

LEGISLATIVE COUNCIL BRIEF

MERCHANT SHIPPING (LOCAL VESSELS) BILL

INTRODUCTION

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

BACKGROUND AND ARGUMENT

The Local Craft Review

2. To improve the safety, control and regulation of local vessels, the Marine Department began a review and published a consultative document entitled "Local Craft Review" in April 1989. The document sets out the problem areas and possible reform measures for consultation with the local shipping industry and other interested parties. In the light of public comments received, the Marine Department has conducted a comprehensive review of the existing statutory framework of local vessels and proposes to introduce the Merchant Shipping (Local Vessels) Bill (the Bill) into the Legislative Council. The Bill will provide a new statutory framework to regulate and control local vessels by putting existing legislation scattered among different Ordinances under a comprehensive body of legislation solely for local vessels. The Bill also contains other changes necessary to meet the modern day operational requirements of the local shipping industry. The Bill covers a wide range of technical issues but essentially it seeks to improve on several key regulatory areas as summarised below.

Simplified Classification of Vessels

3. The present classification of vessels is by generic name, size and usage. Due to the evolution of vessel types and design, this classification system has become overly complex. We propose to consolidate the present 11 classes of local vessels defined under three sets of regulations into four new classes under one set of regulations. Detailed proposals of the new classification system is at ***Annex B***.

Extension of Compulsory Third Party Risks Insurance

4. Under existing legislation, compulsory third party risks insurance is only required for local ferries, launches and pleasure vessels. In view of the rapid increase in marine traffic which would increase the risk of accidents involving both locally licensed vessels and river-trade vessels, we propose to extend this compulsory third party risks insurance requirement to all local vessels permitted to operate in Hong Kong waters including licensed vessels and mainland coastal and river-trade vessels. This proposal will ensure proper protection to passengers and operators sustaining injuries in marine accidents and is welcomed by the local shipping industry.

Transparent Safety Survey Standards

5. Under existing legislation, all local vessels, with the exception of pleasure vessels, are required to be inspected periodically by Government surveyors according to the Marine Department's internal guidelines on safety standards. To introduce greater transparency to this process, we propose in the Bill to prescribe the standards of safety for each of the four new classes of vessels. These standards will be subject to review by a statutory committee and published in the form of regulations and Codes of Practice for guidance of the industry and the public of the safety requirements. Under this new arrangement, vessel owners and operators will be required to assume greater responsibility and accountability for the day to day safe operation of their vessels.

6. Government surveyors will continue to perform mandatory periodic inspections of passenger vessels and dangerous goods carriers. For other vessels, the Director of Marine will be empowered to delegate inspections to authorised surveyors who will be subject to a system of monitoring. Owners will then have the choice of using Marine Department or authorised surveyors.

A More Effective Vessel Documentation System

7. The existing annual vessel licensing system does not always provide for proof of ownership of a vessel. This often leads to difficulties in identifying the responsibility for breach of the law and of blame in the case of civil claims. To rectify this problem, we propose a system for licensing vessels similar to the one used for licensing road vehicles including the issue of a certificate of ownership for each vessel and the requirement for each vessel to have operating licence or laid-up permit.

A Streamlined System of Local Certificates of Competency

8. The present classification of Local Certificates of Competency for Master and Engineer, based on outdated vessels and engine types, is complex and inflexible. We propose to simplify the present 13 types of certificates to eight.

Establishment of a Disciplinary Mechanism

9. Under existing legislation, the Director of Marine is empowered to cancel or suspend a Local Certificate of Competency at his own discretion. Nonetheless, there is no mechanism to investigate the fitness or conduct of the holder of a Local Certificate of Competency. To ensure that such investigations are conducted in an open and fair manner, we propose to set up such a mechanism for conducting inquiries.

Stowage and Securing of Cargoes

10. At present, only sea going vessels are regulated on the stowage and securing of cargoes on board. With the rapid increase in local marine traffic and in light of recent incidents, it is considered necessary to extend the regulation of the stowage and securing of cargoes to local vessels.

Establishment of a Local Vessels Advisory Committee

11. To provide transparency and solicit views of the local shipping industry on the general regulation and control of local vessels, we propose to set up a Local Vessels Advisory Committee. The Committee will be tasked to advise the Director of Marine on matters related to the performance or exercise of his functions or powers under the Bill.

