Association Limited, the Consumer Council, The Hong Kong Monetary Authority, the Hong Kong Association of Banks, Estate Agents Authority, the School of Law of City University of Hong Kong, the Faculty of Law of The University of Hong Kong, and the School of Law of The Chinese University of Hong Kong.

## **PUBLICITY**

25. A press release will be issued on **4 February 2008**. A spokesman will be available to answer media and public enquiries.

## **ENQUIRIES**

26. Any enquiry on this brief should be addressed to Mr Michael Scott, Senior Assistant Solicitor General, at telephone number 2867 2157 or Ms Stella Chan, Government Counsel, at telephone number 2867 4900.

Department of Justice  
February 2008

**STATUTE LAW  
(MISCELLANEOUS PROVISIONS) BILL 2008**

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**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL  
2008**

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## A BILL

To

Provide for miscellaneous amendments to various Ordinances and for connected purposes.

Enacted by the Legislative Council.

### PART 1

#### PRELIMINARY

#### **1. Short title**

This Ordinance may be cited as the Statute Law (Miscellaneous Provisions) Ordinance 2008.

#### **2. Commencement**

(1) This Ordinance, other than this Part and Part 6, shall come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

(2) This Part and Part 6 shall come into operation on the day on which this Ordinance is published in the Gazette.

### PART 2

#### AMENDMENTS TO ORDINANCES: OFFENCES INCOMPLETELY DEFINED BECAUSE OF PHRASE “TO THE SATISFACTION OF” AN ENFORCEMENT AGENCY

#### **Insurance Companies Ordinance**

#### **3. Offences under Part V**

(1) Section 41(1)(a) of the Insurance Companies Ordinance (Cap. 41) is amended, in the Chinese text, by adding “或要求” after “規定”.

(2) Section 41 is amended by adding –

“(1A) Despite subsection (1)(a), an insurer who makes default in complying with a requirement specified in section 35A(1)(b) or 35AA(1)(b) or (2)(b) does not commit an offence unless –

- (a) the Insurance Authority has, before or as soon as practicable after imposing the requirement, specified to the insurer how the Insurance Authority is to be satisfied for the purposes of section 35A(1)(b) or 35AA(1)(b) or (2)(b); or
- (b) after the requirement is imposed on the insurer, the insurer has carried on its business in or from Hong Kong without writing to the Insurance Authority to ascertain, and ascertaining from the Insurance Authority, as to how the Insurance Authority is to be satisfied for the purposes of section 35A(1)(b) or 35AA(1)(b) or (2)(b).

(1B) If such an insurer is charged under subsection (1)(a) for making default in complying with a requirement imposed under section 35(1) or 35AA, the insurer is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (1A)(a) or (b).”.

## Buildings Ordinance

### 4. Section added

The Buildings Ordinance (Cap. 123) is amended by adding immediately after section 40 –

**“40A. Additional elements of certain offences under section 40**

(1) Subsections (2) and (3) apply to a person who fails to comply with an order served on him under section 24A as a result of a failure to comply with a requirement specified under section 24A(2)(a)(iii) in the order.

(2) Despite section 40(2C), the person is not guilty of an offence unless –

(a) the Building Authority has, before or as soon as practicable after serving the order, specified to the person how the Building Authority is to be satisfied for the purposes of section 24A(2)(a)(iii); or

(b) after the order is served on the person, the person has caused or permitted the building works or street works to be carried out without writing to the Building Authority to ascertain, and ascertaining from the Building Authority, as to how the Building Authority is to be satisfied for the purposes of section 24A(2)(a)(iii).

(3) If the person is charged under section 40(2C) for failing to comply with the order, the person is not to be convicted of the offence

unless the prosecution proves the matter mentioned in subsection (2)(a) or (b).

(4) Subsections (5) and (6) apply to a person who fails to comply with a requirement imposed under section 28A(3) by way of an approval of plans.

(5) Despite section 40(3A), the person is not guilty of an offence unless –

(a) the Building Authority has, before the failure, specified to the person how the Building Authority is to be satisfied for the purposes of section 28A(3); or

(b) the person has not, before the failure, written to the Building Authority to ascertain, and ascertained from the Building Authority, as to how the Building Authority is to be satisfied for the purposes of section 28A(3).

(6) If the person is charged under section 40(3A) for failing to comply with the requirement, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (5)(a) or (b).”.

### **Public Health and Municipal Services Ordinance**

#### **5. Power to require limewashing, etc. of premises**

Section 14 of the Public Health and Municipal Services Ordinance (Cap. 132) is amended by adding –

“(3) Despite subsection (2)(a), a person who fails to comply with a requirement to the satisfaction of the Authority pursuant to subsection (1) is not guilty of an offence unless the Authority has, before or as soon as practicable after serving the notice, specified to the person how the Authority is to be satisfied for the purposes of subsection (1).

(4) If a person is charged under subsection (2)(a), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (3).”.

## **6. Removal of litter or waste and cleaning of area**

Section 20 is amended by adding –

“(4) Despite subsection (3)(b), if such a notice is not complied with within the period specified in it as a result of something not being done to the satisfaction of the Authority pursuant to subsection (2), the person on whom it was served is not guilty of an offence unless the Authority has, before or as soon as practicable after serving the notice, specified to the person how the Authority is to be satisfied for the purposes of subsection (2).

(5) If, as a result of something not being done to the satisfaction of the Authority pursuant to subsection (2), a person is charged under subsection (3)(b) in relation to a notice that is not complied with within the period specified in it, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (4).”.

## **Aerial Ropeways (Safety) Ordinance**

### **7. Offences and penalties**

Section 27 of the Aerial Ropeways (Safety) Ordinance (Cap. 211) is amended by adding –

“(3) Despite subsection (1)(a), a person who contravenes section 20(1) does not commit an offence unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of section 20(1); or
- (b) the person has caused or permitted the aerial ropeway to be used, or has permitted persons to be in the vicinity of the ropeway, without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of section 20(1).

(4) If a person is charged under subsection (1)(a) for contravening section 20(1), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (3)(a) or (b).”.

## **Waste Disposal Ordinance**

### **8. Seizure and disposal of waste following conviction**

Section 20F of the Waste Disposal Ordinance (Cap. 354) is amended by adding –

“(2A) Subsections (2B) and (2C) apply to a person who –

- (a) fails to comply with a notice given under subsection (1)(b) as a result of something not being done to the satisfaction of the waste disposal authority pursuant to subsection (1)(b)(i); and
- (b) would, but for subsection (2B), commit an offence under subsection (2) for failing to comply with such a notice.

(2B) Despite subsection (2), the person does not commit an offence unless –

- (a) the waste disposal authority has, before or as soon as practicable after giving the notice, specified to the person how the waste disposal authority is to be satisfied for the purposes of subsection (1)(b)(i); or
- (b) after the notice is given to the person, the person has managed the waste without writing to the waste disposal authority to ascertain, and ascertaining from the waste disposal authority, as to how the waste disposal authority is to be satisfied for the purposes of subsection (1)(b)(i).

(2C) If the person is charged under subsection (2) for failing to comply with the notice, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (2B)(a) or (b).”.

## **Mass Transit Railway Ordinance**

### **9. Records**

Section 11 of the Mass Transit Railway Ordinance (Cap. 556) is amended by adding –

“(5) Despite subsection (4), if the Corporation fails to comply with subsection (1), the Corporation does not commit an offence unless –

- (a) the Secretary has, before the failure, specified to the Corporation how the Secretary is to be satisfied for the purposes of subsection (1); or
- (b) the Corporation has operated the railway without writing to the Secretary to ascertain, and ascertaining from the Secretary, before the failure, as to how the Secretary is to be satisfied for the purposes of subsection (1).

(6) If the Corporation is charged under subsection (4) for failing to comply with subsection (1), the Corporation is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (5)(a) or (b).”.

