

CB (1) 511/98-99 (03)

立法會秘書處法律事務部的信頭

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(譯文)

傳真信件
(圖文傳真號碼: 2824 2176)

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告士打道 7 號
入境事務大樓 41 樓
運輸署
(經辦人: 呂瑩女士)
呂女士:

**往來中環與荃灣 (經青衣)
持牌渡輪服務的最高收費
(根據 1998 年 9 月 18 日在憲報刊登的第 4547 號公告)**

閣下曾在 1998 年 10 月 21 日來信, 本人現就該信致函閣下, 希望閣下告知, 政府當局在決定一份文書是否具有“立法效力”時, 所採用的準則其法律理據為何。

懇請閣下早日賜覆。

助理法律顧問
馮秀娟

副本致: 法律顧問馬耀添先生

1998 年 10 月 22 日

香港中區皇后大道中八號立法會大樓

Legislative Council Building, 8 Jackson Road, Central, Hong Kong.

運輸署的信頭

TRANSPORT DEPARTMENT

CB (1) 511/98—99 (03)

本署檔號：() in PT 70/30—3IV

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助理法律顧問
馮秀娟小姐

馮小姐：

持牌渡輪服務最高船費
第 104 章《渡輪服務條例》第 33 條

十月二十二日的來函收悉。信中問及當局在決定某一份文書是否具有立法效力時，所採用準則的法律根據。

事實上，政府當局在決定運輸署署長（「署長」）根據第 104 章《渡輪服務條例》（「條例」）第 33 條所作的決定是否具有立法效力時，所採用的準則與立法會秘書處法律事務部所採用的相近（儘管措辭不同）。該等準則的法律根據與貴部所採用的準則相同，就是判例法。

本人知悉，貴部曾為一九九八年十月三十日召開的立法會內務委員會會議擬備一份資料文件。在該份文件內，你嘗試總結本署十月二十一日信件的內容來說明政府當局對根據條例第 33 條所刊登公告的地位的看法。不過，我想指出一點，就是我們的信件並不代表政府當局對整個事件的看法，尤其是該信內並沒有陳述訂立《渡輪服務條例》的立法由來。

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至於立法的目的，請注意當時的運輸司在當時的立法局內，就動議二讀 1982 年渡輪服務條例草案時，在致辭中曾表示：「草案第 VI 部〔即條例第 VI 部〕與持牌渡輪服務相關，容許署長批出牌照，並釐定船費和時間表。」（請參照 1982 年 5 月 2 日的立法局會議報告。）顯然，立法機構的意向是就釐定專營與持牌渡輪服務兩者最高船費訂下不同的機制。而就持牌渡輪服務方面，明顯是讓署長一人可釐定這類服務的最高船費。

運輸署署長
（呂瑩 代行）

一九九八年十一月十六日

CHAPTER 104

FERRY SERVICES

To provide for the granting of franchises and licences to operate ferry services, the regulation of the operation and maintenance of such services, and for matters incidental thereto and connected therewith.

[15 June 1982]

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Ferry Services Ordinance.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
“Commissioner” (署長) means the Commissioner for Transport;
“ferry service” (渡輪服務) means a service provided by means of a vessel, other than a vessel exclusively propelled by oars, for the conveyance by water of passengers, baggage, goods or vehicles, for reward at separate fares between 2 or more points within the waters of Hong Kong, whether or not such points are varied from time to time and whether or not the service is operated to a fixed timetable;
“ferry vessel” (渡輪) means any vessel used for a ferry service;
“franchise” (專營權) means a franchise granted under section 6;
“franchise period” (專營期) means the period fixed under section 7 for which a franchise is granted and includes any period for which the franchise is extended under that section;
“franchised service” (專營服務) means a ferry service in respect of which there is in force a franchise;

第 104 章

渡輪服務條例

本條例旨在就批予經營渡輪服務的專營權及牌照、規管該等服務的經營及維持，以及因之而附帶引起的或與之相關的事宜，訂定條文。

[1982 年 6 月 15 日]

第 I 部

導言

1. 簡稱

本條例可引稱為《渡輪服務條例》。

2. 釋義

- (1) 在本條例中，除文意另有所指外——
“持牌人” (licensee) 指獲批予牌照的人；
“專營公司” (grantee) 指獲批予專營權的公司；
“專營服務” (franchised service) 指享有有效專營權的渡輪服務；
“專營期” (franchise period) 指根據第 7 條就批予的專營權而訂定的期間，亦包括根據該條將該專營權延續的任何期間；
“專營權” (franchise) 指根據第 6 條批予的專營權；
“牌照” (licence) 指根據第 28 條批予的牌照；

“grantee” (專營公司) means a company to which a franchise is granted;
 “licence” (牌照) means a licence granted under section 28;
 “licensed service” (領牌服務) means a ferry service in respect of which there is in force a licence;

“licensee” (持牌人) means a person to whom a licence is granted;

“proper and efficient ferry service” (適當而有效率的渡輪服務) —

(a) in relation to a grantee, has the meaning assigned to it by section 12;

(b) in relation to a licensee, has the meaning assigned to it by section 31;

“Victoria port” (維多利亞港口) means the area of the waters of Hong Kong declared under section 56 of the Shipping and Port Control Ordinance (Cap. 313) as Victoria port.

(2) Where under this Ordinance the Governor in Council or the Commissioner is empowered to grant a franchise or licence to operate a ferry service between any 2 or more points, such points may be fixed by reference to any pier, berth, frontage or location.

3. Power of Governor to give directions to public officer

(1) The Governor may give to a public officer such directions as he thinks fit with respect to the exercise or performance of his powers, functions and duties under this Ordinance, either generally or in a particular case.

(2) A public officer shall, in the exercise or performance of his powers, functions and duties under this Ordinance, comply with any direction given by the Governor under subsection (1).

PART II

CONTROL OF FERRY SERVICES

4. Prohibition of operation of ferry service except under a franchise or licence

(1) Subject to section 5, no person shall operate or permit the operation of a vessel on a ferry service except under a franchise or a licence.

(2) Subject to section 5, no person shall operate or manage or assist in the management of a ferry service unless that service is operated under a franchise or licence.

“渡輪” (ferry vessel) 指用作渡輪服務的任何船隻；

“渡輪服務” (ferry service) 指在香港水域內 2 個或超過 2 個地點之間，以收取個別船費作為報酬，而藉船隻（全靠藥力推進的船隻除外）提供的運載乘客、行李、貨品或車輛的水上運載服務，不論該等地點是否不時更改，亦不論該項服務是否按固定時間表運作；

“維多利亞港口” (Victoria port) 指根據《船舶及港口管理條例》(第 313 章) 第 56 條宣布為維多利亞港口的香港水域；

“署長” (Commissioner) 指運輸署署長；

“領牌服務” (licensed service) 指領有有效牌照的渡輪服務；

“適當而有效率的渡輪服務” (proper and efficient ferry service) —

(a) 就專營公司而言，具有第 12 條給予該詞的涵義；

(b) 就持牌人而言，具有第 31 條給予該詞的涵義。

(2) 凡根據本條例，總督會同行政局或署長獲賦權批予專營權或牌照，以在任何 2 個或超過 2 個地點之間經營渡輪服務，該等地點可藉提述任何碼頭、泊位、臨海地或位置而予以訂定。

3. 總督給予公職人員指示的權力

(1) 總督可概括地或按個別情況，就公職人員根據本條例行使或執行權力、職能及職責而向公職人員發出其認為適當的指示。

(2) 公職人員根據本條例行使或執行權力、職能及職責時，須遵從總督根據第(1)款給予的任何指示。

第 II 部

管制渡輪服務

4. 除根據專營權或牌照外，禁止經營渡輪服務

(1) 除第 5 條另有規定外，除非根據專營權或牌照，否則任何人不得操作或准許操作船隻作渡輪服務。

(2) 除第 5 條另有規定外，任何人不得經營、管理或協助管理渡輪服務，除非該服務是根據專營權或牌照經營的。

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable to a fine of \$100,000.

5. Exempted ferry services

(1) This Part does not apply to a tour service, a cargo service, an employees' service or a permitted service.

(2) In this section—

“cargo service” (載貨服務) means a service for the carriage of cargo by lighters or cargo boats;

“employees' service” (運載僱員服務) means a service provided by an employer solely for the carriage of persons employed by him;

“permitted service” (獲准許的服務) means a service—

(a) permitted by the Director of Marine in writing for the carriage of passengers between piers and moored ships, or for the carriage of passengers for special purposes designated by the Director of Marine; or

(b) for the carriage of passengers across Victoria port between such hours as the Commissioner may by notice in the Gazette approve and operated by a ferry vessel issued with a Class I licence for the Victoria Harbour Area under the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap. 313 sub. leg.);

“tour service” (遊覽服務) means a service—

(a) for the carriage of passengers for reward at separate fares;

(b) whereby the passengers travel together on a vessel from one or more places of embarkation on a journey that ends at the place or places of embarkation or ends at a place from which transport on land back to such place or places of embarkation is provided as part of the service;

(c) whereby the passengers do not disembark during the journey, or disembark solely for the purpose of activities arranged or promoted as part of the service; and

(d) whereby all the passengers are carried for the greater part of the journey.

