

LEGISLATIVE COUNCIL BRIEF

Shipping and Port Control Ordinance (Chapter 313)

SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 9 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Shipping and Port Control (Amendment) Bill, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. Part V of the Shipping and Port Control Ordinance ('the Ordinance') provides for safety protection of persons engaged in cargo handling, ship repairs and ship-breaking work. However, the existing legislative provisions do not cover marine construction work.

3. The growth in container handling and marine construction activities in recent years, and the adoption of practices to accelerate the container transfer process have given rise to potential new hazards. Accident figures in recent years indicate that the number of cargo handling accidents has increased from 1 163 during the period 1992-94 to 1 385 during 1995-97, with over 20 fatal cases in each of these periods. Over the same periods, the number of accidents in marine construction remains in excess of 150, while the number of fatal cases, although still relatively low, has doubled from two to four. In order to keep the accident figures to a minimum, it is considered necessary to strengthen the relevant legislation to further protect the safety of workers.

4. We propose -
- (a) to extend the marine work activities covered by the Ordinance to include 'marine construction'; and
 - (b) to improve the safety of workers engaged in marine work activities, through -
 - (i) empowering the Director of Marine to issue codes of practice and to approve qualified trainers on work safety;
 - (ii) enabling regulations to be made for the control of works (including marine construction work), as well as the safety and protection of persons employed in works; and
 - (iii) increasing the penalty charges for offences.

THE BILL

5. The main provisions are -
- (a) Clauses 2 and 7 amend the activities covered by the Ordinance to include 'marine construction';
 - (b) Clauses 9 to 14 set the penalty charges for contravention of sections under the Ordinance related to marine construction, and increase the penalty charges for contravention of sections under the Ordinance related to other marine work activities;
 - (c) Clause 15 empowers the Director of Marine to issue codes of practice; and
 - (d) Clause 16 enables that regulations may be made for control of all aspects of works as well as the safety and protection of persons employed in works, and empowers the Director of Marine to approve trainers on work safety on board vessels.

PUBLIC CONSULTATION

6. We have consulted the relevant industries and interested parties, including the Labour Advisory Board and the Provisional Local Vessels Advisory Committee. They all agreed to the proposed amendment.

BILL OF RIGHTS IMPLICATIONS

7. The Department of Justice advises that the proposed amendment has no human rights implications.

BINDING EFFECT

8. The proposed amendment will not affect the current binding effect of the existing provisions of the Ordinance to be amended.

FINANCIAL AND STAFFING IMPLICATIONS

9. There are no additional financial and staffing implications.

ECONOMIC IMPLICATIONS

10. There will not be any significant economic implications.

ENVIRONMENTAL IMPLICATIONS

11. There are no environmental implications.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be -

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| Publication in the Gazette | 19 March 1999 |
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| First Reading and commencement of Second Reading debate | 31 March 1999 |
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| Resumption of Second Reading debate, committee stage and Third Reading | to be notified |
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PUBLICITY

13. A press release will be issued on 17 March 1999. A spokesman will be available for answering media enquiries.

ENQUIRY

14. Any enquiry on this brief can be addressed to Mr. K.M. Varghese, Assistant Director of Marine (2852 4404) or Mr. B.Y. Lee, Assistant Secretary for Economic Services (2537 2844).

Economic Services Bureau
16 March 1999

**SHIPPING AND PORT CONTROL
(AMENDMENT) BILL 1999**

To provide for the regulation and control of ports and of vessels in Hong Kong or in the waters of Hong Kong, the regulation and control of repairs and breaking up of vessels, cargo handling on vessels and pollution caused by vessels in the waters of Hong Kong, and for other matters affecting vessels, navigation and the safety of vessels at sea (whether within or beyond the waters of Hong Kong).

(Amended 46 of 1981 s. 2; 57 of 1990 s. 2)

[29 December 1978] *L.N. 291 of 1978*

↑ and regulation for and control of construction or reclamation works in which vessels are used

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“agent” (代理人) means any person acting in Hong Kong as agent for the owner of a vessel for the purposes of this Ordinance;

“aid to navigation” (助航設備) means a lighthouse, beacon or buoy, and any cables, wires and other forms of communication apparatus connected or used with a lighthouse, beacon or buoy;

"authorized officer" (獲授權人員) means—

- (a) the Director and any public officer of the Marine Department of or above the rank of Marine Inspector Class II; (*Amended 46 of 1981 s. 3*)
- (b) any police officer of or above the rank of Sergeant; and (*Amended 60 of 1979 s. 2*)
- (c) any public officer authorized in writing in this behalf by the Director;

"beacon" (航標) means any light, mark or sign established as an aid to navigation, other than a lighthouse or buoy;

"buoy" (浮標) means any floating light, mark or sign established as an aid to navigation, other than a lighthouse or beacon;

"cargo" (貨物) means any goods, ships' stores, provisions and equipment, mail and passengers' baggage, carried, or intended to be carried, in or on a vessel;

"cargo handling" (貨物處理) means—

- (a) the loading of cargo on, or the unloading of cargo from, a vessel;
- (b) the transfer of cargo within a vessel; or
- (c) the hoisting, lowering, moving and handling of cargo or any other thing in any manner, on or from a vessel;