## PART 3

### AMENDMENTS TO SUBSIDIARY LEGISLATION: OFFENCES INCOMPLETELY DEFINED BECAUSE OF PHRASE “TO THE SATISFACTION OF” AN ENFORCEMENT AGENCY

#### **Boilers and Pressure Vessels Regulations**

### **10. Offences and penalties**

Regulation 17 of the Boilers and Pressure Vessels Regulations (Cap. 56 sub. leg. A) is amended by adding –



“(3) Despite subregulation (1), a person is not guilty of an offence in the event of a contravention of regulation 12 or 13 unless –

(a) the Authority has, before the contravention, specified to the person how the Authority is to be satisfied for the purposes of regulation 12 or 13; or

(b) the person has caused or permitted the pipe to be used for the purpose of conveyance without writing to the Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of regulation 12 or 13.

(4) If a person is charged under subregulation (1) in the event of a contravention of regulation 12 or 13, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (3)(a) or (b).”.

### **Dutiable Commodities Regulations**

#### **11. Regulations added**

The Dutiable Commodities Regulations (Cap. 109 sub. leg. A) are amended by adding –

**“104A. Additional elements of certain offences under regulation 104 in relation to Part VII**

(1) Despite regulation 104, a person who acts in contravention of regulation 30, 34 or 38(1), (4), (5) or (6)(a) is not guilty of an offence unless –

- (a) the Commissioner has, before the contravention, specified to the person how the Commissioner is to be satisfied for the purposes of regulation 30, 34 or 38(1), (4), (5) or (6)(a); or
- (b) the person has caused or permitted the place or premises to be used as a factory or brewery without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 30, 34 or 38(1), (4), (5) or (6)(a).

(2) If a person is charged under regulation 104 for acting in contravention of regulation 30, 34 or 38(1), (4), (5) or (6)(a), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (1)(a) or (b).

(3) Despite regulation 104, a person who acts in contravention of regulation 33, 41 or 52 as a result of something not being done to the satisfaction of the Commissioner pursuant to the regulation concerned is not guilty of an offence unless –

- (a) the Commissioner has, before the contravention, specified to the person how the Commissioner is to be satisfied for the purposes of regulation 33, 41 or 52; or
- (b) in the case of –
  - (i) a contravention of regulation 33, the person has caused or permitted goods to

be stored in the factory without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 33;

(ii) a contravention of regulation 41, the person has caused or permitted the premises to be used as a brewery without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 41; or

(iii) a contravention of regulation 52, the person has caused or permitted the premises to be used as a distillery or has caused or permitted the part of the distillery, or the fixture in or on the distillery, to be used without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 52.

(4) If, as a result of something not being done to the satisfaction of the Commissioner pursuant to the regulation concerned, a person is charged under regulation 104 for acting in contravention of regulation 33, 41 or 52, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (3)(a) or (b).

(5) Despite regulation 104, a person who acts in contravention of regulation 40(4) or 55(1) is not guilty of an offence unless –

- (a) the Commissioner has, before the contravention, specified to the person how the Commissioner is to be satisfied for the purposes of regulation 40(4) or 55(1); or
- (b) in the case of –
  - (i) a contravention of regulation 40(4), the person has caused or permitted the machinery, apparatus, utensils, vessels or receptacles to be used in the brewing or making, maturing or storing of beer without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 40(4); or

- (ii) a contravention of regulation 55(1), the person has caused or permitted the containers or utensils to be used for distillation and storage of liquor without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 55(1).

(6) If a person is charged under regulation 104 for acting in contravention of regulation 40(4) or 55(1), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (5)(a) or (b).

**104B. Additional elements of certain offences under regulation 104 in relation to Part IX**

(1) Despite regulation 104, a person who acts in contravention of regulation 81 as a result of something not being done to the satisfaction of the Commissioner pursuant to regulation 81 is not guilty of an offence unless –

- (a) the Commissioner has, before the contravention, specified to the person how the Commissioner is to be satisfied for the purposes of regulation 81; or
- (b) the person has caused or permitted the premises to be used as a warehouse or has caused or

permitted the part of the warehouse, or the fixture in or on the warehouse, to be used without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 81.

(2) If, as a result of something not being done to the satisfaction of the Commissioner pursuant to regulation 81, a person is charged under regulation 104 for acting in contravention of regulation 81, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (1)(a) or (b).

(3) Despite regulation 104, a person who acts in contravention of regulation 83(1) or 84 is not guilty of an offence unless –

- (a) the Commissioner has, before the contravention, specified to the person how the Commissioner is to be satisfied for the purposes of regulation 83(1) or 84; or
- (b) the person has caused or permitted the premises to be used as a warehouse without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 83(1) or 84.

(4) If a person is charged under regulation 104 for acting in contravention of regulation 83(1) or 84, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (3)(a) or (b).”.

### **Miscellaneous Licences Regulations**

#### **12. Offences and penalties**

(1) Regulation 17 of the Miscellaneous Licences Regulations (Cap. 114 sub. leg. A) is amended by renumbering it as regulation 17(1).

(2) Regulation 17 is amended by adding –

“(2) Despite paragraph (1), a person who contravenes regulation 59, 71(1) or (2), 75, 108, 121(1) or (2) or 125 does not commit an offence unless –

(a) the enforcement agency has, before the contravention, specified to the person how the enforcement agency is to be satisfied for the purposes of regulation 59, 71(1) or (2), 75, 108, 121(1) or (2) or 125; or

(b) the person has caused or permitted the premises to be kept as a public dance hall or dancing school without writing to the enforcement agency to ascertain, and ascertaining from the enforcement agency, before the contravention, as to how the enforcement agency is to be satisfied for the purposes of regulation

59, 71(1) or (2), 75, 108, 121(1) or (2) or 125.

(3) If a person is charged under paragraph (1) for contravening regulation 59, 71(1) or (2), 75, 108, 121(1) or (2) or 125, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (2)(a) or (b).

(4) Despite paragraph (1), a person who contravenes regulation 76 or 126 as a result of something not being done to the satisfaction of the enforcement agency pursuant to the regulation concerned does not commit an offence unless –

- (a) the enforcement agency has, before the contravention, specified to the person how the enforcement agency is to be satisfied for the purposes of regulation 76 or 126; or
- (b) the person has caused or permitted the premises to be kept as a public dance hall or dancing school without writing to the enforcement agency to ascertain, and ascertaining from the enforcement agency, before the contravention, as to how the enforcement agency is to be satisfied for the purposes of regulation 76 or 126.



(5) If, as a result of something not being done to the satisfaction of the enforcement agency pursuant to the regulation concerned, a person is charged under paragraph (1) for contravening regulation 76 or 126, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (4)(a) or (b).

(6) In this regulation, “enforcement agency” (執行機構) means –

- (a) in the case of a contravention of regulation 59 or 108, the licensing authority;
- (b) in the case of a contravention of regulation 71(1) or 121(1), the Director of Fire Services;
- (c) in the case of a contravention of regulation 71(2) or 121(2), the Building Authority; and
- (d) in the case of a contravention of regulation 75, 76, 125 or 126, the Director of Food and Environmental Hygiene.”.

### **Funeral Parlours Regulation**

#### **13. Offences and penalties**

Section 14 of the Funeral Parlours Regulation (Cap. 132 sub. leg. AD) is amended by adding –

“(4) Despite subsection (2), a licensee of a funeral parlour who contravenes section 12 does not commit an offence unless –

- (a) the Director has, before the contravention, specified to the licensee how the Director is to be satisfied for the purposes of section 12; or
- (b) the licensee has caused or permitted the premises to be used as a funeral parlour without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of section 12.

(5) If a licensee of a funeral parlour is charged under subsection (2) for contravening section 12, the licensee is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (4)(a) or (b).

(6) Despite subsection (3), the licensee of the funeral parlour in relation to which a contravention of section 7(a) occurred does not commit an offence unless –

- (a) the Director has, before the contravention, specified to the licensee how the Director is to be satisfied for the purposes of section 7(a); or
- (b) the licensee has caused or permitted the premises to be used as a funeral parlour without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how

the Director is to be satisfied for the purposes of section 7(a).

(7) If a licensee of a funeral parlour is charged under subsection (3) in relation to a contravention of section 7(a), the licensee is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (6)(a) or (b).”.