(3) For the purposes of this Ordinance, a payment made by a person entitling him to be carried as a passenger on a ferry vessel shall be treated as a separate fare notwithstanding that it is made in consideration of other matters in addition to the journey and irrespective of the person by or to whom it is made.

(3) 任何人違反第(1)或(2)款，即屬犯罪，可處罰款 \$100,000。

5. 獲豁免的渡輪服務

(1) 本部不適用於遊覽服務、載貨服務、運載僱員服務或獲准許的服務。

(2) 在本條中——

“載貨服務”(cargo service) 指以駁船或貨船運載貨物的服務；

“運載僱員服務”(employees' service) 指僱主純粹為運載其所僱用的人而提供的服務；

“遊覽服務”(tour service) 指符合以下條件的服務——

(a) 為收取個別船費作為報酬而運載乘客；

(b) 乘客由一個或超過一個登船地點一同乘搭船隻，而旅程終止於該登船地點或該等登船地點，或終止於某地方，而由該地方返回該登船地點或該等登船地點的陸上運輸是該項服務的一部分；

(c) 在旅程中乘客並不離船登岸，或即使離船登岸亦純粹為進行作為是項服務的一部分而安排或推廣的活動；及

(d) 在旅程的大部分中運載所有乘客；

“獲准許的服務”(permitted service) 指——

(a) 獲海事處處長書面准許，在碼頭與繫泊船舶之間提供的運載乘客服務，或為海事處處長所指定的特別目的提供的運載乘客服務；或

(b) 使用獲根據《商船(小輪及渡輪)規例》* (第 313 章，附屬法例) 所發的維多利亞港範圍第 1 類牌照的渡輪，在署長藉憲報公告批准的時間內，提供運載乘客橫渡維多利亞港口的服務。

(3) 為施行本條例，任何付款如使人有權作為乘客而被渡輪運載的，均須視為個別船費，即使該項付款是除旅程外就其他事宜而作出的代價，和不論該項付款是由誰人作出或向誰人作出。

* “《商船(小輪及渡輪)規例》”乃“Merchant Shipping (Launches and Ferry Vessels) Regulations”之譯名。

PART III

FERRY SERVICE FRANCHISES

6. Grant of franchises

(1) Subject to this Ordinance, the Governor in Council may grant to any company within the meaning of the Companies Ordinance (Cap. 32), or any company to which Part IX or Part XI of the Companies Ordinance (Cap. 32) applies, a franchise that confers the right to operate a ferry service between such points as are specified by him.

(2) A franchise may confer on the grantee the exclusive right to operate a franchised service.

(3) A franchise—

(a) may be granted following a public tender or in such other manner as the Governor in Council thinks fit;

(b) shall be subject to such conditions as the Governor in Council specifies, which may include, without limiting the generality of the foregoing, conditions in respect of the management and commercial development of piers, pier rental and the maintenance of a proper and efficient ferry service generally; and

(c) shall be subject to the provisions of this Ordinance as it may from time to time be amended.

(4) Without prejudice to any other provision of this Ordinance, a franchise may, with the written consent of the grantee, be amended by the Governor in Council.

7. Periods of franchise and extensions thereof

(1) A franchise may be granted for an initial period not exceeding 15 years, and in calculating a franchise period no account shall be taken of any change made from time to time in the franchised services operated under the franchise.

(2) The Governor in Council may, at the request in writing of a grantee, if he is satisfied that the grantee is capable of maintaining a proper and efficient ferry service and it is in the public interest to continue the franchised service or services, extend the franchise for a period or periods not exceeding 15 years beginning on the date on which the extension is granted.

(3) A request under subsection (2) may be made—

(a) not more than once in each 5 year period during the franchise period, the first of such periods to be treated as commencing on the date of the granting of the franchise and subsequent periods as commencing on the fifth anniversary of the date of commencement of the prior period; and

第 III 部

渡輪服務專營權

6. 專營權的批予

(1) 在符合本條例的規定下，總督會同行政局可向《公司條例》(第 32 章)所指的任何公司，或向《公司條例》(第 32 章)第 IX 或 XI 部所適用的任何公司，批予一項專營權，而該專營權授予權利在總督會同行政局所指明的地點之間經營渡輪服務。

(2) 專營權可授予專營公司專有權利，經營專營服務。

(3) 專營權——

(a) 可在公開投標後批予，或以總督會同行政局認為適當的其他方式批予；

(b) 須受總督會同行政局指明的條件規限，在不局限前文的一般性的原則下，該等條件可包括關於碼頭的管理及商業發展、碼頭的租金和概括地維持適當而有效率的渡輪服務的條件；及

(c) 須受經不時修訂的本條例條文所規限。

(4) 在不損害本條例任何其他條文的原則下，專營權可在專營公司的書面同意下，由總督會同行政局修改。

7. 專營權的期間和專營權的延續

(1) 批予的專營權的首段期間不得超過 15 年，在計算專營期時，無須考慮對根據該專營權經營的專營服務所不時作出的任何更改。

(2) 總督會同行政局在專營公司以書面提出請求後，如信納該專營公司能維持適當而有效率的渡輪服務，和信納延續其一項或多於一項專營服務是符合公眾利益的，則可延續該專營權一段或多於一段不超過 15 年的期間，由批予延續的日期起計。

(3) 根據第 (2) 款提出的請求——

(a) 可在專營期內每 5 年期內提出不多於一次，第一個 5 年期須視為由批予專營權的日期開始，而以後的 5 年期，則須視為由上一個 5 年期開始日期起計的五周年開始；及

- (b) in any case not less than 2 years before the expiration of the franchise period.

8. Restriction on transfer of franchise

A grantee shall not transfer its franchise, or any part thereof, without the approval of the Governor in Council.

9. Directors of grantee companies

It shall be a condition of the franchise that, unless the Governor in Council otherwise permits, a majority of the directors of a grantee shall be Commonwealth citizens ordinarily resident in Hong Kong and shall participate actively as directors in the management of the grantee.

10. Governor may appoint additional directors

(1) The Governor may, notwithstanding any provision of the Companies Ordinance (Cap. 32) or any other law or of any document, appoint, for such period as he may direct, not more than 2 persons to be additional directors of a grantee; and, notwithstanding any such provision as aforesaid, a person so appointed may not be removed from office as additional director of a grantee except by the Governor.

(2) A person so appointed to be an additional director of a grantee shall primarily represent the interests of the Government and for that purpose shall be entitled to participate at meetings of the grantee and the board of directors of the grantee, to have access to all material concerning the affairs of the grantee which is available to any other director and require such information with respect to the grantee's affairs as he may specify to be furnished to him; and, without prejudice to the foregoing but subject to subsection (3), any such person shall be treated for all purposes as if he had been appointed at a general meeting of the grantee as a director thereof.

(3) No fee or reward, financial or otherwise, shall be paid by a grantee to a person appointed to be an additional director of the grantee under this section in respect of the performance of his functions as such additional director.

11. Grantee not to alter memorandum or articles without Governor's approval

It shall be a condition of any franchise that the grantee shall not permit any alteration to its memorandum or articles of association without the approval of the Governor.

- (b) 在任何情況下可在不少於專營期屆滿前 2 年提出。

8. 轉讓專營權的限制

未得總督會同行政局批准，專營公司不得轉讓其專營權或其專營權的任何部分。

9. 專營公司的董事

除非總督會同行政局另予准許，否則專營權須有以下條件：專營公司的過半數董事須為通常居於香港的英聯邦公民，並須以董事身分積極參與專營公司的管理工作。

10. 總督可委任額外董事

(1) 儘管《公司條例》(第 32 章)或任何其他法律或任何文件另有任何條文，總督可委任不超過 2 人出任專營公司的額外董事，任期由總督指定；此外，儘管有任何如前述的條文，獲如此委任的人除非由總督免任，否則不可被免任專營公司額外董事。

(2) 獲如此委任為專營公司額外董事的人，須以代表政府的利益為主，而為此目的，他有權出席專營公司及專營公司董事局的會議，以及有權接觸任何其他董事可得到的關於該專營公司事務的一切資料，和要求向他提供他所指明的關於該專營公司事務的資料；在不損害前述規定的原則但在不抵觸第 (3) 款的條文下，為所有目的，該人須被視為猶如是在該專營公司的全體大會上被委任為該專營公司董事一樣。

(3) 對於根據本條獲委任為專營公司額外董事的人，專營公司不得就該人以額外董事身分執行職能而向他支付任何費用、經濟酬賞或其他酬賞。

11. 專營公司未經總督批准不得更改章程大綱或章程細則

任何專營權須有以下條件：未得總督批准，專營公司不得准許更改其公司章程大綱或章程細則。

PART IV

OPERATION AND CONTROL OF FRANCHISED SERVICES

12. Grantee to maintain proper service

(1) A grantee shall, at all times during the franchise period, maintain to the satisfaction of the Commissioner a proper and efficient ferry service.

(2) Without prejudice to the generality of subsection (1), the grantee shall not be treated for any of the purposes of this Ordinance as maintaining a proper and efficient ferry service unless it provides every service authorized by its franchise or under this Ordinance and maintains and operates every such service in accordance with its franchise, this Ordinance and any direction, specification or requirement under its franchise or this Ordinance or under any plan in force under section 22 relating to the future operations of the grantee.