"collision regulations" (碰撞規例) means the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369 sub. leg.); (*Added 57 of 1990 s. 3*)

"dangerous goods" (危險品) means the substances and articles which are specified in the Schedule to the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg.);

"dead ship" (廢船) means any ship exceeding 50 metres in length, other than a laid-up vessel, which—

- (a) is, for any reason, unable to proceed under its own power;
- (b) is, for any reason, unable to manoeuvre with its own steering gear;
- (c) is, for any reason, unable to work its own anchors; or
- (d) has any part of the hull structure removed, or under repair, which may affect the water-tight integrity of the ship;

"Director" (處長) means the Director of Marine;

"dynamically supported craft" (動力承托的航行器) means a craft that is operable on or above water and the weight of which, or a significant part thereof, is balanced in one mode of operation by other than hydrostatic forces;

"junk" (中式帆船) includes any vessel—

- (a) of Chinese or other Asiatic build, construction or rig;
- (b) of Chinese or other Asiatic build and construction but of European rig; or

↑ , container, pallet, material and solid ballast

- (c) of European build and construction, but of Chinese or other Asiatic rig,
whether such vessel is of a sea-going type or not and whether mechanically propelled or not;
- "laid-up vessel" (閒置船隻) means any vessel exceeding 50 metres in length, other than a dead ship, which remains, or is to remain, within the waters of Hong Kong through lack of employment or pending the outcome of any legal proceedings before any court;
- "lighthouse" (燈塔) includes a lightship and any floating or other light exhibited for the guidance of ships, other than a beacon or buoy;
- "master" (船長), in relation to a vessel other than a vessel to which Part IV applies, means the person (except a pilot) having for the time being command or charge of the vessel;
- "mooring" (繫泊設備) includes a mooring dolphin or post, buoy, pontoon, floating pier or other floating structure used for the mooring of vessels or to assist in the embarkation or disembarkation to or from vessels;
- "owner" (擁有人) --
- (a) in relation to a vessel, means--
- (i) the person or persons registered or licensed as the owner of the vessel, or in the absence of registration or licensing, the person or persons owning the vessel, except that in relation to a vessel owned by a State which is operated by a person registered as the vessel's operator, it means the person registered as its operator; or
- (ii) a demise charterer of the vessel; and
- (b) in relation to cargo, includes--
- (i) the consignor, consignee or shipper of the cargo; and
- (ii) the agent of the owner of the cargo;
- "pilot" (領港員) means the person who is a pilot within the meaning of the Pilotage Ordinance (Cap. 84);
- "place on land" (陸上地方) means--
- (a) any premises, building or vehicle on land;
- (b) any building, structure or object erected or placed on the bed or shore of the sea; or
- (c) anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of the sea;
- "port" (港口) means any area of the waters of Hong Kong which is declared to be a port under section 56;
- "port dues" (港口費) means any due, fee or charge payable under this Ordinance in respect of a vessel which enters the waters of Hong Kong or uses any port facility;
- "port facility" (港口設施) means any aid to navigation, mooring or signal station;

△ "material" (物料) includes construction material, waste material and debris;

"river trade limits" (內河航限) means—

- (a) the waters in the vicinity of Hong Kong within the following boundaries—
- (i) to the East, meridian 114° 30' East;
 - (ii) to the South, parallel 22° 09' North; and
 - (iii) to the West, meridian 113° 31' East; and
- (b) all inland waterways in the provinces of Kwangtung and Kwangsi on the mainland of China to which access can be obtained by water from the area defined in paragraph (a);

"ship" (船·船舶) means any vessel used in navigation other than a vessel propelled by oars or a junk;

"signal station" (信號站) means a signal station so specified by regulations made under this Ordinance;

"tidal water" (感潮水域) means any part of the sea or of a river within the ebb and flow of the tide at ordinary spring tides;

"tons" (噸) and "tonnage" (噸位) mean tons and tonnage as calculated according to British measurement of registered tonnage;

"use of signals of distress regulations" (使用遇險信號規例) means the Merchant Shipping (Safety) (Use of Signals of Distress) Regulations (Cap. 369 sub-leg.); (*Added 57 of 1990 s. 3*)

↑ (《遇險訊號規例》)

"vessel" (船隻) includes—

- (a) any ship, junk, boat, dynamically supported craft, seaplane, or any other description of vessel used in navigation; and
- (b) any other description of vessel in Hong Kong or in the waters of Hong Kong not used in navigation or not constructed or adapted for use in navigation; (*Amended 46 of 1981 s. 3*)

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

(*Amended 57 of 1990 s. 3*)

12. Power to detain vessels

(1) Where—

- (a) a vessel is refused permission to leave the waters of Hong Kong under ~~section 11~~; or
- (b) it is provided in this Ordinance that under specified conditions a vessel shall not leave any port or the waters of Hong Kong,

the Director may take such steps as are necessary to detain the vessel in such port or waters.