### **Offensive Trades Regulation**

#### **14. Offences and penalties**

Section 23 of the Offensive Trades Regulation (Cap. 132 sub. leg. AX) is amended by adding –

“(3) Despite subsection (2), a person who contravenes section 17 as a result of something not being done to the satisfaction of the Director pursuant to that section does not commit an offence unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of section 17; or
- (b) the person has caused or permitted the part of the premises to be used for sleeping purposes without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of section 17.

(4) If, as a result of something not being done to the satisfaction of the Director pursuant to section 17, a person is charged under subsection (2) for contravening that section, the person is not to be

convicted of the offence unless the prosecution proves the matter mentioned in subsection (3)(a) or (b).”.

### **Places of Amusement Regulation**

#### **15. Offences and penalties**

(1) Section 19 of the Places of Amusement Regulation (Cap. 132 sub. leg. BA) is amended by renumbering it as section 19(1).

(2) Section 19 is amended by adding –

“(2) Despite subsection (1), a person who contravenes section 15 as a result of something not being done to the satisfaction of the Director pursuant to that section is not guilty of an offence unless –

(a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of section 15; or

(b) the person has caused or permitted the premises to be used for the purpose authorized by the licence without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of section 15.

(3) If, as a result of something not being done to the satisfaction of the Director pursuant to section 15, a person is charged under subsection (1) for contravening that section, the

person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (2)(a) or (b).

(4) Despite subsection (1), a person who contravenes section 22(a), 24 or 26 is not guilty of an offence unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of section 22(a), 24 or 26; or
- (b) the person has caused or permitted the premises to be used as a billiard establishment, public bowling-alley or public skating rink without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of section 22(a), 24 or 26.

(5) If a person is charged under subsection (1) for contravening section 22(a), 24 or 26, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (4)(a) or (b).”.

## Public Cleansing and Prevention of Nuisances Regulation

### 16. Section added

The Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK) is amended by adding –

#### **“23A. Additional elements of certain offences under section 23**

(1) Despite section 23(1)(b), a person who fails to comply with section 19(2)(f) or (4)(a) is not guilty of an offence unless –

- (a) the Director has, before the failure, specified to the person how the Director is to be satisfied for the purposes of section 19(2)(f) or (4)(a); or
- (b) the person has caused or permitted household waste to be put in the dustbin without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of section 19(2)(f) or (4)(a).

(2) If a person is charged under section 23(1)(b) for failing to comply with section 19(2)(f) or (4)(a), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (1)(a) or (b).

(3) Subsections (4) and (5) apply to a person who fails to comply with a notice under section 5(1) or (2) as a result of a failure to comply with a requirement specified under section 5(3) in the notice to the satisfaction of a public officer.

(4) Despite section 23(1)(c), the person is not guilty of an offence unless the Director has, before or as soon as practicable after the notice is served, specified to the person how such a public officer is to be satisfied for the purposes of section 5(3).

(5) If the person is charged under section 23(1)(c), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (4).”.

### **Sanitation and Conservancy Regulation**

#### **17. Offences and penalties**

Section 10 of the Sanitation and Conservancy Regulation (Cap. 132 sub. leg. BT) is amended by adding –

“(4) Despite subsection (3), a person who contravenes section 7(2)(c) or (3) as a result of something not being done to the satisfaction of the Director pursuant to the section concerned is not guilty of an offence unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of section 7(2)(c) or (3);
- or
- (b) the person has caused or permitted the sanitary pail or container to be used without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of section 7(2)(c) or (3).

(5) If, as a result of something not being done to the satisfaction of the Director pursuant to the section concerned, a person is charged under subsection (3) for contravening section 7(2)(c) or (3), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (4)(a) or (b).”.

### **Slaughterhouses Regulation**

#### **18. Offences**

(1) Section 36 of the Slaughterhouses Regulation (Cap. 132 sub. leg. BU) is amended by renumbering it as section 36(1).

(2) Section 36 is amended by adding –

“(2) Despite subsection (1), a person who contravenes section 26(a) does not commit an offence unless –

(a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of section 26(a); or

(b) the person has caused or permitted the premises to be used or occupied as a licensed slaughterhouse without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of section 26(a).

(3) If a person is charged under subsection (1) for contravening section 26(a), the person is not to be convicted of



the offence unless the prosecution proves the matter mentioned in subsection (2)(a) or (b).”.

**Public Health (Animals and Birds)(Animal Traders)  
Regulations**

**19. Offences and penalties**

Regulation 13 of the Public Health (Animals and Birds)(Animal Traders) Regulations (Cap. 139 sub. leg. B) is amended by adding –

“(3) Despite paragraph (2)(b), a person who contravenes regulation 9 as a result of something not being done to the satisfaction of the Director pursuant to regulation 9(c) is not guilty of an offence unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of regulation 9(c); or
- (b) the person has caused or permitted animals to be kept in the premises for the purpose of his business as an animal trader without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of regulation 9(c).

(4) If, as a result of something not being done to the satisfaction of the Director pursuant to regulation 9(c), a person is charged under paragraph (2)(b) for contravening regulation 9, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (3)(a) or (b).”.

## Dairies Regulations

### 20. Offences and penalties

Regulation 27 of the Dairies Regulations (Cap. 139 sub. leg. D) is amended by adding –

“(4A) Despite paragraph (4), a person is not guilty of an offence in the event of any contravention of regulation 12(4)(b)(iii) or 14 unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of regulation 12(4)(b)(iii) or 14; or
- (b) the person has caused or permitted any cattle to be kept in any dairy in the building or place, or has caused or permitted the building or place to be used as a milk room, without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of regulation 12(4)(b)(iii) or 14.

(4B) If a person is charged under paragraph (4) in the event of any contravention of regulation 12(4)(b)(iii) or 14, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (4A)(a) or (b).

(4C) Despite paragraph (4), a person is not guilty of an offence in the event of any contravention of regulation 16(1) unless –

- (a) the Director has, before the contravention, specified to the person how an inspector is to be satisfied for the purposes of regulation 16(1); or
- (b) the person has caused or permitted any cattle to be kept in any dairy in, to have access to, the building or place, or has caused or permitted the building or place to be used as a milk room, without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how an inspector is to be satisfied for the purposes of regulation 16(1).

(4D) If a person is charged under paragraph (4) in the event of any contravention of regulation 16(1), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (4C)(a) or (b).”.

### **Public Health (Animals and Birds)(Exhibitions) Regulations**

#### **21. Offences and penalties**

Regulation 9 of the Public Health (Animals and Birds)(Exhibitions) Regulations (Cap. 139 sub. leg. F) is amended by adding –

“(4) Despite paragraph (2)(b), a person who contravenes regulation 7 as a result of something not being done to the satisfaction of the Director pursuant to regulation 7(f) is not guilty of an offence unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of regulation 7(f); or

- (b) the person has caused or permitted an exhibition of animals or birds to be held at the place without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of regulation 7(f).

(5) If, as a result of something not being done to the satisfaction of the Director pursuant to regulation 7(f), a person is charged under paragraph (2)(b) for contravening regulation 7, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (4)(a) or (b).”.

### **Public Health (Animals)(Boarding Establishment) Regulations**

#### **22. Offences and penalties**

Regulation 9 of the Public Health (Animals)(Boarding Establishment) Regulations (Cap. 139 sub. leg. I) is amended by adding –

“(3) Despite paragraph (2)(b), a person who contravenes regulation 8 as a result of something not being done to the satisfaction of the Director pursuant to regulation 8(f) is not guilty of an offence unless –

- (a) the Director has, before the contravention, specified to the person how the Director is to be satisfied for the purposes of regulation 8(f); or
- (b) the person has caused or permitted any boarding establishment for animals to be kept at the place without writing to the Director to ascertain, and ascertaining from the Director, before the

contravention, as to how the Director is to be satisfied for the purposes of regulation 8(f).

(4) If, as a result of something not being done to the satisfaction of the Director pursuant to regulation 8(f), a person is charged under paragraph (2)(b) for contravening regulation 8, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (3)(a) or (b).”.

### **Places of Public Entertainment Regulations**

#### **23. General penalty**

(1) Regulation 171 of the Places of Public Entertainment Regulations (Cap. 172 sub. leg. A) is amended by renumbering it as regulation 171(1).