13. Alteration of services and provision of new services

(1) Subject to this section, the Governor in Council may by notice in writing to the grantee authorize it, before the expiration of such period as may be specified in the notice, to—

- (a) alter a franchised service in the manner specified in the notice, whether by way of increasing or reducing the number of points of call, or otherwise;
- (b) operate a new ferry service under the franchise between such points of call as may be specified in the notice.

(2) Where under subsection (1) the Governor in Council authorizes a grantee to operate a new ferry service, he may confer on the grantee the exclusive right to operate such service.

(3) The grantee shall operate a new ferry service or an altered franchised service authorized under this section in accordance with the authorization.

(4) The period referred to in subsection (1) shall be—

- (a) in the case of a notice given under paragraph (a) thereof, not less than 6 months; and
- (b) in the case of a notice given under paragraph (b) thereof, not less than 12 months.

(5) The Governor in Council shall not give an authorization under subsection (1) unless the grantee agrees in writing to the proposal.

(6) A grantee may apply in writing through the Commissioner requesting the Governor in Council to alter a franchised service or to operate a new ferry service under this section.

第 IV 部

專營服務的經營及控制

12. 專營公司須維持適當服務

(1) 專營公司在專營期內任何時間，均須維持令署長滿意的適當而有效率的渡輪服務。

(2) 在不損害第 (1) 款的概括性的原則下，專營公司除非提供其專營權或本條例所批准的每項服務，以及按照其專營權、本條例和任何根據其專營權或根據本條例或關於專營公司未來經營的根據第 22 條有效的任何計劃所作的指示、說明或規定，維持和經營每項該等服務，否則不得為本條例的任何日的被視為維持適當而有效率的渡輪服務。

13. 服務的更改和新服務的提供

(1) 在符合本條的規限下，總督會同行政局可以書面通知專營公司，授權該公司在該通知書指明的期間屆滿前——

(a) 不論藉增加或減少停靠點的數目或藉其他方法，按該通知書指明的方式更改專營服務；

(b) 在該通知書所指明的停靠點之間，根據專營權經營一項新的渡輪服務。

(2) 凡總督會同行政局根據第 (1) 款授權專營公司經營一項新的渡輪服務，總督會同行政局可將經營該項服務的專有權利授予該專營公司。

(3) 專營公司須按照根據本條的授權，經營該獲授權的一項新渡輪服務或經更改的專營服務。

(4) 第 (1) 款提述的期間——

(a) 就根據該款 (a) 段發出的通知書而言，須不少於 6 個月；及

(b) 就根據該款 (b) 段發出的通知書而言，須不少於 12 個月。

(5) 除非專營公司以書面表示同意建議，否則總督會同行政局不得根據第 (1) 款給予授權。

(6) 專營公司可以書面透過署長作出申請，要求總督會同行政局根據本條更改一項專營服務或經營一項新的渡輪服務。

(7) An application under subsection (6) shall be made, unless the Governor in Council otherwise directs, not less than 6 months before the proposed alteration or new ferry service is to come into force.

(8) The Commissioner may with the consent of the Governor in Council by agreement with a grantee permit the grantee to cease operating a ferry service.

14. Temporary alteration of services and provision of temporary new services

(1) The Commissioner may by notice in writing direct a grantee to alter a franchised service temporarily.

(2) The Commissioner may by notice in writing direct a grantee to operate a temporary new ferry service under the franchise.

(3) A direction given under this section shall not begin until the expiration of a period specified by the Commissioner which the Commissioner considers reasonable.

(4) A direction given under this section shall have effect for an initial period as specified in the notice not exceeding 12 months from the date from which the direction has effect and may be extended by the Commissioner for a further period or periods not exceeding 12 months in aggregate.

(5) In this section "to alter a franchised service" (更改專營服務) includes to vary the number of points of call served by a franchised service.

15. Commissioner may specify frequency of services and carrying capacity and types of vessels

(1) As regards any franchised service, the Commissioner may direct the grantee by notice in writing as to the frequency at which the franchised service shall be operated and the carrying capacity and type of ferry vessel to be used from the fleet of vessels that the grantee has available for use.

(2) A direction under this section shall not begin until the expiration of a period of 3 months from the giving of the notice unless the Commissioner and the grantee otherwise agree.

(3) As regards any franchised service for which a direction is given under this section, the grantee may increase the frequency to a greater frequency than that at which the franchised service is directed to be operated under this section.

(4) Where a grantee increases the frequency of a franchised service under subsection (3), the grantee shall, if the alteration continues for a period in excess of 48 hours, notify the Commissioner of the increased frequency in writing.

(7) 除非總督會同行政局另有指示，否則根據第(6)款作出的申請，須在建議中的更改或新的渡輪服務生效前不少於6個月作出。

(8) 署長可在總督會同行政局同意下，藉與專營公司達成的協議，准許該專營公司停止經營一項渡輪服務。

14. 暫時性更改服務和提供暫時性新服務

(1) 署長可藉書面通知，指示專營公司暫時更改一項專營服務。

(2) 署長可藉書面通知，指示專營公司根據專營權經營一項暫時性新渡輪服務。

(3) 根據本條發出的指示，在署長所指明並認為合理的期間屆滿前不得生效。

(4) 根據本條發出的指示，須在通知書所指明的首段期間有效，此首段期間不得超過由該指示生效的日期起計的12個月，並且可由署長延續一段或多於一段總計不超過12個月的後續期間。

(5) 在本條中，“更改專營服務”(to alter a franchised service)包括變更一項專營服務所提供的停靠點數目。

15. 署長可指明服務的班次和船隻的載運量及類型

(1) 在任何專營服務方面，署長可就該專營服務須提供的班次，和就專營公司可供使用的船隊中用作渡輪的船隻的載運量及類型，藉書面通知給予專營公司指示。

(2) 除非署長及該專營公司另有協議，否則根據本條發出的指示，在通知書發出後滿3個月之前不得生效。

(3) 在根據本條獲發出指示的任何專營服務方面，專營公司可將班次增加至較根據本條所指示經營的專營服務提供的班次為頻密的班次。

(4) 凡專營公司根據第(3)款增加一項專營服務的班次，如該項班次更改持續超過48小時，該專營公司須以書面將增加的班次通知署長。

16. Conditions etc., with respect to directions

(1) The Commissioner shall not direct a grantee under section 14 or 15, unless he—

- (a) has consulted with the Director of Civil Engineering and the Director of Marine; (*Amended L.N. 127 of 1986; L.N. 364 of 1991*)
- (b) has given reasonable notice of the direction to the grantee;
- (c) has considered any submissions made by the grantee; and
- (d) has had regard to—
 - (i) the projected demand over a reasonable period for ferry services;
 - (ii) other transport services and facilities provided or to be provided (whether by the grantee or otherwise);
 - (iii) the availability of piers and ferry vessels;
 - (iv) the financial implications for the grantee;
 - (v) any additional resources that may be required by the grantee; and
 - (vi) any other factors that the Commissioner considers relevant.

(2) If a grantee disagrees with a direction given by the Commissioner the grantee may within 14 days of the direction, or such further period as the Commissioner may allow, object by notice in writing served on the Commissioner.

(3) Subject to subsection (4), the Commissioner shall within 28 days of receiving of an objection under subsection (2) notify the grantee whether he allows or rejects the objection or intends to refer the matter to the Governor in Council.

(4) Where an objection under subsection (2) is based on the ground of adverse financial implications the Commissioner shall not reject the objection until he has referred the objection and his comments on it to the Governor in Council for his determination.

(5) Where a grantee objects under this section, it shall provide full details of its objection including copies of all documents, papers, submissions and financial particulars upon which it relies in support of its objection.

17. Application by grantee in respect of temporary alterations to services

(1) A grantee may apply in writing to the Commissioner to exercise his powers under section 14 or 15 in respect of a franchised service operated by the grantee.

16. 指示的條件等

(1) 署長不得根據第 14 或 15 條向專營公司發出指示，除非署長已——

- (a) 諮詢土木工程署署長及海事處處長；（由 1986 年第 127 號法律公告修訂；由 1991 年第 364 號法律公告修訂）
- (b) 就該項指示給予專營公司合理通知；
- (c) 考慮專營公司所提出的任何意見書；及
- (d) 顧及——
 - (i) 在一段合理期間內對渡輪服務的預計需求；
 - (ii) 所提供的或將提供的其他運輸服務及設施（不論是否由專營公司提供）；
 - (iii) 碼頭及渡輪的可供使用情況；
 - (iv) 專營公司會受的財政影響；
 - (v) 專營公司可能需要的任何額外資源；及
 - (vi) 署長認為有關的任何其他因素。

(2) 專營公司如不同意署長所發出的指示，可在指示後 14 天內，或在署長許可的後續期間內，向署長送達書面通知，提出反對。

(3) 除第 (4) 款另有規定外，署長須在接獲根據第 (2) 款提出的反對後 28 天內，就他是否接納或拒絕接納該項反對，或是否擬將該事情轉介總督會同行政局，通知該專營公司。

(4) 凡根據第 (2) 款提出的反對是基於不利的財政影響而提出的，在署長將該項反對和將其對於該項反對的意見轉介總督會同行政局決定之前，署長不得拒絕接納該項反對。

(5) 凡專營公司根據本條提出反對，該公司須提供該項反對的全部細節，包括提供賴以支持該項反對的一切文件、文牘、意見書及財政詳情的文本。

17. 專營公司就暫時更改服務作出的申請

(1) 專營公司可以書面向署長申請，要求署長就專營公司經營的一項專營服務行使根據第 14 或 15 條授予署長的權力。

(2) Unless the Commissioner otherwise agrees, an application under subsection (1) shall be delivered to the Commissioner not less than 28 days prior to the date upon which the grantee desires to introduce the alteration or commence operating the new ferry service set out in its application.