(2) If the Director incurs any cost in detaining a vessel under subsection (1), he may recover the cost—

- (a) as a civil debt from the owner or master of the vessel; or
- (b) under section 55 as if the cost represented port dues payable in respect of the vessel.

(3) Where any vessel not registered in Hong Kong is detained under subsection (1), notice thereof shall be given to the consular officer for the State to which the vessel belongs, and if there is no such consular officer to the master of the vessel, and such notice shall specify the grounds on which the vessel has been detained. (*Amended 23 of 1998 s. 2*)

↑ section 11B

PART V

~~△ REPAIRS OR BREAKING UP OF VESSELS AND CARGO HANDLING~~

△ WORKS

36. Interpretation

In this Part, unless the context otherwise requires—

▲ “inspector” (督察) means a person appointed under section 38 to be an inspector;

“lifting appliance” (起重裝置) means a crane, winch, hoist, derrick boom, sheer legs, fork lift truck or other self-propelled machine, and any other description of lifting appliance, derrick and mast bands, goose-necks, eyebolts, and all other permanent attachments to a derrick, mast or deck, used on a vessel for the purposes of hoisting or lowering in connexion with cargo handling;

↑ excavator, pile driver, pile extractor,

↑ works

▲ “approved code” (《守則》) means a code of practice issued under section 44A;

“crane” (起重機) means any appliance equipped with mechanical means of hoisting and lowering a load and for transporting the load while suspended; and also all chains, ropes, swivels, or other tackle (down to and including the hook), used in the operation of the appliance; but does not include—

- (a) a hoist block running on a fixed rail or wire;
- (b) a stacker or conveyer whereby a load is moved by means of a belt or platform; or
- (c) an earth or mineral moving or excavating appliance not fitted with a grab;

"lifting gear" (起重工具) includes a chain sling, rope sling, canvas sling, net, tray, board, box, bull rope, snorter, can hook or other means of supporting cargo and attachments thereto including a ring, link, hook, plate, clamp, shackle, swivel, eyebolt, bridle, beam, spreader, rope and wire, used on a vessel in connexion with ~~lifting gear~~ cargo handling;

"machinery, equipment or appliance" (機械、裝備或裝置), in the case of—
 (a) repairs to a vessel, means any machinery, equipment or appliance provided or used for that purpose;
 (b) the breaking up of a vessel, means any machinery, equipment or appliance provided or used for that purpose; ~~and~~
 (c) cargo handling, means any lifting appliance or lifting gear provided or used for that purpose; ~~and~~

△ "person in charge of works" (工程負責人) means—
 (a) the owner or master of, or other person having control over, the vessel ~~on or to~~ which any works are to be, or are being, carried out; ~~or~~
 (b) a principal contractor or sub-contractor, if any, who contracts to carry out, or who carries out, any works; ~~or~~

▲ "principal contractor" (總承判商) means a person who enters into a contract directly with the owner or master of, or other person having control over, the vessel to carry out any works;

"repairs" (修理), in relation to—
 (a) any vessel, means any repairs, alterations or maintenance works on or to the vessel carried out by any person other than a member of the crew or master of the vessel or that involve or are likely to involve the safety of any person other than a member of the crew or the master; and
 (b) any vessel carrying dangerous goods, means any repairs, alterations or maintenance works on or to the vessel capable of providing an ignition source, including those that involve welding, burning or the use of blow lamps, braziers or other devices using combustible materials;

"sub-contractor" (次承判商) means—
 (a) any person who enters into a contract, express or implied, with a principal contractor to perform all or any part of the works which the principal contractor has contracted to perform; and
 (b) any other person who enters into a contract, express or implied, to perform all or any part of the works which a sub-contractor within the meaning of paragraph (a) has contracted to perform;

"works" (工程) means—
 (a) repairs to any vessel;
 (b) the breaking up of a vessel; ~~or~~
 (c) cargo handling on a vessel; ~~or~~

□

↑ works

↑ and

△ (d) marine construction, means any machinery, equipment or appliance provided or used for that purpose;

■ "marine construction" (海上建造工程) means any construction or reclamation works, including dredging, drilling, pipe laying, buoy laying, cable laying and caisson construction, in which vessels are used;

□ on, to or by means of

■ or

▲ (c) any other person having for the time being in command or charge of any works being carried out on, to or by means of a vessel;

^ ; or

□ (d) marine construction.

37. Application

(1) ~~Subject to subsection (2), this Part shall not apply to repairs to, or the breaking up of, a vessel which is—~~
~~(a) 50 metres or less in length;~~
~~(b) in a dock other than a floating dock; or~~
~~(c) on a slip or mechanical lift.~~
~~(2) The Director may, in the case of any vessel referred to in subsection (1)(a), give written notification to the person in charge of works that this Part applies to that vessel.~~

↑ This

39. Powers of Director and inspectors

- (1) The Director and an inspector shall have power—
- (a) at any reasonable time (or, in a situation which in the opinion of the Director or an inspector is or may be dangerous, at any time) to board any vessel within the waters of Hong Kong which he has reason to believe it is necessary to board for the purposes of this Part, and for the purpose of boarding any such vessel which is floating alongside any premises at a seawall or pier, to enter such premises;
 - (b) to take with him such persons as may be necessary to assist him in the exercise of his powers, or performance of his duties, under this Part;
 - (c) to inspect and examine any vessel on or to which any works are being carried out;
 - (d) to make such examination and inquiry as may be necessary to ascertain that safe working conditions obtain and that the provisions of this Part are complied with;
 - (e) to investigate any accident involving any works or injury to any person arising out of or in the course of carrying out any works;
 - (f) to require the production of any register, certificate or other document required to be kept in pursuance of this Part and to inspect and copy any of them or any entry in them; and
 - (g) to require the posting of any notice in pursuance of this Part or any notice related to works, machinery, equipment or appliances, or the safety of persons employed in carrying out any works.