(2) Regulation 171 is amended by adding –

“(2) Despite paragraph (1)(a), a person who fails to comply with regulation 53(1) does not commit an offence unless –

(a) the Director of Fire Services has, before the failure, specified to the person how the Director of Fire Services is to be satisfied for the purposes of regulation 53(1); or

(b) the person has caused or permitted the premises to be used as a place of public entertainment without writing to the Director of Fire Services to ascertain, and ascertaining from the Director of Fire Services, before the failure, as to

how the Director of Fire Services is to be satisfied for the purposes of regulation 53(1).

(3) If a person is charged under paragraph (1)(a) for failing to comply with regulation 53(1), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (2)(a) or (b).

(4) Despite paragraph (1)(b), a person who fails to comply with regulation 87 or 88 as a result of something not being done to the satisfaction of the licensing authority pursuant to the regulation concerned does not commit an offence unless –

(a) the licensing authority has, before the failure, specified to the person how the licensing authority is to be satisfied for the purposes of regulation 87 or 88; or

(b) the person has caused or permitted the premises to be used as a place of public entertainment without writing to the licensing authority to ascertain, and ascertaining from the licensing authority, before the failure, as to how the licensing authority is to be satisfied for the purposes of regulation 87 or 88.

(5) If, as a result of something not being done to the satisfaction of the licensing authority pursuant to the regulation concerned, a person is charged under paragraph (1)(b) for failing

to comply with regulation 87 or 88, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (4)(a) or (b).”.

### **Public Bus Services Regulations**

#### **24. Offences and penalties**

Regulation 25 of the Public Bus Services Regulations (Cap. 230 sub. leg. A) is amended by adding –

“(5) Despite subregulation (1), a person who contravenes regulation 6(a) or 7(1)(e) does not commit an offence unless –

(a) the Commissioner has, before the contravention, specified to the person how the Commissioner is to be satisfied for the purposes of regulation 6(a) or 7(1)(e); or

(b) the person has caused or permitted the bus to be used in connection with the franchise without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the contravention, as to how the Commissioner is to be satisfied for the purposes of regulation 6(a) or 7(1)(e).

(6) If a person is charged under subregulation (1) for contravening regulation 6(a) or 7(1)(e), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (5)(a) or (b).”.

## Child Care Services Regulations

### 25. Offences

Regulation 46 of the Child Care Services Regulations (Cap. 243 sub. leg. A) is amended by adding –

“(9) Despite paragraph (4A), if regulation 43(3) is contravened in respect of a centre as a result of something not being done to the satisfaction of the Director pursuant to that regulation, the supervisor is not guilty of an offence unless –

- (a) the Director has, before the contravention, specified to the supervisor how the Director is to be satisfied for the purposes of regulation 43(3);  
or
- (b) the supervisor has caused or permitted the premises to be used as a centre without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of regulation 43(3).

(10) If, as a result of something not being done to the satisfaction of the Director pursuant to regulation 43(3), such a supervisor is charged under paragraph (4A) in relation to a contravention of regulation 43(3), the supervisor is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (9)(a) or (b).”.



## Peak Tramway (Safety) Regulations

### 26. Offences by company

(1) Regulation 35 of the Peak Tramway (Safety) Regulations (Cap. 265 sub. leg. A) is amended by renumbering it as regulation 35(1).

(2) Regulation 35 is amended by adding –

“(2) Despite subregulation (1), if the company fails to comply with regulation 25(1) or 27(1), the company does not commit an offence unless –

(a) the Director has, before the failure, specified to the company how the Director is to be satisfied for the purposes of regulation 25(1) or 27(1); or

(b) the company has caused or permitted the tramway to be used, or has permitted persons to be in the vicinity of the tramway, without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of regulation 25(1) or 27(1).

(3) If the company is charged under subregulation (1) for failing to comply with regulation 25(1) or 27(1), the company is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (2)(a) or (b).”.

## Mining (General) Regulations

### 27. Offences and penalties

(1) Regulation 37 of the Mining (General) Regulations (Cap. 285 sub. leg. A) is amended by renumbering it as regulation 37(1).

(2) Regulation 37 is amended by adding –

“(2) Despite paragraph (1), a person who contravenes regulation 12 is not guilty of an offence unless –

- (a) the Superintendent of Mines has, before the contravention, specified to the person how the Superintendent of Mines is to be satisfied for the purposes of regulation 12; or
- (b) the person has caused or permitted the area to be prospected without writing to the Superintendent of Mines to ascertain, and ascertaining from the Superintendent of Mines, before the contravention, as to how the Superintendent of Mines is to be satisfied for the purposes of regulation 12.

(3) If a person is charged under paragraph (1) for contravening regulation 12, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (2)(a) or (b).”.

## Mines (Safety) Regulations

### 28. Offences and penalties

(1) Regulation 105 of the Mines (Safety) Regulations (Cap. 285 sub. leg. B) is amended by renumbering it as regulation 105(1).

(2) Regulation 105 is amended by adding –

“(2) Despite paragraph (1), a person who contravenes regulation 8 or 9(2) is not guilty of an offence unless –

(a) the mines officer has, before the contravention, specified to the person how the mines officer is to be satisfied for the purposes of regulation 8 or 9(2);  
or

(b) the person has caused or permitted the engine, ladder, windlass, brake, rope, winding gear, mechanical appliance or machinery to be used in the prospecting or mining operation without writing to the mines officer to ascertain, and ascertaining from the mines officer, before the contravention, as to how the mines officer is to be satisfied for the purposes of regulation 8 or 9(2).

(3) If a person is charged under paragraph (1) for contravening regulation 8 or 9(2), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (2)(a) or (b).

(4) Despite paragraph (1), a person who contravenes regulation 41(1) or 62 is not guilty of an offence unless –

(a) the mines officer has, before the contravention, specified to the person how the mines officer is to be satisfied for the purposes of regulation 41(1) or 62; or

(b) the person has caused or permitted the underground workings to be used without writing to the mines officer to ascertain, and ascertaining from the mines officer, before the contravention, as to how the mines officer is to be satisfied for the purposes of regulation 41(1) or 62.

(5) If a person is charged under paragraph (1) for contravening regulation 41(1) or 62, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (4)(a) or (b).”.

### **Dangerous Goods (General) Regulations**

#### **29. Offences and penalties**

Regulation 60 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B) is amended by adding –

“(12) Despite paragraph (7), the licensee of a factory in respect of which regulation 31(b) is contravened is not guilty of an offence unless –

- (a) the Authority has, before the contravention, specified to the licensee how the Authority is to be satisfied for the purposes of regulation 31(b); or
- (b) the licensee has caused or permitted the manufacture of explosives to be carried on at the factory without writing to the Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of regulation 31(b).

(13) If such a licensee is charged under paragraph (7) in relation to a contravention of regulation 31(b), the licensee is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (12)(a) or (b).”.

### **30. Alterations to and maintenance of distribution pipelines**

Regulation 78C is amended by adding –

“(3A) Despite paragraph (3), the licensee of a store in respect of which paragraph (1)(b) is contravened is not guilty of an offence unless –

- (a) the Authority has, before the contravention, specified to the licensee how the Authority is to be satisfied for the purposes of paragraph (1)(b); or
- (b) the licensee has caused or permitted the store to be used for storage of gas without writing to the

Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of paragraph (1)(b).

(3B) If such a licensee is charged under paragraph (3) in relation to a contravention of paragraph (1)(b), the licensee is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (3A)(a) or (b).”.

### **31. Offences and penalties**

Regulation 79 is amended by adding –

“(5) Despite paragraph (2), a person who contravenes regulation 73(1) as a result of something not being done to the satisfaction of the Authority pursuant to regulation 73(1) is not guilty of an offence unless –

- (a) the Authority has, before the contravention, specified to the person how the Authority is to be satisfied for the purposes of regulation 73(1); or
- (b) the person has caused or permitted the place to be used for storage of containers containing liquid oxygen or liquid nitrogen without writing to the Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of regulation 73(1).

(6) If, as a result of something not being done to the satisfaction of the Authority pursuant to regulation 73(1), a person is

charged under paragraph (2) for contravening regulation 73(1), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (5)(a) or (b).