18. Suspension or alteration of franchised service in circumstances beyond the control of a grantee

(1) Whenever a grantee suspends or alters otherwise than in accordance with section 15(3) a franchised service for a period of more than 48 hours, or it appears likely that a suspension or alteration will last for more than 48 hours, the grantee shall notify the Commissioner as soon as practicable after it becomes aware that the suspension or alteration is likely to last for more than 48 hours.

(2) The Commissioner may direct a grantee to supply within a reasonable time such information as the Commissioner thinks fit relating to the cause of any suspension or alteration referred to in subsection (1) and the steps taken or proposed to be taken by the grantee in relation thereto.

(3) Whenever a grantee suspends or alters a service for less than 48 hours, the Commissioner may direct the grantee to supply within a reasonable time such information as the Commissioner thinks fit relating to the suspension or alteration.

(4) Where a grantee suspends or alters a franchised service for more than 48 hours otherwise than in accordance with section 15(3) the Commissioner may

- (a) direct the grantee to make application for a variation of the franchised service;
- (b) direct the grantee to resume the franchised service; or
- (c) take such other action under this Part as he sees fit.

(5) Where a grantee suspends or alters a franchised service by reason of circumstances beyond its control, such suspension or alteration shall not be taken as a breach of its franchise or a failure to maintain a proper and efficient service if the grantee complies with the requirements of this section and all the requirements and directions of the Commissioner in relation to the suspension or alteration.

19. Fares on franchised services

- (1) The Governor in Council may by order determine—
 - (a) the maximum fares that may be charged for the carriage of passengers, baggage, goods and vehicles on any franchised service and may determine such fares in relation to classes of passengers, times of operation of the franchised services, and standards of ferry vessel accommodation; and

(2) 除非署長同意另作其他安排，否則根據第(1)款作出的申請，須於專營公司擬實施申請書所列的更改服務的日期不少於 28 天前，或擬開始經營申請書所列的新渡輪服務的日期不少於 28 天前，交付署長。

18. 在並非專營公司所能控制的情況下 專營服務的暫停或更改

(1) 每當專營公司暫停或並非按照第 15(3) 條而更改一項專營服務超過 48 小時，或一項暫停或更改看來相當可能會持續超過 48 小時，該專營公司須於知悉該項暫停或更改相當可能持續超過 48 小時後，在切實可行範圍內盡快通知署長。

(2) 署長可指示專營公司在合理時間內，提供署長認為適當的，並與第(1)款所提及的任何暫停或更改的因由有關的，和與該專營公司就或建議就該項暫停或更改所採取的措施有關的資料。

(3) 每當專營公司暫停或更改一項服務少於 48 小時，署長可指示該專營公司在合理時間內，提供署長認為適當的並與該項暫停或更改有關的資料。

(4) 凡專營公司暫停或並非按照第 15(3) 條而更改一項專營服務超過 48 小時，署長可

- (a) 指示該專營公司申請變更該項專營服務；
- (b) 指示該專營公司恢復該項專營服務；或
- (c) 根據本部採取署長所認為適當的其他行動。

(5) 凡專營公司由於非其所能控制的情況而暫停或更改一項專營服務，只要該專營公司遵從本條的規定，和遵從署長就該項暫停或更改所作的所有規定及指示，該項暫停或更改即不得被視為違反該公司的專營權，或視為沒有維持適當而有效率的服務。

19. 專營服務收取的船費

- (1) 總督會同行政局可藉命令——
 - (a) 釐定就任何專營服務中乘客、行李、貨品及車輛的運載可收取的最高船費，以及因應乘客的類別、專營服務的經營時間及渡輪艙室的水準，釐定船費；及

- (b) the maximum rate of increase that may be permitted by the Commissioner under subsection (3) within the schedule of maximum fares determined under paragraph (a).

(2) Where the Commissioner directs a grantee under section 14 to alter a franchised service temporarily by operating over a different journey distance, or to operate a temporary new ferry service under the franchise, the Commissioner shall determine the maximum fares which may be charged for the carriage of passengers, baggage, goods and vehicles on such service and such fares shall be calculated having regard to the appropriate maximum fares determined under subsection (1)(a) and the classes of passengers and standards of ferry vessel accommodation.

(3) Where the Commissioner is satisfied that circumstances require a franchised service to be operated—

- (a) where a direction is given under section 15, at a frequency greater than that specified in that direction;
- (b) during a period or on a day other than that specified in a direction under section 15; or
- (c) with a ferry vessel of a carrying capacity or type other than that specified in a direction under section 15,

he may by notice in writing permit the grantee to charge an increased fare for the carriage of passengers, baggage, goods and vehicles on such service during the operation of such service, and such increased fare shall be calculated having regard to the appropriate maximum fares determined under subsection (1)(a), and such additional amount as the Commissioner may think fit not exceeding the maximum rate of increase determined under subsection (1)(b).

(4) A grantee may apply in writing to the Governor in Council through the Commissioner for a revision of the maximum fares applicable in relation to a ferry service.

(5) If a grantee applies under subsection (4) for a revision of the maximum fares applicable in relation to a ferry service and provides full details including all documents, papers, submissions and financial particulars upon which it bases its application for revision, the Commissioner shall submit the application to the Governor in Council for determination as soon as is practicable after receiving such details and in any event not more than 6 months after receiving such details.

(6) A grantee shall not charge—

- (a) a fare exceeding the maximum fare determined under subsection (1)(a) or (2) or permitted under subsection (3); or
- (b) except with the prior permission of the Commissioner, a fare other than that determined or permitted under this section.

- (b) 釐定署長根據第 (3) 款可准許的並在根據 (a) 段所釐定的最高船費的附表範圍內的最高增加率。

(2) 凡署長根據第 14 條指示專營公司藉行走不同航程距離而暫時更改一項專營服務，或指示該公司根據專營權經營暫時性新渡輪服務，署長須釐定就該項服務中乘客、行李、貨品及車輛的運載可收取的最高船費，而在計算該等船費時，須顧及到根據第 (1)(a) 款所釐定的適當最高船費、乘客的類別及渡輪艙室的水準。

(3) 凡署長信納有某些情況使到某項專營服務須如以下所述般經營——

- (a) 如已根據第 15 條發出指示，須以較該指示所指明的班次為密的班次經營；
- (b) 須於並非根據第 15 條所發指示指明的某段期間或某一天經營；或
- (c) 須以並非根據第 15 條所發指示指明載運量或類型的渡輪經營。

署長可藉書面通知，准許該專營公司在該項服務經營期間，就運載乘客、行李、貨品及車輛收取增加後的船費，而在計算該項增加後的船費時，須顧及根據第 (1)(a) 款所釐定的適當最高船費，和顧及署長認為適當的不超過根據第 (1)(b) 款所釐定的最高增加率的額外金額。

(4) 專營公司可透過署長向總督會同行政局提出書面申請，將適用於一項渡輪服務的最高船費調整。

(5) 如專營公司根據第 (4) 款申請將適用於一項渡輪服務的最高船費調整，並提供全部細節，包括提供關於其調整船費申請所根據的所有文件、文牘、意見書及財政詳情，則署長在收到該等細節後，須在切實可行範圍內盡快（但無論如何不得超過 6 個月）將該申請呈交總督會同行政局決定。

(6) 專營公司收取的船費——

- (a) 不得超過根據第 (1)(a) 或 (2) 款所釐定的或根據第 (3) 款所准許的最高船費；或
- (b) 不得為並非根據本條所定或准許者，但獲署長事先准許的船費，則不在此限。

20. Commissioner may specify piers and berths

(1) As regards any franchised service the Commissioner may, from time to time, after consultation with the Director of Marine, the Director of Civil Engineering and the grantee, by notice in writing specify the piers or berths to be used by the grantee for the purposes of such franchised service. (*Amended L.N. 127 of 1986; L.N. 364 of 1991*)

(2) Subject to this Ordinance, the grantee shall not use a pier or berth other than a pier or berth specified under this section for the purposes of any franchised service.

21. Records

(1) In respect of any franchise, the Commissioner may by notice in writing direct the grantee to keep, in such form as the Commissioner may reasonably require, records in respect of all or any of the following matters—

- (a) the number and capacity of the ferry vessels in use on each franchised service each day;
- (b) the number of journeys operated by each ferry vessel on a franchised service each day;
- (c) the number and classification of passengers and vehicles carried on each ferry journey on each franchised service each day;
- (d) the number and classification of passengers and vehicles carried on each franchised service each day;
- (e) the daily receipts in respect of each franchised service;
- (f) the number and specifications of ferry vessels used or kept by the grantee for the purposes of or in connexion with its franchise, and the number and specifications of ferry vessels under construction or which have been ordered for the purposes of the franchise;
- (g) the maintenance of ferry vessels, piers and any other facilities employed by a grantee in connexion with the franchise.