(2) An owner or master of, or other person having control over, a vessel shall furnish such safe means required by the Director or an inspector as are necessary for the purposes of boarding, inspection, examination, investigation, or otherwise for the exercise of his powers under this Part.

(3) Any person who—

- (a) without reasonable excuse fails to comply with any requirement of the Director or an inspector in pursuance of this section;
- (b) without reasonable excuse fails to produce any register, certificate or other document which he is required in pursuance of this Part to produce;
- (c) without reasonable excuse withholds any information as to who is the owner or master of, or person having control over, the vessel, or the owner of any machinery, equipment or appliance provided or used for the carrying out of any works,

commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months.

↑ at level 4

40. Restriction on carrying out repairs or breaking up of vessels

(1) Subject to subsection (2), no owner or master of, or other person having control over, a vessel shall, except with the written permission of the Director, carry out, or cause to be carried out, any repairs to, or break up, the vessel.

(2) The Director may by notice in the Gazette specify any type of repairs to a vessel in respect of which permission under subsection (1) is not required.

(3) Any person who without reasonable excuse contravenes subsection (1) commits an offence and is liable to a fine of \$50,000 and to imprisonment for 2 years.

↑ subsections (1A) and (2)

△ (1A) Subsection (1) does not apply to any vessels of 50 metres or less in length unless the Director gives written notification to the person in charge of works that subsection (1) applies to that vessel.

■ at level 6

41. Safe atmosphere

(1) Where a vessel is being repaired or broken up, the person in charge of works shall not—

- (a) provide or use, or cause to be provided or used, any machinery, equipment or appliance that is capable of providing an ignition source; or
- (b) carry out, or cause to be carried out, any works that involve welding or burning, the use of blow lamps, braziers or other devices using combustible materials,

in an atmosphere containing flammable vapours, flammable gases or explosive dusts.

(2) A person in charge of works who contravenes subsection (1) commits an offence and is liable to a fine of \$20,000 and to imprisonment for 1 year.

□ at level 5

42. Directions regarding repairs or breaking up of vessels

(1) The Director may direct any person who, in the opinion of the Director, is the owner or master of a vessel, or who claims or appears to the Director to exercise control over a vessel, that is to be repaired or broken up or is being repaired or broken up, or who is in charge of the repairs or the breaking up of a vessel—

- (a) to remove the vessel to a position or place within the waters of Hong Kong specified by the Director;
- (b) to comply with such safety requirements as may be specified by the Director generally or in any particular case;
- (c) to comply with any other requirements which may be specified by the Director in respect of the manner in which the vessel may be repaired or broken up;
- (d) in the case of the breaking up of a vessel, to give security, in cash or otherwise, in such amount as the Director may consider necessary to ensure the effective breaking up and complete removal of the vessel.

(2) Any person who fails to comply with any direction given to him under subsection (1) commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months, and to an additional fine of \$1,000 for each day during which such failure to comply continues after notice requiring compliance with the direction has been served by the Director on such person.

↑ at level 4

↑ \$2,000

43. Prohibition against use of dangerous equipment, etc.

(1) A person in charge of works shall not provide or use, or cause to be provided or used, any machinery, equipment or appliance for the carrying out of the works if the machinery, equipment or appliance is in such a condition or so constructed that it cannot be used without unnecessary risk of accident or bodily injury.

(2) If the Director or an inspector has reasonable grounds to believe that any machinery, equipment or appliance provided or used for the carrying out of any works is in such a condition or so constructed that it cannot be used without unnecessary risk of accident or bodily injury, the Director or inspector may give directions to the person in charge of works—

- (a) prohibiting the use of the machinery, equipment or appliance, or if it is capable of repair or alteration, prohibiting its use until it is repaired or altered as specified in the direction; or
- (b) requiring him to take such other steps as may be specified in the directions for remedying the unnecessary risk of accident or bodily injury.

- (3) A person in charge of works who—
- (a) contravenes subsection (1) commits an offence and is liable to a fine of ~~\$20,000~~ and to imprisonment for one year;
- (b) fails to comply with any direction given to him under subsection (2) commits an offence and is liable to a fine of ~~\$10,000~~ and to imprisonment for 6 months, and to an additional fine of ~~\$1,000~~ for each day during which such failure to comply continues after notice requiring compliance with the direction has been served by the Director or an inspector on such person.