(7) Paragraphs (8) and (9) apply to a person who –

- (a) contravenes regulation 74(4)(c) as a result of something not being done to the satisfaction of the Authority pursuant to that regulation; and
- (b) would, but for paragraph (8), be guilty of an offence under paragraph (3) for contravening regulation 74(4).

(8) Despite paragraph (3), the person is not guilty of an offence unless –

- (a) the Authority has, before the contravention, specified to the person how the Authority is to be satisfied for the purposes of regulation 74(4)(c);  
or
- (b) the person has caused or permitted the stand to be used for storage of the cylinder without writing to the Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of regulation 74(4)(c).

(9) If the person is charged under paragraph (3) for contravening regulation 74(4), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (8)(a) or (b).”.

### **32. Offences and penalties**

Regulation 148 is amended by adding –

“(5) Paragraphs (6) and (7) apply to a person who contravenes regulation 147 as a result of –

- (a) electrical equipment being installed in any store that contains calcium carbide; and
- (b) the equipment being not installed to the satisfaction of the Authority.

(6) Despite paragraph (3), the person is not guilty of an offence unless –

- (a) the Authority has, before the contravention, specified to the person how the Authority is to be satisfied for the purposes of regulation 147; or
- (b) the person has caused or permitted the store to contain calcium carbide without writing to the Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of regulation 147.

(7) If the person is charged for contravening regulation 147, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (6)(a) or (b).”.

### **33. Offences and penalties**

Regulation 165 is amended by adding –

“(6) Despite paragraph (1), a person who contravenes regulation 160 as a result of something not being done to the satisfaction



of the Authority pursuant to that regulation is not guilty of an offence unless –

- (a) the Authority has, before the contravention, specified to the person how the Authority is to be satisfied for the purposes of regulation 160(2); or
- (b) the person has caused or permitted more than 1 t of celluloid or film to be stored in the compartment without writing to the Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of regulation 160(2).

(7) If, as a result of something not being done to the satisfaction of the Authority pursuant to regulation 160, a person is charged under paragraph (1) for contravening regulation 160, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (6)(a) or (b).”.

#### **34. Alterations to and maintenance of stores after grant or renewal of licence**

Regulation 178 is amended by adding –

“(3A) Despite paragraph (3), the licensee of a store in respect of which paragraph (1)(b) is contravened is not guilty of an offence unless –

- (a) the Authority has, before the contravention, specified to the licensee how the Authority is to be satisfied for the purposes of paragraph (1)(b);
- or

- (b) the licensee has caused or permitted the store to be used for storage of dangerous goods without writing to the Authority to ascertain, and ascertaining from the Authority, before the contravention, as to how the Authority is to be satisfied for the purposes of paragraph (1)(b).

(3B) If such a licensee is charged under paragraph (3) in relation to a contravention of paragraph (1)(b), the licensee is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (3A)(a) or (b).”.

**Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations**

**35. Other offences**

Regulation 25 of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg. A) is amended by adding –

“(7) Despite paragraph (1), a stockholder who fails to comply with regulation 18(3) is not guilty of an offence unless –

- (a) the Director has, before the failure, specified to the stockholder how the Director is to be satisfied for the purposes of regulation 18(3); or
- (b) the stockholder has caused or permitted any reserved commodity to be maintained by him as stock without writing to the Director to ascertain, and ascertaining from the Director, before the

failure, as to how the Director is to be satisfied for the purposes of regulation 18(3).

(8) If a stockholder is charged under paragraph (1) for failing to comply with regulation 18(3), the stockholder is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (7)(a) or (b).”.

### **Air Pollution Control (Dry-cleaning Machines)(Vapour Recovery) Regulation**

#### **36. Offences and penalties**

Section 11 of the Air Pollution Control (Dry-cleaning Machines)(Vapour Recovery) Regulation (Cap. 311 sub. leg. T) is amended by adding –

“(5) Subsections (6) and (7) apply to an owner of a dry-cleaning laundry who –

- (a) fails to comply with section 8(2)(a); and
- (b) would, but for subsection (6), commit an offence under subsection (3) for contravening section 8(1) (other than section 8(1)(b)(ii)(E)) or (2).

(6) Despite subsection (3), the owner does not commit an offence unless –

- (a) the Authority has, before the failure, specified to the owner how the Authority is to be satisfied for the purposes of section 8(2)(a); or
- (b) the owner has not, before the failure, written to the Authority to ascertain, and ascertained from the Authority, as to how the Authority is to be satisfied for the purposes of section 8(2)(a).

(7) If the owner is charged under subsection (3) for contravening section 8(1) (other than section 8(1)(b)(ii)(E)) or (2), the owner is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (6)(a) or (b).”.

### **Marine Fish Culture Regulations**

#### **37. Offences and penalties**

Regulation 11 of the Marine Fish Culture Regulations (Cap. 353 sub. leg. A) is amended by adding –

“(3) Despite paragraph (1), a licensee or permittee who contravenes regulation 7(a) does not commit an offence unless –

- (a) the Director has, before the contravention, specified to the licensee or permittee how the Director is to be satisfied for the purposes of regulation 7(a); or
- (b) the licensee or permittee has caused or permitted the raft or impoundment to be used without writing to the Director to ascertain, and ascertaining from the Director, before the contravention, as to how the Director is to be satisfied for the purposes of regulation 7(a).

(4) If a licensee or permittee is charged under paragraph (1) for contravening regulation 7(a), the licensee or permittee is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (3)(a) or (b).”.

**Merchant Shipping (Safety)(Cargo Ship Construction and Survey)(Ships Built Before 1 September 1984) Regulations**

**38. Penalties**

Regulation 80 of the Merchant Shipping (Safety)(Cargo Ship Construction and Survey)(Ships Built Before 1 September 1984) Regulations (Cap. 369 sub. leg. R) is amended by adding –

“(4) Despite subregulation (1), if a ship fails to comply with regulation 50(1) as a result of something not being done to the satisfaction of the Certifying Authority pursuant to that regulation, the owner or master of the ship does not commit an offence unless –

- (a) the Certifying Authority has, before the failure, specified to the owner or master how the Certifying Authority is to be satisfied for the purposes of regulation 50(1); or
- (b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Certifying Authority to ascertain, and ascertaining from the Certifying Authority, before the failure, as to how the Certifying Authority is to be satisfied for the purposes of regulation 50(1).

(5) If, as a result of something not being done to the satisfaction of the Certifying Authority pursuant to regulation 50(1), such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 50(1), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (4)(a) or (b).”.

**Merchant Shipping (Safety)(Cargo Ship Construction and  
Survey)(Ships Built On or After 1 September 1984)  
Regulations**

**39. Penalties**

Regulation 64 of the Merchant Shipping (Safety)(Cargo Ship Construction and Survey)(Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg. S) is amended by adding –

“(4) Despite subregulation (1), if a ship fails to comply with regulation 3A(3), 5(1), 22(2)(k) or 39(1) as a result of something not being done to the satisfaction of the Certifying Authority pursuant to the regulation concerned, the owner or master of the ship does not commit an offence unless –

- (a) the Certifying Authority has, before the failure, specified to the owner or master how the Certifying Authority is to be satisfied for the purposes of regulation 3A(3), 5(1), 22(2)(k) or 39(1); or
- (b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Certifying Authority to ascertain, and ascertaining from the Certifying Authority, before the failure, as to how the Certifying Authority is to be satisfied for the purposes of regulation 3A(3), 5(1), 22(2)(k) or 39(1).

(5) If, as a result of something not being done to the satisfaction of the Certifying Authority pursuant to the regulation concerned, such an owner or master is charged under subregulation (1)

for the failure by the ship to comply with regulation 3A(3), 5(1), 22(2)(k) or 39(1), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (4)(a) or (b).

(6) Despite subregulation (1), if a ship fails to comply with regulation 52(1)(f), (2) or (5) as a result of something not being done to the satisfaction of the Director pursuant to the regulation concerned, the owner or master of the ship does not commit an offence unless –

- (a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of regulation 52(1)(f), (2) or (5); or
- (b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of regulation 52(1)(f), (2) or (5).