(2) A grantee shall furnish to the Commissioner, at such times and in such form as he may reasonably direct, copies of any records which it is directed to keep pursuant to any notice under subsection (1).

(3) The Financial Secretary or any person authorized in writing by him may inspect, at any reasonable time, any records and accounts kept by the grantee in connexion with its franchise and make and take away copies of any such records or accounts.

22. Forward planning

(1) A grantee and the Commissioner shall not later than 30 November in each year reach agreement as far as they are able on a plan relating to the operations of the grantee for the next 5 years.

20. 署長可指明碼頭及泊位

(1) 在任何專營服務方面，署長可在諮詢海事處處長、土木工程署署長及專營公司後，不時藉書面通知，就該專營公司為經營該專營服務的目的而使用的碼頭或泊位作出指明。 (由 1986 年第 127 號法律公告修訂；由 1991 年第 364 號法律公告修訂)

(2) 除本條例另有規定外，專營公司不得使用並非根據本條為任何專營服務的目的而指明的碼頭或泊位。

21. 紀錄

(1) 對於任何專營權，署長均可藉書面通知，指示專營公司按署長所合理規定的格式，就以下所有或任何事宜，備存紀錄

- (a) 在每項專營服務中每日所使用的渡輪數目及載運量；
- (b) 在一項專營服務中每日每艘渡輪行走的航程次數；
- (c) 在每項專營服務中每日每次渡輪航程所載乘客及車輛的數目及類別；
- (d) 在每項專營服務中每日所載乘客及車輛的數目及類別；
- (e) 每項專營服務的每日收入；
- (f) 為專營權的目的或與專營權相關而由專營公司使用或備有的渡輪的數目及規格，以及為該專營權的目的而在建造中或已訂購的渡輪的數目及規格；
- (g) 與專營權相關而由專營公司所採用的渡輪、碼頭及任何其他設施的維修。

(2) 專營公司須按署長所合理指示的時間及格式，將依據第 (1) 款所發通知書指示該專營公司備存的任何紀錄的副本，向署長呈交。

(3) 財政司或由財政司以書面授權的任何人，可在任何合理時間，查閱與專營權相關而由專營公司備存的任何紀錄及帳目，並且可將任何該等紀錄或帳目複製成副本和將副本帶走。

22. 遠期計劃

(1) 專營公司及署長須在不遲於每年的 11 月 30 日，就專營公司未來 5 年的經營計劃盡可能達成協議。

(2) In the event that the grantee and the Commissioner fail to reach agreement on any point in a plan, the Commissioner shall forward the details of the point in disagreement, including the grantee's submissions in relation thereto, to the Secretary for Transport who shall decide on the point having regard to the submissions of the grantee and the Commissioner and such decisions of the Secretary for Transport shall be incorporated in the plan.

(3) In the exercise of any power under this Ordinance, the Governor in Council and the Commissioner shall have regard to any plan in force under this section.

(4) Where a grantee fails to comply with a plan in force under this section by reason of circumstances beyond its control, such failure shall not be taken as a breach of its franchise or a failure to maintain a proper and efficient service.

23. Governor in Council may impose financial penalty

(1) The Governor in Council may by notice in writing impose on a grantee a financial penalty specified in the notice for any failure by the grantee to comply with its franchise or this Ordinance or any direction or requirement under its franchise or this Ordinance or any provision of any plan in force under section 22 where the Governor in Council is satisfied that the grantee has had reasonable opportunity of complying with its franchise, this Ordinance, the direction or the requirement, as the case may be, and an opportunity of showing cause why the penalty should not be imposed.

(2) A financial penalty imposed under this section shall not exceed—

(a) in respect of any one or more failures—

- (i) \$10,000 in the case of a first imposition of such penalty;
- (ii) \$20,000 in the case of a second imposition of such penalty;
- (iii) \$50,000 in the case of a third or subsequent imposition of such penalty; and

(b) in respect of any failure which is of a continuing nature \$10,000 for each day on which the failure continues.

(3) A financial penalty imposed under this section shall be recoverable by the Government as a civil debt.

(4) Where the Governor in Council is considering the imposition of a penalty on a grantee under this section and a penalty has previously been imposed on the grantee under this section, the Governor in Council shall not consider any failures of the grantee which were considered for the imposition of the penalty on the previous occasion unless the grantee has failed to pay that previous penalty or to rectify any default that gave rise to such failure.

(2) 如專營公司及署長沒有就計劃中的某事項達成協議，則署長須將沒有達成協議的事項的細節，包括專營公司就該事項所擬的意見書，呈交運輸司，運輸司須在顧及專營公司及署長的意見書下，就該事項作出決定，而運輸司就該事項所作出的決定須納入該計劃之內。

(3) 總督會同行政局及署長根據本條例行使任何權力時，須顧及根據本條有效的任何計劃。

(4) 凡專營公司由於非其所能控制的情況，沒有遵從根據本條有效的計劃，此項不遵從行為不得被視為違反專營公司的專營權，或視為沒有維持適當而有效率的服务。

23. 總督會同行政局可施加經濟罰則

(1) 如專營公司沒有遵從其專營權或本條例，或沒有遵從根據其專營權或本條例所作的任何指示或規定，或沒有遵從根據第 22 條任何有效的計劃的任何規定，而總督會同行政局信納該專營公司已有合理機會遵從其專營權、本條例、上述指示或規定（視屬何情況而定），以及已有機會提出因由解釋為何不應施加罰則，則總督會同行政局可藉書面通知，就該不遵從行為而向該專營公司施加該通知書所指明的經濟罰則。

(2) 根據本條施加的經濟罰則——

(a) 就任何一項或超過一項不遵從行為而言——

(i) 如屬首次施加該罰則，不得超過 \$10,000；

(ii) 如屬第二次施加該罰則，不得超過 \$20,000；

(iii) 如屬第三次或以後施加該罰則，不得超過 \$50,000；及

(b) 就任何屬於持續性的不遵從行為而言，就該不遵從行為持續期間的每天，不得超過 \$10,000。

(3) 根據本條施加的經濟罰則，得作為民事債項由政府追討。

(4) 凡總督會同行政局正考慮根據本條向專營公司施加罰則，而一項罰則已於先前根據本條施加於該專營公司，則總督會同行政局不得對該專營公司任何已於先前被考慮過而施加罰則的不遵從行為考慮，除非該專營公司沒有付清該先前罰則所規定的罰款，或沒有對導致該項不遵從行為的任何失責作出糾正。

PART V

EMERGENCY AND REVOCATION

24. Emergency or breakdown in franchised service

(1) If the Governor in Council considers—

- (a) that an emergency exists or is likely to come into existence; or
- (b) after consultation between the grantee and the Commissioner, that there is or is likely to be a substantial breakdown for any reason in the operation of a franchised service,

he may suspend the franchise either altogether or in respect of any such franchised service operated thereunder as he may specify, and such suspension shall have effect until the Governor in Council terminates the suspension or declares that the circumstances that gave rise to the suspension no longer exist.

(2) Where under subsection (1) a franchise is suspended altogether or in respect of any franchised service, the Government may take possession of any property of the grantee used or kept by it for the purposes of or in connexion with its franchise and the Government or its nominee may use such property in the operation of such ferry service as the Commissioner thinks fit.

(3) A grantee shall be entitled to compensation for the use or loss of or damage to any of its property of which possession has been taken under subsection (2) and, except where a franchise is revoked under section 25, for any loss or damage sustained in consequence of any suspension of its franchise or of any franchised service under subsection (1).

25. Revocation of authority to operate a franchised service or of franchise

(1) If it appears to the Governor in Council that without good cause a grantee has failed, or is likely to fail, to maintain a proper and efficient ferry service, either generally or in respect of any franchised service the Governor in Council may direct the Commissioner to serve on the grantee a notice in writing requiring the grantee to show cause in writing, within 28 days after the service of the notice—

- (a) why its authority to operate any franchised service set out in the notice should not be revoked; or
- (b) why its franchise should not be revoked altogether.

(2) Any notice served under subsection (1) shall specify the ground for revoking the franchise or any authority thereunder and may relate to and include any franchised service whether the grantee has failed to maintain a proper and efficient ferry service in relation to that service or not.