↑ at level 5

↑ at level 4

↑ \$2,000

44. Prohibition against carrying out works in dangerous conditions

(1) A person in charge of works shall not carry out, or cause to be carried out, any works in a condition or manner that does not provide adequately against unnecessary risk of accident or bodily injury.

(2) If the Director or an inspector has reasonable grounds to believe that any works are being carried out in a condition or manner that does not provide adequately against unnecessary risk of accident or bodily injury, the Director or inspector may give directions to the person in charge of the works requiring him to take such steps as may be specified in the directions for remedying the unnecessary risk of accident or bodily injury.

- (3) A person in charge of works who—
- (a) contravenes subsection (1) commits an offence and is liable to a fine of ~~\$20,000~~ and to imprisonment for one year;
- (b) fails to comply with any direction given to him under subsection (2) commits an offence and is liable to a fine of ~~\$10,000~~ and to imprisonment for 6 months, and to an additional fine of ~~\$1,000~~ for each day during which such failure to comply continues after notice requiring compliance with the direction has been served by the Director or an inspector on such person.

△ 44A. Code of practice

(1) For the purpose of providing practical guidance in respect of any one or more of the requirements of this Part or of regulations made under this Ordinance, the Director may issue such codes of practice (whether prepared by the Director or not) as the Director considers appropriate.

(2) The Director may amend or revoke a code of practice issued by him under subsection (1).

(3) Where the Director exercises a power under subsection (1) or (2), he shall as soon as may be reasonably practicable publish notice thereof in the Gazette and the notice shall be in such form as the Director considers appropriate.

(4) A failure by any person to observe a provision of an approved code shall not of itself cause him to incur any criminal liability, but where—

- (a) in any criminal proceedings the defendant is alleged to have committed an offence either—
- (i) by reason of a contravention of or a failure to comply with, whether by act or omission, this Ordinance or regulations under this Ordinance; or
- (ii) by reason of a failure to discharge or perform a duty imposed by this Ordinance or such regulations; and
- (b) the matter to which the alleged contravention or failure relates is one to which, in the opinion of the court, an approved code relates,

then subsection (5) shall apply as regards to the proceedings.

(5) In any criminal proceedings to which this subsection applies, the following, namely—

- (a) compliance with a provision of an approved code found by the court to be relevant to a matter to which a contravention or failure alleged in the proceedings relates;
- (b) a contravention of or failure to comply with, whether by act or omission, any such provision so found,

may be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(6) In any criminal proceedings, any document which purports to be a copy of a particular approved code shall, in the absence of evidence to the contrary, be regarded by the court as being a true copy of that code.

80. Regulations

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

- (a) the provision of port facilities and control over their use;
- (b) the procedure to be followed, and the provisions to be complied with, by vessels entering or leaving the waters of Hong Kong;
- (c) the control of vessels within the waters of Hong Kong generally and in particular—
 - (i) the navigation of vessels and the prevention of collisions;
 - (ii) the speed of vessels;
 - (iii) the anchoring, mooring and berthing of vessels;
 - (iv) the manning of ships;
 - (v) the lights and signals to be exhibited by vessels;
- (d) the radiotelephone equipment to be carried and operated on vessels;
- (e) the aids to navigation to be laid or erected in respect of vessels which are disabled, stranded, abandoned or sunk in the waters of Hong Kong or in respect of construction or other works in the waters of Hong Kong;
- (f) the control of the laying of private port facilities, or any floating or other structure, in the waters of Hong Kong and prescribing fees therefor;
- (g) the prevention of hazards to navigation and the removal and disposal of objects which are a hazard to navigation;
- (h) the control of dead ships, laid-up vessels, or vessels stranded, abandoned or sunk in the waters of Hong Kong, and the supply of information in relation thereto;
- ~~(i) the control of repairs to vessels, salvaging or breaking up of vessels and the safety and protection against accidents of persons employed in such operations;~~
- (j) the control of cargo handling, the control and use of lifting appliances and lifting gear, the safety and protection against accidents of persons employed in cargo handling, the provision of safe workplaces on vessels, the operation, use and maintenance of hatches and hatch coverings on vessels in connexion with cargo handling; and regulations made for the purposes of this paragraph may empower the Director to make exemptions from the application of the regulations where he is satisfied that the regulations have been substantially complied with or where compliance therewith is unnecessary having regard to the circumstances;

- ~~(i) the control of repairs to vessels, salvaging or breaking up of vessels and the safety and protection against accidents of persons employed in such operations;~~
- △ (i) the control of works, the control of salvaging of vessels, the control and use of lifting appliances and lifting gear, the safety and protection against accidents of persons employed in such works or operations, the provision of safe workplaces on vessels, the operation, use and maintenance of hatches and hatch coverings on vessels in connexion with works, and regulations made for the purpose of this paragraph may empower the Director—
 - (i) to make exemptions from the application of the regulations where he is satisfied that the regulations have been substantially complied with or where compliance therewith is unnecessary having regard to the circumstances;
 - (ii) to approve any person to provide a safety training course and issue certificates to any person who attends the course;