(7) If, as a result of something not being done to the satisfaction of the Director pursuant to the regulation concerned, such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 52(1)(f), (2) or (5), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (6)(a) or (b).”

**Merchant Shipping (Safety)(Fire Protection)(Ships Built Before  
25 May 1980) Regulations**

**40. Penalties**

(1) Regulation 75 of the Merchant Shipping (Safety)(Fire Protection)(Ships Built Before 25 May 1980) Regulations (Cap. 369 sub. leg. W) is amended by renumbering it as regulation 75(1).

(2) Regulation 75 is amended by adding –

“(2) Despite subregulation (1), if a ship fails to comply with regulation 48(1) as a result of something not being done to the satisfaction of the Director pursuant to paragraph (2)(a)(i) or (s)(vii) of Schedule 1, the owner or master of the ship does not commit an offence unless –

(a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of paragraph (2)(a)(i) or (s)(vii) of Schedule 1; or

(b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of paragraph (2)(a)(i) or (s)(vii) of Schedule 1.

(3) If, as a result of something not being done to the satisfaction of the Director pursuant to paragraph (2)(a)(i) or



(s)(vii) of Schedule 1, such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 48(1), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (2)(a) or (b).”.

#### **41. Inert gas systems: standard requirements**

Schedule 1 is amended by repealing “[reg. 48]” and substituting “[regs. 48 & 75]”.

#### **Merchant Shipping (Safety)(Fire Appliances)(Ships Built On or After 25 May 1980 but Before 1 September 1984) Regulations**

#### **42. Penalties**

(1) Regulation 77 of the Merchant Shipping (Safety)(Fire Appliances)(Ships Built On or After 25 May 1980 but Before 1 September 1984) Regulations (Cap. 369 sub. leg. X) is amended by renumbering it as regulation 77(1).

(2) Regulation 77 is amended by adding –

“(2) Despite subregulation (1), if a ship fails to comply with regulation 11(1)(a) as a result of something not being done to the satisfaction of the Director pursuant to paragraph (13)(b) of Schedule 12, the owner or master of the ship does not commit an offence unless –

(a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of paragraph (13)(b) of Schedule 12; or

(b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of paragraph (13)(b) of Schedule 12.

(3) If, as a result of something not being done to the satisfaction of the Director pursuant to paragraph (13)(b) of Schedule 12, such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 11(1)(a), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (2)(a) or (b).

(4) Despite subregulation (1), if a ship fails to comply with regulation 51(2)(a)(i) or (s)(vii), 51A(1)(a) or (12), 51B(1)(a) or (12)(a) or 75 as a result of something not being done to the satisfaction of the Director pursuant to the regulation concerned, the owner or master of the ship does not commit an offence unless –

(a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of regulation 51(2)(a)(i) or

(s)(vii), 51A(1)(a) or (12), 51B(1)(a) or (12)(a) or 75; or

- (b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of regulation 51(2)(a)(i) or (s)(vii), 51A(1)(a) or (12), 51B(1)(a) or (12)(a) or 75.

(5) If, as a result of something not being done to the satisfaction of the Director pursuant to the regulation concerned, such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 51(2)(a)(i) or (s)(vii), 51A(1)(a) or (12), 51B(1)(a) or (12)(a) or 75, the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (4)(a) or (b).”.

#### **43. Automatic fire alarm and fire detection systems**

Schedule 12 is amended by repealing “& 64(1)]” and substituting “, 64(1) & 77]”.

**Merchant Shipping (Safety)(Fire Protection)(Ships Built On or  
After 1 September 1984) Regulations**

**44. Penalties**

(1) Regulation 146 of the Merchant Shipping (Safety)(Fire Protection)(Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg. Y) is amended by renumbering it as regulation 146(1).

(2) Regulation 146 is amended by adding –

“(2) Despite subregulation (1), if a ship fails to comply with regulation 49(8), 75A(3), 91A(3), 112A(3), 125(1)(f) or (5), 128A(3) or 142(1)(f) or (4), the owner or master of the ship does not commit an offence unless –

(a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of regulation 49(8), 75A(3), 91A(3), 112A(3), 125(1)(f) or (5), 128A(3) or 142(1)(f) or (4); or

(b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of regulation 49(8), 75A(3), 91A(3), 112A(3), 125(1)(f) or (5), 128A(3) or 142(1)(f) or (4).

(3) If such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 49(8), 75A(3), 91A(3), 112A(3), 125(1)(f) or (5), 128A(3) or 142(1)(f) or (4), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (2)(a) or (b).

(4) Despite subregulation (1), if a ship fails to comply with regulation 49(3)(a), 66 or 125(2) as a result of something not being done to the satisfaction of the Director pursuant to the regulation concerned, the owner or master of the ship does not commit an offence unless –

- (a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of regulation 49(3)(a), 66 or 125(2); or
- (b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of regulation 49(3)(a), 66 or 125(2).

(5) If, as a result of something not being done to the satisfaction of the Director pursuant to the regulation concerned,

such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 49(3)(a), 66 or 125(2), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (4)(a) or (b).”.

**Merchant Shipping (Safety)(Passenger Ship Construction and Survey)(Ships Built On or After 1 September 1984) Regulations**

**45. Penalties**

Regulation 86 of the Merchant Shipping (Safety)(Passenger Ship Construction and Survey)(Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg. AM) is amended by adding –

“(3) Despite subregulation (1), if a ship fails to comply with regulation 14(1)(b) as a result of something not being done to the satisfaction of the Director pursuant to that regulation, the owner or master of the ship does not commit an offence unless –

- (a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of regulation 14(1)(b);  
or
- (b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of regulation 14(1)(b).

(4) If, as a result of something not being done to the satisfaction of the Director pursuant to regulation 14(1)(b), such an owner or master is charged under subregulation (1) for the failure by the ship to comply with regulation 14(1)(b), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subregulation (3)(a) or (b).”.

### **Merchant Shipping (Safety)(GMDSS Radio Installations) Regulation**

#### **46. Penalties**

(1) Section 20 of the Merchant Shipping (Safety)(GMDSS Radio Installations) Regulation (Cap. 369 sub. leg. AR) is amended by renumbering it as section 20(1).

(2) Section 20 is amended by adding –

“(2) Despite subsection (1), if a ship fails to comply with section 15(3) or (4), the owner or master of the ship does not commit an offence unless –

(a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of section 15(3) or (4); or

(b) the owner or master has caused or permitted the ship to proceed to sea without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how

the Director is to be satisfied for the purposes of section 15(3) or (4).

(3) If such an owner or master is charged under subsection (1) for the failure by the ship to comply with section 15(3) or (4), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (2)(a) or (b).”.

### **Road Traffic (Construction and Maintenance of Vehicles) Regulations**

#### **47. Regulation added**

The Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) is amended by adding –

#### **“121A. Additional elements of certain offences under regulation 121**

- (1) Paragraphs (2) and (3) apply to –
- (a) a taxi that does not comply with regulation 42(2) or 43(2); or
  - (b) a taxi that does not comply with regulation 46(2) as a result of something not being done to the satisfaction of the Commissioner pursuant to paragraph 3 of Part II of the Sixth Schedule.
- (2) Despite regulation 121(1), if a person uses or causes or permits to be used on any road the taxi, the person does not commit an offence unless –
- (a) the Commissioner has, before the taxi is so used, specified to the person how the Commissioner is



to be satisfied for the purposes of regulation 42(2) or 43(2) or paragraph 3 of Part II of the Sixth Schedule; or

- (b) the person has so used or caused or permitted to be so used the taxi without writing to the Commissioner to ascertain, and ascertaining from the Commissioner, before the taxi is so used, as to how the Commissioner is to be satisfied for the purposes of regulation 42(2) or 43(2) or paragraph 3 of Part II of the Sixth Schedule.

(3) If such a person is charged under regulation 121(1) in relation to the taxi, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (2)(a) or (b).

(4) Paragraphs (5) and (6) apply to a taxi the taximeter on which does not comply with regulation 42(2)(a) or 43(2).