(3) If, after the service of a notice under subsection (1)(a)—

第 V 部

緊急情況和專營權的撤銷

24. 緊急情況或專營服務的中斷

(1) 總督會同行政局——

- (a) 如認為存在或相當可能出現緊急情況；或
- (b) 在諮詢專營公司及署長後，如認為一項專營服務的經營因任何原因而大規模停頓或因任何原因相當可能會大規模停頓，

則總督會同行政局可將該專營權全部暫時中止，或就根據該專營權而經營而由總督會同行政局所指定的其中任何專營服務暫時中止；而該項暫時中止須具效力，直至總督會同行政局將之終止，或宣布導致是項暫時中止的情況已不再存在為止。

(2) 凡根據第(1)款專營權全部被暫時中止，或任何專營服務被暫時中止，政府可取去專營公司為其專營權的目的或與其專營權相關而使用或備存的任何財產的管有權；而政府或其代名人可將該財產用於經營署長認為適當的渡輪服務。

(3) 專營公司有權就根據第(2)款被取去的任何財產的使用、損失或損壞獲得補償，而除非專營權已根據第25條被撤銷，否則專營公司亦有權就根據第(1)款暫時中止專營權或暫時中止任何專營服務所引致的損失或損壞獲得補償。

25. 撤銷專營服務的經營權或撤銷專營權

(1) 如總督會同行政局覺得專營公司無好的因由而沒有或會相當可能沒有概括地或在任何專營服務方面維持適當而有效率的服務，總督會同行政局可指示署長向該專營公司送達書面通知，要求專營公司在該通知書送達後28天內，以書面提出因由，解釋——

- (a) 為何不應將該通知書所列專營服務的經營權撤銷；或
- (b) 為何不應將其專營權全部撤銷。

(2) 根據第(1)款送達的通知書，須指明撤銷該專營權或撤銷在該專營權下的任何經營權的理由，並且可涉及和包括任何專營服務，不論該專營公司有沒有就該項專營服務維持適當而有效率的渡輪服務。

(3) 根據第(1)(a)款送達通知書後，如——

(a) the grantee does not show cause why its authority to operate the franchised services set out therein should not be revoked; or
 (b) the Governor in Council, having considered any representations made by the grantee, is of the opinion that the grantee has not shown cause why such authority should not be revoked,

the Governor in Council may, with effect from such date as he may specify, revoke the right of the grantee to operate all or any of the franchised services set out in the notice.

(4) If, after the service of a notice under subsection (1)(b)—

- (a) the grantee does not show cause why the franchise should not be revoked altogether; or
 (b) the Governor in Council, having considered any representations made by the grantee, is of the opinion that the grantee has not shown cause why the franchise should not be revoked altogether,

the Governor in Council may, with effect from such date as he may specify, revoke the franchise.

(5) Notice of any revocation under this section shall be served on the grantee and, as soon as practicable thereafter, published in the Gazette.

(6) A grantee shall not be entitled to compensation in respect of the revocation of a right or franchise under this section.

26. Temporary taking by Government of property where franchise has been revoked

(1) Where a franchise is revoked under section 25 the Government may take possession of any property used or kept by a grantee for the purposes of or in connexion with the operation of any ferry service under the franchise so revoked and such property may be used by the Government, or its nominee, in the operation of such ferry service as the Commissioner thinks fit.

(2) Any property of which possession is taken under subsection (1) may be retained by the Government for such initial period, not exceeding 2 years, as the Governor in Council may direct and such period may be extended by resolution of the Legislative Council for further successive periods not exceeding 6 months each.

(3) At any time during or upon the expiration of the period, including any extension thereof, referred to in subsection (2), any property of which possession is taken under subsection (1) may be returned to the grantee of the revoked franchise or otherwise disposed of in such manner and upon such terms as the Governor in Council thinks fit and where any property is disposed of otherwise than by return the owner shall be entitled to compensation to the extent that the property is not replaced or otherwise compensated for.

(a) 該專營公司並無提出因由，解釋為何不應將該通知書所列專營服務的經營權撤銷；或

(b) 總督會同行政局經考慮該專營公司所作的申述，認為該專營公司並沒有提出因由，解釋為何不應撤銷該項經營權，

則總督會同行政局可將該專營公司經營該通知書所列的所有或任何專營服務的權利撤銷，撤銷自總督會同行政局指明的日期起生效。

(4) 根據第(1)(b)款送達通知後，如——

(a) 專營公司並無提出因由，解釋為何不應將專營權全部撤銷；或

(b) 總督會同行政局經考慮該專營公司所作的申述後，認為該專營公司並沒有提出因由，解釋為何不應將該專營權全部撤銷，

則總督會同行政局可撤銷該專營權，撤銷自總督會同行政局指明的日期起生效。

(5) 根據本條發出的撤銷通知，須送達專營公司，其後並須在切實可行範圍內盡快在憲報刊登。

(6) 專營公司無權就根據本條作出的權利撤銷或專營權撤銷獲得補償。

26. 專營權被撤銷時財產由政府暫時取去

(1) 凡專營權根據第 25 條被撤銷，政府可將任何根據該撤銷的專營權為經營任何渡輪服務的目的或與經營該渡輪服務相關而由專營公司使用或備存的財產的管有權取去；而該財產可由政府或由其他代名人用於經營署長認為適當的渡輪服務。

(2) 根據第(1)款被取去管有權的財產，可由政府保留，保留的首段期間以總督會同行政局所指示的不超過 2 年期間為限，該期間可由立法局藉決議給予多次連接延續，但每次延續的期間均不得超過 6 個月。

(3) 在第(2)款所提述的期間內或屆滿時，包括該段期間的任何延續期間，根據第(1)款被取去管有權的任何財產，可歸還被撤銷專營權的專營公司，或以總督會同行政局認為適當的方式及條款作其他處置；凡財產並非以歸還的方式處置，其擁有人有權獲得補償，但所獲得的補償，以該財產沒有獲得替換或以沒有獲得其他方式的補償為限。

(4) Where possession is taken under subsection (1) of any property, the owner shall be entitled to compensation for the use or loss of or damage to such property.

(5) In calculating the amount of compensation payable under subsection (4), the amount of any compensation payable under section 24(3) shall be deducted from such amount.

(6) In this section "property used or kept by a grantee for the purposes of or in connexion with the operation of any ferry service" (為經營任何渡輪服務的目的或與經營任何渡輪服務相關而由專營公司使用或備存的財產) includes property so used or kept which is also used or kept for any other purposes.

27. Arbitration

(1) If the Government and an owner are unable to agree as to the amount of compensation payable under this Part, either party may refer the matter to arbitration under the Arbitration Ordinance (Cap. 341).

(2) In determining the amount of compensation payable an arbitrator shall have regard to any matter he considers relevant, subject to this Ordinance and to the value of any asset taken over in the operation of a ferry service.

PART VI

FERRY SERVICE LICENCES

28. Grant of licence

(1) Subject to this Ordinance, the Commissioner may if he thinks fit grant to any person a licence to operate a ferry service between such points as are specified in the licence.

(2) A licence—

- (a) may be granted in such form as the Commissioner thinks fit;
- (b) shall be subject to such conditions as the Commissioner may specify; and
- (c) may, after consultation with the licensee, be amended by the Commissioner.

(3) The Commissioner may, after consultation with a licensee and having regard to the financial circumstances of the licensee, specify by notice in writing served by post on the licensee the minimum frequency of a licensed service.

(4) The Commissioner shall, before granting a licence under subsection (1), consult with the Director of Marine and the Director of Civil Engineering with respect to the proposed grant and the proposed conditions of such licence. (Amended L.N. 127 of 1986; L.N. 364 of 1991)

(4) 凡財產根據第(1)款被取去管有權，其擁有人有權就該財產的使用、損失或損壞獲得補償。

(5) 在計算根據第(4)款須付的補償金額時，任何根據第24(3)條須付的補償金額，須從該金額中扣除。

(6) 在本條中，“為經營任何渡輪服務的目的或與經營任何渡輪服務相關而由專營公司使用或備存的財產”(property used or kept by a grantee for the purposes of or in connexion with the operation of any ferry service) 包括如此使用或備存的財產而該財產亦為任何其他目的而使用或備存。

27. 仲裁

(1) 如政府及擁有人未能就根據本部須付的補償金額達成協議，任何一方均可根據《仲裁條例》(第341章)將該事宜轉介仲裁。

(2) 在釐定須付的補償金額時，仲裁人須在符合本條例的規限下和在任何用作經營渡輪服務而被接收的資產的價值的規限下，顧及他認為有關的任何事宜。

第 VI 部

渡輪服務牌照

28. 牌照的批予

(1) 在符合本條例的規定下，署長如認為適當，可向任何人批予牌照，以在該牌照指明的地點之間經營一項渡輪服務。

(2) 牌照——

- (a) 可按署長認為適當的格式批予；
- (b) 須受署長指明的條件規限；及
- (c) 可由署長在諮詢持牌人後予以修訂。

(3) 署長在諮詢持牌人並顧及該持牌人的財政狀況後，可以郵遞方式向該持牌人送達書面通知，指明一項領牌服務的最少班次。

(4) 在根據第(1)款批予牌照之前，署長須就建議中的牌照批予和牌照條件，諮詢海事處處長及土木工程署署長。(由1986年第127號法律公告修訂；由1991年第364號法律公告修訂)

(5) The Commissioner may require an applicant for a licence to supply such information in such manner as the Commissioner may reasonably require in order to decide whether or not to grant a licence to the applicant.

(6) Where 2 or more persons apply, or it appears to the Commissioner that 2 or more persons are likely to apply, separately for a licence to operate substantially the same ferry service between the same points, the Commissioner shall, without prejudice to this section, make arrangements for such applications to be made by way of public tender in such manner and within such period as he may determine; but the Commissioner shall not be bound to grant any application so made, and any application relating to such ferry service which is made otherwise than in accordance with such arrangements while they are in force shall not be considered.

(7) Any person whose application for a licence is not granted by the Commissioner may appeal in writing—

- (a) against the decision of the Commissioner, within 28 days of the date of such decision, to the Secretary for Transport who may confirm or set aside such decision after considering any written representations submitted to him by the appellant and the Commissioner in respect of that decision; and
- (b) if he is aggrieved by the decision of the Secretary for Transport, to the Governor in Council within 28 days of the date of that decision, and the decision of the Governor in Council on any such appeal shall be final.