- (k) the prevention and control of pollution of the waters of Hong Kong;
- (l) the control of the loading, discharge, storage and movement of logs and other timber in the waters of Hong Kong, and of the loading or discharge of logs and other timber at any public waterfront or public seawall within the waters of Hong Kong;
- (m) the establishment of typhoon shelters and typhoon anchorages and the control of their use and the vessels therein;
- (n) the prohibition or control of fishing within specified areas of the waters of Hong Kong, the control of fishing by the use of bright lights, and the control of the erection and working of fishing stakes;
- (o) the licensing of marine hawkers, tallyclerks and stevedores and the general control of persons engaged in the trade of, or acting as, marine hawkers, tallyclerks and stevedores;
- (p) the port dues, fees and charges payable in respect of vessels and port facilities, any other fees or charges payable under this Ordinance, and the recovery of such port dues, fees and charges;
- (q) empowering the Director, in order to calculate any port dues, to require the production of documents in respect of a vessel and to require the survey of a vessel at the cost of the owner or master of the vessel;
- (r) the notification of accidents involving vessels and injuries to persons on vessels within the waters of Hong Kong, and the investigation and inquiry into such accidents and injuries;
- (s) prohibiting, restricting or regulating the embarkation or disembarkation of persons, the loading and unloading of cargo and goods, and the conveyance and disposal of cargo and goods unlawfully obtained;
- (t) empowering the Director to control and regulate water sports, races, regattas or other similar activities in the waters of Hong Kong and providing for the safety of persons taking part in, or affected by, such activities;
- (u) establishing piers and terminals and controlling their use;
- (ua) the prevention of collisions at sea; (*Added 57 of 1990 s. 6*)
- (ub) giving effect to any provisions of an international agreement applicable to Hong Kong so far as the agreement relates to the prevention of collisions at sea; (*Added 57 of 1990 s. 6*)
- (uc) prescribing what signals may be used by vessels as signals of distress; (*Added 57 of 1990 s. 6*)
- (ud) prescribing the circumstances in which, and the purposes for which, any such signal is to be used and the circumstances in which it is to be revoked; (*Added 57 of 1990 s. 6*)

- (ue) prescribing the circumstances and manner in which warnings of navigational dangers shall be reported; (*Added 57 of 1990 s. 6*)
- (v) empowering the Director to give directions in any particular case in relation to such matters as may be specified;
- (w) empowering the Director to amend any Schedule to such regulations;
- (x) prescribing any other matter which is to be or may be prescribed under this Ordinance;
- (y) providing generally for the better carrying out of the provisions and purposes of this Ordinance.

(1A) Any port dues or other fees or charges prescribed under this Ordinance may be fixed at levels which provide for the recovery of expenditure incurred or likely to be incurred by the Government or other authority in relation generally to the administration, regulation and control of ports, vessels and navigation in the waters of Hong Kong, and shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the provision of any particular service, facility or matter. (*Added 25 of 1986 s. 2*)

(1B) Port dues and other fees and charges prescribed under this Ordinance may, without prejudice to the generality of subsection (1A)—

- (a) in relation to moorings, be fixed having regard to any or all of the following—
 - (i) the size, whether measured by tonnage, length or otherwise, of any vessel moored or capable of being moored, at any mooring;
 - (ii) sums paid to owners of moorings by persons wishing to use or acquire them; and
 - (iii) the locations of moorings; and
- (b) in any case be fixed at different amounts in relation to different sizes of vessel, whether measured by tonnage, length or otherwise, or in relation to different classes, types or descriptions of service, facility, licence or vessel. (*Added 25 of 1986 s. 2*)

(1C) Regulations made under subsection (1) may—

- (a) be made to apply to vessels required to be licensed under Part IV wherever they may be and to other vessels while they are in the waters of Hong Kong;
- (b) regulate—
 - (i) the lights and shapes to be carried and exhibited;
 - (ii) the sound signals to be used; and
 - (iii) the steering and sailing rules to be observed, by vessels; and
- (c) provide for the prevention of collisions at sea—
 - (i) between seaplanes on the surface of the water; and
 - (ii) between vessels and seaplanes on the surface of the water.

(*Added 57 of 1990 s. 6*)

(2) Any regulations made under this section may provide that a contravention of specified provisions thereof is an offence and may prescribe penalties therefor not exceeding a fine of \$50,000 and imprisonment for 6 months

A BILL

To

Amend the shipping and port Control Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Shipping and Port Control (Amendment) Ordinance 1999.

2. Long title amended

The long title to the Shipping and Port Control Ordinance (Cap. 313) is amended by adding “and regulation for and control of construction or reclamation works in which vessels are used” before “and for other matters”.

3. Interpretation

Section 2 is amended -

- (a) in the definition of “cargo”, by adding”, container, pallet, material and solid ballast” after “goods”;
- (b) in the definition of “use of signals of distress regulations”, by repealing “(使用遇險信號規例)” and substituting “(遇險訊號的使用規例)”;
- (c) by adding -
 ““material” (物料) includes construction material, waste material and debris;”.