(5) Despite regulation 121(3), if a person uses or suffers or permits to be used to ply for hire or for the carriage of passengers for hire or reward on any road the taxi, the person does not commit an offence unless –

- (a) the Commissioner has, before the taxi is so used, specified to the person how the Commissioner is to be satisfied for the purposes of regulation 42(2)(a) or 43(2); or
- (b) the person has so used or suffered or permitted to be so used the taxi without writing to the

Commissioner to ascertain, and ascertaining from the Commissioner, before the taxi is so used, as to how the Commissioner is to be satisfied for the purposes of regulation 42(2)(a) or 43(2).

(6) If such a person is charged under regulation 121(3) in relation to the taxi, the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (5)(a) or (b).”.

#### **48. Plates on taxis**

The Sixth Schedule is amended by repealing “[reg. 46]” and substituting “[regs. 46 & 121A]”.

### **Merchant Shipping (Prevention of Oil Pollution) Regulations**

#### **49. Regulation added**

The Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg. A) is amended by adding –

#### **“38. Additional elements of certain offences under regulation 37**

(1) Despite regulation 37(1), if a Hong Kong ship fails to comply with regulation 14(3)(b), the owner or master of the ship does not commit an offence unless –

- (a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of regulation 14(3)(b);
- or
- (b) the owner or master has caused or permitted the ship to proceed to sea or to operate within Hong

Kong waters without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of regulation 14(3)(b).

(2) If such an owner or master is charged under regulation 37(1) for the failure of the Hong Kong ship to comply with regulation 14(3)(b), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (1)(a) or (b).

(3) Despite regulation 37(1), if a ship fails to comply with regulation 20(2) as a result of something not being done to the satisfaction of the Certifying Authority pursuant to paragraph 4.1.2 of Schedule 6, the owner or master of the ship does not commit an offence unless –

- (a) the Certifying Authority has, before the failure, specified to the owner or master how the Certifying Authority is to be satisfied for the purposes of paragraph 4.1.2 of Schedule 6; or
- (b) the owner or master has caused or permitted the ship to proceed to sea or to operate within Hong Kong waters without writing to the Certifying Authority to ascertain, and ascertaining from the Certifying Authority, before the failure, as to how the Certifying Authority is to be satisfied for the purposes of paragraph 4.1.2 of Schedule 6.

(4) If, as a result of something not being done to the satisfaction of the Certifying Authority pursuant to paragraph 4.1.2 of

Schedule 6, such an owner or master is charged under regulation 37(1) for the failure by the ship to comply with regulation 20(2), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (3)(a) or (b).

(5) Despite regulation 37(1), if a ship fails to comply with regulation 21(2) as a result of something not being done to the satisfaction of the Certifying Authority pursuant to paragraph 4.2.3, 4.2.6, 4.4.1 or 7 of Schedule 7, the owner or master of the ship does not commit an offence unless –

- (a) the Certifying Authority has, before the failure, specified to the owner or master how the Certifying Authority is to be satisfied for the purposes of paragraph 4.2.3, 4.2.6, 4.4.1 or 7 of Schedule 7; or
- (b) the owner or master has caused or permitted the ship to proceed to sea or to operate within Hong Kong waters without writing to the Certifying Authority to ascertain, and ascertaining from the Certifying Authority, before the failure, as to how the Certifying Authority is to be satisfied for the purposes of paragraph 4.2.3, 4.2.6, 4.4.1 or 7 of Schedule 7.

(6) If, as a result of something not being done to the satisfaction of the Certifying Authority pursuant to paragraph 4.2.3, 4.2.6, 4.4.1 or 7 of Schedule 7, such an owner or master is charged under regulation 37(1) for the failure by the ship to comply with regulation

21(2), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (5)(a) or (b).

(7) Despite regulation 37(1), if a ship fails to comply with regulation 21(2) as a result of something not being done to the satisfaction of the Director pursuant to paragraph 5.1 of Schedule 7, the owner or master of the ship does not commit an offence unless –

- (a) the Director has, before the failure, specified to the owner or master how the Director is to be satisfied for the purposes of paragraph 5.1 of Schedule 7; or
- (b) the owner or master has caused or permitted the ship to proceed to sea or to operate within Hong Kong waters without writing to the Director to ascertain, and ascertaining from the Director, before the failure, as to how the Director is to be satisfied for the purposes of paragraph 5.1 of Schedule 7.

(8) If, as a result of something not being done to the satisfaction of the Director pursuant to paragraph 5.1 of Schedule 7, such an owner or master is charged under regulation 37(1) for the failure by the ship to comply with regulation 21(2), the owner or master is not to be convicted of the offence unless the prosecution proves the matter mentioned in paragraph (7)(a) or (b).”.

**50. Specification for oil tankers with dedicated clean ballast tanks**

Schedule 6 is amended by repealing “[reg. 20(2) & (4)]” and substituting “[regs. 20(2) & (4) & 38]”.

**51. Specifications for the design, operation and control of crude oil washing systems**

Schedule 7 is amended by repealing “[reg. 21(2) & (4)]” and substituting “[regs. 21(2) & (4) & 38]”.

**Entertainment Special Effects (General) Regulation**

**52. Requirements to be complied with by person holding store licence**

Section 32 of the Entertainment Special Effects (General) Regulation (Cap. 560 sub. leg. A) is amended by adding –

“(4) Despite subsection (2), a person who fails to comply with subsection (1)(a) does not commit an offence unless –

- (a) the Authority has, before the failure, specified to the person how the Authority is to be satisfied for the purposes of subsection (1)(a); or
- (b) the person has caused or permitted the store, fittings or equipment to be used without writing to the Authority to ascertain, and ascertaining from the Authority, before the failure, as to how the Authority is to be satisfied for the purposes of subsection (1)(a).

(5) If a person is charged under subsection (2) for failing to comply with subsection (1)(a), the person is not to be convicted of the

offence unless the prosecution proves the matter mentioned in subsection (4)(a) or (b).

(6) Despite subsection (3), a person who fails to comply with subsection (1)(g)(i) does not commit an offence unless –

(a) the Authority has, before or as soon as practicable after imposing the requirement, specified to the person how the Authority is to be satisfied for the purposes of subsection (1)(g)(i);  
or

(b) after the requirement is imposed on the person, the person has caused or permitted the store to be used without writing to the Authority to ascertain, and ascertaining from the Authority, as to how the Authority is to be satisfied for the purposes of subsection (1)(g)(i).

(7) If a person is charged under subsection (3) for failing to comply with subsection (1)(g)(i), the person is not to be convicted of the offence unless the prosecution proves the matter mentioned in subsection (6)(a) or (b).”.

## PART 4

### PROVISIONS SUPPLEMENTARY TO AMENDMENTS UNDER PART 3

#### **Boilers and Pressure Vessels Ordinance**

##### **53. Regulations**

Section 65(1)(a) of the Boilers and Pressure Vessels Ordinance (Cap. 56) is amended by repealing “boilers and pressure vessels” and substituting “boilers, pressure vessels and steam containers”.

#### **Boilers and Pressure Vessels Regulations**

##### **54. Steam pipes to be lagged**

Regulation 13 of the Boilers and Pressure Vessels Regulations (Cap. 56 sub. leg. A) is amended by adding “to or from a boiler, pressure vessel or steam container” after “under pressure”.

##### **55. Offences and penalties**

Regulation 17(1) is amended by adding “steam container,” after “steam receiver,”.

## PART 5

### NEW POST TITLES OF PROSECUTORS OF RANK OF SENIOR GOVERNMENT COUNSEL AND GOVERNMENT COUNSEL IN DEPARTMENT OF JUSTICE

#### **Legal Officers Ordinance**

##### **56. Schedule 1 amended**

Schedule 1 to the Legal Officers Ordinance (Cap. 87) is amended, under the heading of “DEPARTMENT OF JUSTICE”, by repealing –

“Government Counsel.

Assistant Government Counsel.”



and substituting –

“Senior Public Prosecutor.

Government Counsel.

Public Prosecutor.”.

### **Related Amendments**

#### **Magistrates Ordinance**

##### **57. Appointment of public prosecutors by Secretary for Justice**

(1) Section 13 of the Magistrates Ordinance (Cap. 227) is amended, in the heading, by repealing “**public prosecutors**” and substituting “**official prosecutors**”.