29. Period of grant

- (1) A licence may be granted for any period not exceeding 3 years.
- (2) The Commissioner may, at the request of the licensee, during any period while the licence is in force, extend the period of the licence for a further period or periods not exceeding 3 years at any one time, so that the period for which the licence was granted together with all extensions thereof shall not in any case exceed in the aggregate a period of 10 years.

30. Restriction on transfer of licence

A licensee shall not transfer his licence without the approval of the Commissioner.

31. Licensee to maintain proper service

- (1) A licensee shall, at all times during the licence period, maintain to the satisfaction of the Commissioner a proper and efficient ferry service.

(5) 署長可要求牌照申請人按署長所合理要求的方式，提供署長所合理要求的資料，以決定是否將牌照批予該申請人。

(6) 凡有 2 人或超過 2 人 (或署長覺得相當可能有 2 人或超過 2 人) 分別申請牌照以在相同地點之間經營在相當程度上相同的渡輪服務，署長須在不損害本條規定的原則下，安排該等申請按署長所決定的方式及期間內以公開投標方式作出；但署長並無責任必須批准如此作出的任何申請，而任何有關該項渡輪服務的申請，在上述安排有效時如不按上述安排作出，均不得予以考慮。

(7) 任何牌照申請人不獲署長批予牌照——

- (a) 可在自署長作出該決定之日起計的 28 天內，向運輸司提出書面上訴，反對該項決定，而運輸司在考慮上訴人及署長就該項決定向運輸司提交的書面申述後，可確定或推翻該項決定；及
- (b) 如因運輸司的決定感到受屈，可在自運輸司作出該決定之日起計的 28 天內，向總督會同行政局提出書面上訴；總督會同行政局就該上訴所作的決定為最終決定。

29. 批予牌照期

- (1) 在批予任何牌照期時，可以批予任何不超過 3 年的期間。
- (2) 署長可在牌照有效的任何期間，應持牌人的請求，將該牌照期延續一段或多於一段期間，但每段延續期間不得超過 3 年，使到該牌照獲批予的期間，連同其所有延續期間，無論如何總計不得超過 10 年。

30. 牌照轉讓的限制

未經署長批准，持牌人不得轉讓其牌照。

31. 持牌人須維持適當服務

- (1) 持牌人須於牌照期內，維持令署長滿意的適當而有效率的渡輪服務。

(2) Without prejudice to the generally of subsection (1), the licensee shall not be treated for any of the purposes of this Ordinance as maintaining a proper and efficient ferry service unless he maintains the service and operates the same in accordance with the licence, this Ordinance and any direction, specification or requirement under the licence or this Ordinance.

32. Suspension or alteration of licensed service

(1) Whenever a licensee suspends or alters a licensed service so that it is suspended or altered for—

- (a) more than 48 hours in the case of a daily or more frequent service; or
- (b) two or more successive occasions occurring during a period of not less than 5 days in any other case,

the licensee shall give notice in writing to the Commissioner as soon as practicable after the licensee becomes aware that the suspension or alteration is likely so to continue or occur for such a period.

(2) The Commissioner may require a licensee to supply, within a reasonable time, such information as the Commissioner thinks fit relating to the cause of any suspension or alteration referred to in subsection (1) and the steps taken or proposed to be taken by the licensee in relation thereto.

(3) Whenever a licensee suspends or alters a licensed service and is not required to give notice to the Commissioner under subsection (1), the Commissioner may require a licensee to supply, within a reasonable time, such information as the Commissioner thinks fit relating to the suspension or alteration.

(4) As regards any suspension of or alteration to any licensed service, the Commissioner may—

- (a) authorize the suspension or alteration of such service on such terms and conditions as he sees fit; or
- (b) direct the licensee to resume any service so altered or suspended.

(5) Where a licensee suspends or alters a licensed service by reason of circumstances beyond his control, such suspension or alteration, shall not be taken as a breach of his licence if he complies with all the requirements of this section and all the requirements and directions of the Commissioner in relation to the suspension or alteration.

33. Fares on licensed services

(1) The Commissioner may by notice in the Gazette determine the maximum fares that may be charged for the carriage of passengers, baggage, goods and vehicles on any licensed service.

(2) 在不損害第(1)款的概括性的原則下，除非持牌人按照牌照、本條例和按照根據該牌照或本條例所作的指示、說明或規定，維持和經營渡輪服務，否則持牌人不得為本條例的任何目的被視為維持適當而有效率的渡輪服務。

32. 領牌服務的暫停或更改

(1) 每當持牌人暫停或更改領牌服務，以致——

- (a) (如屬每天一班或更頻密的服務) 暫停或更改服務超過 48 小時；或
- (b) (如屬其他服務) 在不少於 5 天的期間內，暫停或更改服務的事件連續發生 2 次或超過 2 次，

該持牌人須於知悉該項暫停或更改相當可能會如此持續於該期間或如此發生於該期間後，在切實可行範圍內盡快以書面通知署長。

(2) 署長可要求持牌人在合理時間內，提供署長認為適當的，並與第(1)款所描述的任何暫停或更改的因由有關的，和與該持牌人就或建議就該項暫停或更改所採取的措施有關的資料。

(3) 每當持牌人暫停或更改領牌服務，但無須根據第(1)款通知署長者，署長可要求該持牌人在合理時間內，提供署長認為適當的並與該項暫停或更改有關的資料。

(4) 在暫停或更改任何領牌服務方面，署長可——

- (a) 批准暫停或更改該項服務，但該項批准得受其認為適當的條款及條件規限；或
- (b) 指示持牌人將如此更改或暫停的服務恢復。

(5) 凡持牌人由於非其所能控制的情況而暫停或更改領牌服務，只要他遵從本條的所有規定，和遵從署長就該項暫停或更改所作的規定及指示，該項暫停或更改不得被視為違反持牌人的牌照。

33. 領牌服務的船費

(1) 署長可藉憲報公告，釐定就領牌服務中乘客、行李、貨品及車輛的運載可收取的最高船費。

(2) A licensee shall not charge a fare exceeding the maximum fare determined under subsection (1).

(3) Nothing in this section shall prevent a licensee from charging a fare lower than the maximum fare determined under subsection (1).

34. Revocation of licence

(1) If it appears to the Commissioner that without good cause a licensee has failed, or is likely to fail, to maintain a proper and efficient ferry service the Commissioner may serve on the licensee a notice requiring the licensee to show cause in writing, within 14 days after the service of the notice, why his licence should not be revoked, and any such notice shall specify the ground for revoking such licence.

(2) If, after the service of a notice under subsection (1)—

(a) the licensee does not show cause why the licence should not be revoked; or

(b) the Commissioner, having considered any representations made by the licensee, is of the opinion that the licensee has not shown cause why the licence should not be revoked,

the Commissioner may by notice in writing served on the licensee revoke the licence, with effect from such date as he may specify in such notice.

35. (Omitted as spent)

36. Commissioner to report

The Commissioner shall, not later than 31 March in each year, report to the Governor in Council on all actions taken by him under this Part during the preceding year.

(2) 持牌人不得收取較根據第 (1) 款釐定的最高船費為高的船費。

(3) 本條不得阻止持牌人收取較根據第 (1) 款釐定的最高船費為低的船費。

34. 牌照的撤銷

(1) 如署長覺得持牌人無好的因由而沒有或相當可能沒有維持適當而有效率的渡輪服務，署長可向持牌人送達書面通知，要求持牌人在該通知送達後 14 天內，以書面提出因由，解釋為何其牌照不應被撤銷，而該通知書須指明撤銷該牌照的理由。

(2) 根據第 (1) 款送達通知書後，如——

(a) 該持牌人並無提出因由，解釋為何不應將其牌照撤銷；或

(b) 署長經考慮持牌人所作的申述後，認為該持牌人並沒有提出因由，解釋為何不應將其牌照撤銷，

則署長可藉送達該持牌人的書面通知撤銷該牌照，撤銷由署長在該通知書所指明的日期起生效。

35. (已失時效而略去)

36. 署長作出報告

署長須於每年不遲於 3 月 31 日，向總督會同行政局報告他於上一年內根據本部所採取的一切行動。

PART VII

MISCELLANEOUS

37. Profit Control Scheme

(1) The Financial Secretary and the grantee may, with the approval of the Governor in Council, enter into an agreement to control the level and distribution of profits arising from the operations of the grantee under the franchise, any agreement entered into in pursuance of this Ordinance and any other operations of the grantee specified in the agreement.

(2) An agreement entered into under subsection (1) may specify circumstances under which the right to control the level and distribution of profits may be exercised.

(3) The operations of the grantee which may be specified in an agreement entered into under this section may include any operation of the grantee and shall not be limited to operations conducted under or in pursuance of this Ordinance or the franchise.

(4) The terms of any agreement entered into under this section shall be reviewed every 3 years by the Financial Secretary and the grantee.

(5) Any amendment agreed to by the Financial Secretary and the grantee shall be subject to the approval of the Governor in Council.

(6) The Financial Secretary may at any reasonable time, inspect any record or account kept by the grantee in connexion with its franchise or any operations specified in an agreement entered into under this section and the Financial Secretary may make and take away copies of any such record or account.