4. Application of collision regulations and use of signals of distress regulations

Section 10 is amended -

- (a) in subsections (1) and (2), by repealing “使用遇險信號規例” and substituting “遇險訊號的使用規例”;
- (b) in subsection (5) -
 - (i) by repealing “使用遇險信號規例” and substituting “遇險訊號的使用規例”;
 - (ii) by repealing “信號” wherever it appears and substituting “訊號”.

5. Power to detain vessels

Section 12(1) is amended by repealing “section 11” and substituting “section 11B”.

6. Part heading amended

The heading to Part V is repealed and substituted by “WORKS”.

7. Interpretation

Section 36 is amended -

- (a) in the definition of “lifting appliance” -
 - (i) by adding “excavator, pile driver, pile extractor,” after “sheer legs,”;
 - (ii) by repealing “cargo handling” and substituting “works”;
- (b) in the definition of “lifting gear”, by repealing “cargo handling” and substituting “works”;
- (c) in the definition of “machinery, equipment or appliance” -
 - (i) in paragraph (b), by repealing “and”;
 - (ii) in paragraph (c), by adding “and” at the end;
 - (iii) by adding -

“(d) marine construction, means any machinery, equipment or appliance provided or used for that purpose;”;

(d) in the definition of “person in charge of works” -

(i) in paragraph (a) -

(A) by repealing “on or to” and substituting “on, to or by means of”;

(B) by repealing “or” at the end;

(ii) in paragraph (b), by adding “or” at the end;

(iii) by adding -

“(c) any other person having for the time being in command or charge of any works being carried out on, to or by means of a vessel;”;

(e) in the definition of “works” -

(i) in paragraph (b), by repealing “or”;

(ii) in paragraph (c), by repealing the full stop and substituting”; or”;

(iii) by adding -

“(d) marine construction.”;

(f) by adding -

““approved code” (認可守則) means a code of practice issued under section 44A;

“crane” (起重機) means any appliance equipped with mechanical means of hoisting and lowering a load and for transporting the load while suspended; and also all chains, ropes,

swivels, or other tackle (down to and including the hook), used in the operation of the appliance; but does not include -

- (a) a hoist block running on a fixed rail or wire;
- (b) a stacker or conveyer whereby a load is moved by means of a belt or platform; or
- (c) an earth or mineral moving or excavating appliance not fitted with a grab;

“marine construction” (海上建造工程) means any construction or reclamation works, including dredging, drilling, pipe laying, buoy laying, cable laying and caisson construction, in which vessels are used;”.

8. Application

Section 37 is amended -

- (a) in subsection (1), by repealing “Subject to subsection (2), this” and substituting “This”;
- (b) by repealing subsections (1)(a) and (2).

9. Powers of Director and inspectors

Section 39(3) is amended by repealing “of \$10,000” and substituting “at level 4”.

10. Restriction on carrying out repairs or breaking up of vessels

Section 40 is amended -

(a) in subsection (1), by repealing “subsection (2)” and substituting “subsections (1A) and (2)”;

(b) by adding -

“(1A) Subsection (1) does not apply to any vessels of 50 metres or less in length unless the Director gives written notification to the person in charge of works that subsection (1) applies to that vessel.”;

(c) in subsection (3), by repealing “of \$50,000” and substituting “at level 6”.

11. Safe atmosphere

Section 41(2) is amended by repealing “of \$20,000” and substituting “at level 5”.

12. Directions regarding repairs or breaking up of vessels

Section 42(2) is amended by repealing “of \$10,000” and “of \$1,000” and substituting “at level 4” and “at level 1” respectively.

13. Prohibition against use of dangerous equipment, etc.

Section 43(3) is amended -

(a) in paragraph (a), by repealing “of \$20,000” and substituting “at level 5”;

(b) in paragraph (b), by repealing “of \$10,000” and “of \$1,000” and substituting “at level 4” and “at level 1” respectively.

14. Prohibition against carrying out works in dangerous conditions

Section 44(3) is amended -

- (a) in paragraph (a), by repealing “of \$20,000” and substituting “at level 5”;
- (b) in paragraph (b), by repealing “of \$10,000” and “of \$1,000” and substituting “at level 4” and “at level 1” respectively.

15. Section added

The following is added -

“44A. Code of practice

(1) For the purpose of providing practical guidance in respect of any one or more of the requirements of this Part or of regulations made under this Ordinance, the Director may issue such codes of practice (whether prepared by the Director or not) as the Director considers appropriate.

(2) The Director may amend or revoke a code of practice issued by him under subsection (1).

(3) Where the Director exercises a power under subsection (1) or (2), he shall as soon as may be reasonably practicable publish notice thereof in the Gazette and the notice shall be in such form as the Director considers appropriate.

(4) A failure by any person to observe a provision of an approved code shall not of itself cause him to incur any criminal liability, but where -

- (a) in any criminal proceedings the defendant is alleged to have committed an offence either -
 - (i) by reason of a contravention of or a failure to comply with, whether by act or omission, this Ordinance or regulations under this Ordinance; or

(ii) by reason of a failure to discharge or perform a duty imposed by this Ordinance or such regulations; and

(b) the matter to which the alleged contravention or failure relates is one to which, in the opinion of the court, an approved code relates,

then subsection (5) shall apply as regards to the proceedings.