(2) Section 13 is amended by repealing “public prosecutor” where it twice appears and substituting “official prosecutor”.

##### **58. Private prosecution and intervention by the Secretary for Justice**

Section 14(3) is amended by repealing “public prosecutor” and substituting “legal officer in the Department of Justice”.

##### **59. Power for public prosecutor to withdraw case**

The heading of section 15 is repealed and the following substituted –

“**Secretary for Justice may withdraw case by entering nolle prosequi**”.

##### **60. Authority of legal officer to prosecute, etc.**

Section 17 is repealed.

## District Court Ordinance

### 61. Right of audience

Section 15(3) of the District Court Ordinance (Cap. 336) is repealed.

### 62. Signing and form of charge sheet

Section 77(1) is amended by repealing “, other than an assistant government counsel,”.

### 63. Form of charge sheet

(1) The First Schedule is amended, in the English text, by repealing “, 19” where it twice appears.

(2) The First Schedule is amended by repealing “*Government Counsel*” where it twice appears and substituting “(*Name and post title of the legal officer*)”.

## PART 6

### DELIVERY OF ORIGINAL TITLE DEEDS IN SALE OF LAND

#### Conveyancing and Property Ordinance

### 64. Section added

The Conveyancing and Property Ordinance (Cap. 219) is amended by adding –

**“13A. Delivery of original deeds or documents of title**

(1) Unless the contrary intention is expressed, a vendor of land shall, for the purpose of giving title to that land, deliver to the purchaser both of the following only –

- (a) if there is a Government lease that relates exclusively to the land, the lease; and

(b) any document that relates exclusively to the land and is required to be produced by the vendor as proof of title to that land under section 13(1)(a) and (c).

(2) Subsection (1) does not affect any rule of common law under which the vendor may discharge his obligation to give title to that land otherwise than by delivering the Government lease or document to the purchaser.

(3) If the vendor is not required to deliver to the purchaser a document in giving title to that land, the purchaser has no proprietary right or ownership in the document.

(4) The fact that –

(a) the vendor is not required to deliver to the purchaser a document in giving title to that land; and

(b) the purchaser has no proprietary right or ownership in the document,

does not affect the right or interest of any other person in that land arising from the deposit of the document with that other person.”.

## **65. Covenants and conditions which may be incorporated by reference**

(1) The Second Schedule is amended, in clause 8 of Part A, by repealing “relate exclusively to the property the subject of the agreement” and substituting “are required for the purpose of giving title to the property”.

(2) The Second Schedule is amended, in clause 9 of Part A, by repealing “good title to the property. The vendor shall” and substituting “title

to the property in accordance with section 13A of the Conveyancing and Property Ordinance (Cap. 219). The vendor shall, in accordance with section 13 of that Ordinance,”.

## PART 7

### AMENDMENTS TO PROVISIONS CONTAINING REFERENCES TO REPEALED SUBSIDIARY LEGISLATION UNDER DISTRICT COURT ORDINANCE

#### **Pneumoconiosis (Compensation) Appeal Rules**

##### **66. Application**

Rule 2(2) of the Pneumoconiosis (Compensation) Appeal Rules (Cap. 360 sub. leg. C) is amended by repealing “District Court Civil Procedure (General) Rules (Cap. 336 sub. leg.)” and substituting “Rules of the District Court (Cap. 336 sub. leg. H)”.

#### **Control of Obscene and Indecent Articles Rules**

##### **67. Costs**

Rule 9 of the Control of Obscene and Indecent Articles Rules (Cap. 390 sub. leg. B) is amended by repealing “the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B) as in force on 1 July 1987” and substituting “Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

#### **Architects Registration Ordinance**

##### **68. Disciplinary orders of inquiry committee and costs**

Section 24(3)(b) of the Architects Registration Ordinance (Cap. 408) is amended by repealing “the First Schedule to the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B)” and substituting “Part I of Schedule 1 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

### **Engineers Registration Ordinance**

**69. Disciplinary orders of inquiry committee  
and costs**

Section 23(3)(b) of the Engineers Registration Ordinance (Cap. 409) is amended by repealing “the First Schedule to the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B)” and substituting “Part I of Schedule 1 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

### **Surveyors Registration Ordinance**

**70. Disciplinary orders of inquiry committee  
and costs**

Section 23(3)(b) of the Surveyors Registration Ordinance (Cap. 417) is amended by repealing “the First Schedule to the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B)” and substituting “Part I of Schedule 1 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

### **Planners Registration Ordinance**

**71. Disciplinary orders of inquiry committee  
and costs**

Section 23(3)(b) of the Planners Registration Ordinance (Cap. 418) is amended by repealing “the First Schedule to the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B)” and substituting “Part I of Schedule 1 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

### **Administrative Appeals Board Ordinance**

**72. Provision relating to costs and witness  
expenses**

Section 22(4)(b) of the Administrative Appeals Board Ordinance (Cap. 442) is amended by repealing “scales of costs specified in the First Schedule to

the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B)” and substituting “scale of costs specified in Part I of Schedule 1 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

### **Landscape Architects Registration Ordinance**

#### **73. Disciplinary order of inquiry committee**

Section 23(3)(b) of the Landscape Architects Registration Ordinance (Cap. 516) is amended by repealing “the First Schedule to the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B)” and substituting “Part I of Schedule 1 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

### **Housing Managers Registration Ordinance**

#### **74. Disciplinary order of inquiry committee**

Section 23(3)(b) of the Housing Managers Registration Ordinance (Cap. 550) is amended by repealing “the First Schedule to the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B)” and substituting “Part I of Schedule 1 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H)”.

## PART 8

### AMENDMENT TO RATING ORDINANCE

#### **75. Refusal to furnish information and obstruction**

Section 46 of the Rating Ordinance (Cap. 116) is amended, in the Chinese text, by repealing “(1)” before “任何人 —”.

## Explanatory Memorandum

This Bill makes miscellaneous amendments to various Ordinances and subsidiary legislation.

2. It is divided into 8 Parts.

### PART 1

3. Part 1 (clauses 1 and 2) contains the short title and commencement clauses.

### PARTS 2 AND 3

4. Part 2 (clauses 3 to 9) and Part 3 (clauses 10 to 52) make amendments to various Ordinances and subsidiary legislation in which offences with the phrase “to the satisfaction of” an enforcement agency are created. Provisions set out in those Parts have to be amended to enable persons who are required to regulate their conduct according to any of those provisions to ascertain, before a prosecution is brought, the elements of the offence concerned.

### PART 4

5. Part 4 (clauses 53 to 55) contains amendments to the Boilers and Pressure Vessels Ordinance (Cap. 56) and the Boilers and Pressure Vessels Regulations (Cap. 56 sub. leg. A) that are supplementary to the amendments made to the Regulations in clause 10.

## PART 5

6. Part 5 (clauses 56 to 63) amends Schedule 1 to the Legal Officers Ordinance (Cap. 87) and makes related amendments to the Magistrates Ordinance (Cap. 227) and the District Court Ordinance (Cap. 336) so that the post titles of prosecutors of the ranks of “Senior Government Counsel” and “Government Counsel” in the Prosecutions Division of the Department of Justice are to be amended to “Senior Public Prosecutor” and “Public Prosecutor” respectively.

## PART 6

7. Part 6 (clauses 64 and 65) amends the Conveyancing and Property Ordinance (Cap. 219). A new section 13A is to be added to that Ordinance to define the obligation of a vendor of land to deliver title deeds to the purchaser on completion of the sale of land.

## PART 7

8. The District Court Civil Procedure (General) Rules (Cap. 336 sub. leg. A) and the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg. B) were repealed following the enactment of the Rules of the District Court (Cap. 336 sub. leg. H). Part 7 (clauses 66 to 74) contains amendments to 7 Ordinances and 2 pieces of subsidiary legislation in order to replace references



to any of the repealed Rules by references to the Rules of the District Court (Cap. 336 sub. leg. H).

## PART 8

9. Part 8 makes a minor and clerical amendment to the Rating Ordinance (Cap. 116).