(7) The grantee shall supply upon the written request of the Financial Secretary any relevant financial information regarding the operations under the franchise.

38. Inspection by Director of Civil Engineering of premises

(1) The Director of Civil Engineering or any person authorized by him, may—

(a) at all reasonable times inspect—

(i) any premises used by a grantee or licensee in connexion with a franchise or licence and all facilities provided by a grantee or licensee for the safe operation, maintenance and repair of all buildings, structures, piers and electrical and mechanical plant and equipment so used;

第 VII 部

雜項

37. 利潤管制計劃

(1) 財政司及專營公司經總督會同行政局批准，可訂立協議，就專營公司根據專營權進行的經營、依據本條例訂立的任何協議，和在該協議內指明的專營公司的任何其他經營所帶來的利潤的水平及分配，作出管制。

(2) 根據第(1)款訂立的協議，可指明在那些情況下，可行使權利以管制利潤水平及分配。

(3) 在根據本條訂立的協議中指明的關於專營公司的經營，可包括該專營公司的任何經營，並且不限於根據或依據本條例，或根據或依據專營權而進行的經營。

(4) 根據本條訂立的任何協議的條款，須由財政司及專營公司每 3 年檢討一次。

(5) 任何由財政司及專營公司同意作出的修訂，須經總督會同行政局批准。

(6) 財政司可於任何合理時間，查閱與專營權相關或與根據本條訂立的協議指明的任何經營相關而由專營公司備存的任何紀錄或帳目；財政司並可將任何該等紀錄或帳目複製成副本和將副本帶走。

(7) 專營公司須應財政司的書面要求，就根據專營權進行的經營提供任何有關的財政資料。

38. 土木工程署署長對處所的檢查

(1) 土木工程署署長或其所授權的任何人，可——

(a) 於任何合理時間——

(i) 檢查與專營權或牌照相關而由專營公司或持牌人使用的任何處所，以及檢查專營公司或持牌人為安全操作、保養及修理被如此使用的所有建築物、構築物、碼頭、機電裝置及設備而提供的一切設施；

- (ii) any pier wholly or partly maintained by a grantee or licensee in connexion with a franchise or licence;
- (b) require a grantee or licensee to carry out in respect of all such piers or such of those piers as he may specify, any inspection or survey, repair, provision of equipment, maintenance or other works, within such reasonable time as he may specify;
- (c) require an independent inspection or survey of any such plant, equipment or pier at such periodical intervals as he may reasonably specify, by a qualified person approved by him.

(2) A grantee or licensee shall afford such facilities for carrying out of any inspections referred to in subsection (1) as may be required by the Director of Civil Engineering.

(3) The cost of any inspection, independent inspection or survey, repair, equipment, maintenance or other works required under subsection (1)(b) or (c) shall be borne by the grantee or licensee.

(4) This section shall be construed so that the powers granted by it to the Director of Civil Engineering are in addition to and do not derogate from any other power howsoever granted to or vested in the Director of Civil Engineering.

(Amended L.N. 127 of 1986; L.N. 364 of 1991)

39. Inspection by Director of Marine of ferry vessels

- (1) The Director of Marine or any person authorized by him, may—
 - (a) at all reasonable times inspect any ferry vessel and any premises or pier used by a grantee in connexion with its franchise; and
 - (b) require a grantee to carry out in respect of all such ferry vessels or such of those vessels as he may specify, any repair, provision of equipment, maintenance or other works, within such reasonable time as he may specify.

(2) A grantee shall afford such facilities for the carrying out of any inspections referred to in subsection (1)(a) as may be required by the Director of Marine.

(3) This section shall be construed so that the powers granted by it to the Director of Marine are in addition to and do not derogate from any other power howsoever granted to or vested in the Director of Marine.

40. Commissioner may have access

The Commissioner or any person authorized in writing by him may at all reasonable times have access to and may enter upon any pier or ferry vessel used in connexion with any ferry service.

- (ii) 檢查與專營權或牌照相關而由專營公司或持牌人全部或部分維持的碼頭；

(b) 規定專營公司或持牌人在他指明的合理時間內和就所有上述碼頭或其中他指明的碼頭，進行任何檢查或勘查、修理、設備供應、保養或其他工程；

(c) 規定由他認可的合資格的人，在他合理指明的相隔時間，對任何他合理指明的上述裝置、設備或碼頭，進行獨立檢查或勘查。

(2) 專營公司或持牌人須為土木工程署署長提供土木工程署署長所要求的方便，以進行第(1)款所提述的任何檢查。

(3) 根據第(1)(b)或(c)款規定作出的任何檢查、獨立檢查或勘查、修理、設備、保養或其他工程，其費用須由專營公司或持牌人承擔。

(4) 本條須作如下解釋：本條授予土木工程署署長的權力是增補而非減損授予或歸屬(不論是如何授予或歸屬)土木工程署署長的任何其他權力。

(由 1986 年第 127 號法律公告修訂；由 1991 年第 364 號法律公告修訂)

39. 海事處處長對渡輪的檢查

- (1) 海事處處長或其所授權的任何人，可——

(a) 於任何合理時間，檢查與專營公司的專營權相關而由專營公司使用的任何渡輪及任何處所或碼頭；及

(b) 規定專營公司在他指明的合理時間內，就所有上述渡輪或其中他指明的渡輪，進行任何修理、設備供應、保養或其他工程。

(2) 專營公司須為海事處處長提供海事處處長所要求的方便，以進行第(1)(a)款所提述的檢查。

(3) 本條須作如下解釋：本條授予海事處處長的權力是增補而非減損授予或歸屬(不論是如何授予或歸屬)海事處處長的任何其他權力。

40. 署長可來到碼頭或渡輪

署長或由署長以書面授權的任何人，可於任何合理時間來到與任何渡輪服務相關而使用的任何碼頭或渡輪，並可進入該等碼頭或登上該等渡輪。

41. Appeal by grantee or licensee

(1) A grantee or licensee aggrieved by any decision, direction or requirement of the Secretary for Transport, the Commissioner, the Director of Civil Engineering or the Director of Marine or any person authorized by any one of them, under this Ordinance or the franchise or licence may, within 28 days of the giving or making of the decision, direction or requirement, appeal by petition to the Governor in Council, and the decision of the Governor in Council on any such appeal shall be final. (*Amended L.N. 127 of 1986; L.N. 364 of 1991*)

(2) Where a grantee or licensee appeals under subsection (1), the decision, direction or requirement, as the case may be, shall not have effect until the appeal has been determined, unless the Governor in Council otherwise directs.

42. Obstruction of public officers

Any person who obstructs a public officer in the carrying out of his duties or the exercise of his powers under this Ordinance commits an offence and is liable to a fine of \$5,000 and to imprisonment for 6 months.

43. Publication of franchised and licensed services

The Commissioner shall from time to time, as he thinks necessary, cause to be published in the Gazette a list of all franchised services and licensed services.

44. Regulations

(1) The Governor in Council may make regulations for all or any of the following matters—

- (a) the provision of adequate signs and destination indicators at piers used by ferry vessels;
- (b) regulating the conduct of persons while employed by a grantee or a licensee;
- (c) regulating the carriage of passengers, baggage, goods and vehicles on ferry vessels;
- (d) the method of payment of fares by passengers and for vehicles carried on such vessels;
- (e) regulating the use of piers used by ferry vessels;
- (f) the safe and efficient operation of ferry services;
- (g) the control and marshalling of passengers and of vehicular traffic on or about any ferry vessel, pier or adjacent roadway;

41. 專營公司或持牌人的上訴

(1) 專營公司或持牌人，如因運輸司、署長、土木工程署署長或海事處處長或由他們之中任何一位所授權的任何人，根據本條例或專營權或牌照所作的任何決定、指示或規定感到受屈，可在該決定、指示或規定給予或作出後 28 天內，藉呈請書向總督會同行政局提出上訴，而總督會同行政局就任何該等上訴所作的決定為最終決定。
(由 1986 年第 127 號法律公告修訂；由 1991 年第 364 號法律公告修訂)

(2) 凡專營公司或持牌人根據第 (1) 款提出上訴，上述的決定、指示或規定（視屬何情況而定）在該宗上訴被裁定之前，不得生效，但如總督會同行政局另有指示，則不在此限。

42. 妨礙公職人員

任何人妨礙公職人員根據本條例執行其職責或行使其權力，即屬犯罪，可處罰款 \$5,000 及監禁 6 個月。

43. 專營服務及領牌服務的刊登

署長如認為需要，須不時安排一份列載所有專營服務及領牌服務的名單在憲報刊登。

44. 規例

(1) 總督會同行政局可就以下所有或任何事宜，訂立規例——

- (a) 在渡輪使用的碼頭設置足夠的標誌及目的地指示牌；
- (b) 規管專營公司或持牌人所僱用的人在受僱時的行為；
- (c) 規管在渡輪上乘客、行李、貨品及車輛的運載；
- (d) 由渡輪所運載的乘客繳費的方法及為渡輪所運載的車輛繳費的方法；
- (e) 規管渡輪使用的碼頭的使用；
- (f) 渡輪服務的安全而有效率運作；
- (g) 任何渡輪、碼頭或鄰近道路之上或附近的乘客及車輛交通的管制及調度；