(5) In any criminal proceedings to which this subsection applies, the following, namely -

(a) compliance with a provision of an approved code found by the court to be relevant to a matter to which a contravention or failure alleged in the proceedings relates;

(b) a contravention of or failure to comply with, whether by act or omission, any such provision so found,

may be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(6) In any criminal proceedings, any document which purports to be a copy of a particular approved code shall, in the absence of evidence to the contrary, be regarded by the court as being a true copy of that code.”.

16. Regulations

Section 80(1) is amended by repealing paragraphs (i) and (j) and substituting -

“(i) the control of works, the control of salvaging of vessels, the control and use of lifting appliances and

lifting gear, the safety and protection against accidents of persons employed in such works or operations, the provision of safe workplaces on vessels, the operation, use and maintenance of hatches and hatch coverings on vessels in connexion with works, and regulations made for the purpose of this paragraph may empower the Director -

- (i) to make exemptions from the application of the regulations where he is satisfied that the regulations have been substantially complied with or where compliance therewith is unnecessary having regard to the circumstances;
- (ii) to approve any person to provide a safety training course and issue certificates to any person who attends the course;”.

Explanatory Memorandum

This Bill makes a number of miscellaneous amendments to the Shipping and Port Control Ordinance (Cap. 313) (“principal Ordinance”) in the manner explained below.

2. Clause 2 amends the long title to the principal Ordinance so as to provide for the regulation and control of marine construction activities.

3. Clause 3 amends section 2 of the principal Ordinance as follows -

- (a) to include “container, pallet, material and solid ballast” in the definition of “cargo” so that handling of these things (when read together with the definition

of “cargo handling”) is now covered under the provisions relating to cargo handling;

- (b) to include a definition of “material” consequent upon the amended definition of “cargo”; and
- (c) to amend the Chinese equivalent of “use of signals of distress regulations” in order to achieve consistency between the principal Ordinance and subsidiary legislation under the Merchant Shipping (Safety) Ordinance (Cap. 369).

4. Clause 4 amends section 10 of the principal Ordinance consequent upon the amendments made to the Chinese equivalent of “use of signals of distress regulations”.

5. Clause 5 amends section 12(1) of the principal Ordinance by repealing the wrong cross reference to “section 11” and inserting the correct reference to “section 11B”.

6. Clause 6 amends the heading to Part V of the principal Ordinance so as to accurately reflect the new scope of that Part.

7. Clause 7 amends section 36 of the principal Ordinance as follows -

- (a) to include “excavator, pile driver, pile extractor” in the definition of “lifting appliance” and to replace “cargo handling” with “works” so that using of lifting appliances in all aspects of works is now under legislative control;
- (b) to replace “cargo handling” with “works” in the definition of “lifting gear” so that using of lifting gear in all aspects of works is now under legislative control;

- (c) to add a new paragraph (d) covering marine construction to the definition of “machinery, equipment or appliance”;
- (d) to expand the definition of “person in charge of works” in order to include any person who is actually in command or charge of any works;
- (e) to expand the definition of “works” to include “marine construction” so that “marine construction” is now under legislative control; and
- (f) 3 new definitions are added -
 - (i) a definition of “approved code” is added as the result of adding a new section 44A to the principal Ordinance in respect of a code of practice;
 - (ii) a definition of “crane” is added in order to provide a basis for introducing a new provision in the regulations regarding training for crane operators;
 - (iii) a definition of “marine construction” is added to describe what type of activities are now regarded as marine construction and are under legislative control.

8. Clause 8 amends section 37 of the principal Ordinance by repealing subsections (1)(a) and (2) so that Part V of the principal Ordinance now applies in all cases to vessels which are 50 metres or less in length.

9. Clause 10 amends section 40 of the principal Ordinance by adding a new subsection (1A) so that vessels of 50 metres or less in length

are exempted from section 40(1) subject to a contrary notice from the Director.

10. Clause 15 adds a new section 44A to the principal Ordinance which empowers the Director to issue codes of practice as practical guidances in respect of the requirements of Part V or of regulations.

11. Clause 16 amends section 80(1) of the principal Ordinance by restructuring paragraphs (i) and (j) as well as expanding their scope so that -

- (a) regulations may be made for control of works (defined to include marine construction), safety and protection of persons employed in works;
- (b) regulations may empower the Director to approve any person to provide a safety training course and issue certificates to persons attending the course.

12. Penalties for breach of requirements in Part V of the principal Ordinance are also increased as follows -

| | <u>Sections</u> | <u>Existing fines</u> | <u>New fines</u> |
|-----|---|-----------------------|-----------------------------|
| (a) | 42(2), 43(3) (b) & 44(3)(b) | \$ 1,000 (level 1) | level 1 (max. \$2,000) |
| (b) | 39(3), 42(2), 43(3)(b) & 44(3)(b) | \$10,000 (level 3) | level 4 (max. \$25,000) |
| (c) | 41(2), 43(3) (a) & 44(3)(a) | \$20,000 (level 4) | level 5 (max. \$50,000) |
| (d) | 40(3) | \$50,000 (level 5) | level 6 (max. \$100,000) |