THE BILL

12. The main provisions of the Bill are :-

- (a) Clauses 4 to 7 provide for the establishment of a Local Vessels Advisory Committee.
- (b) Clauses 8 and 9 empower the Director of Marine to approve code of practices in respect of requirements under the Bill.
- (c) Clauses 10 to 15 stipulate the requirements and procedure for the certification and licensing of vessels.
- (d) Clauses 16 to 23 provide for the examination and certification of coxswains, engine operators and pleasure vessel operators on local vessels, and circumstances and procedure for the suspension or cancellation of their local certificates of competency.
- (e) Clauses 24 to 33 relate to the safety of navigation of local vessels.

- (f) Clauses 52 to 56 relate to the seizure, removal and detention of local vessels, in particular on safety grounds.
- (g) Clauses 60 to 62 set out the powers of authorised officers and investigating officers under the Bill.
- (h) Clause 87 provides for appeals to the Administrative Appeals Board against various decisions of the Director under the Bill.

LEGISLATIVE TIMETABLE

13. The legislative timetable will be -

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

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT

15. The Bill does not bind the State by any express provision.

ECONOMIC IMPLICATIONS

16. Increasing the efficiency in the regulation and control of local vessels will be conducive to Hong Kong's position as a major international maritime centre.

PUBLIC CONSULTATION

17. The proposals in the Bill were developed on the basis of the Local Craft Review and have been refined in the light of public comments. The Provisional Local Vessel Advisory Committee, formed in 1991 and consisted of representatives of all major sectors of the local shipping industry, has been fully consulted and is in support of the proposals.

FINANCIAL AND STAFFING IMPLICATIONS

18. There are no additional financial or staffing implications.

PUBLICITY

19. A press release will be issued on 17 March 1999. A spokesman will be made available to answer media enquiries and any questions the public may raise.

ENQUIRY

20. Any enquiry on this brief can be addressed to Mr M C Tsang, Deputy Director of Marine (2852 4402) or Mr Peter Kwok, Assistant Secretary for Economic Services (2537 2842).

Economic Services Bureau

Date : 16 March 1999

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MERCHANT SHIPPING (LOCAL VESSELS) BILL

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A BILL

To

Provide for the regulation and control of local vessels in Hong Kong or in the waters of Hong Kong and for other matters affecting local vessels, including their navigation and safety at sea (whether within or beyond the waters of Hong Kong).

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Merchant Shipping (Local Vessels) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette.

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;
- (b) any police officer of or above the rank of Sergeant; and
- (c) any public officer authorized in writing in this behalf by the Director;

“authorized surveyor” (特許驗船師) means a person appointed under section 7(1) to be a surveyor for the purposes of this Ordinance;

“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, vessels’ 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 local vessel;
- (b) the transfer of cargo within a local vessel;
- (c) the transfer of cargo by a local vessel to or from another vessel; or
- (d) the hoisting, lowering, moving and handling of cargo or any other thing in any manner, on or from a local vessel;

“certificate of ownership” (擁有權證書), in relation to a local vessel, means its certificate of ownership issued under regulations made under section 89;

“certificated” (領有證明書) means certificated under regulations made under section 89;

“class” (類別), in relation to a vessel, includes type;

“code of practice” (工作守則) includes -

- (a) a standard;
- (b) a specification; and
- (c) any other documentary form of practical guidance;

“collision regulations” (碰撞規例) means the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369 sub. leg.);

“Committee” (委員會) means the Local Vessels Advisory Committee established under section 4(1);

“coxswain”, (船長), in relation to a local vessel, means the person having for the time being the charge or command of the vessel; but where there is no such person or the vessel is in the charge or command of a person under the age of 16, it means the person whose name appears in the vessel’s certificate of ownership;

“crew” (船員) means the coxswain and any other person employed or engaged in any capacity on board a local vessel on the business of the vessel;

“dangerous goods” (危險貨物) means dangerous goods within the meaning of section 1 of the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation (Cap. 413 sub. leg.);

“dead vessel” (廢置船隻) means any local vessel, other than a laid-up vessel which has a written permission under section 66 which is in force, 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 vessel;

“detention order” (扣留令) means a notice under section 52(4);

“Director” (處長) means the Director of Marine;

“domestic premises” (住宅處所) means any premises used wholly or mainly for residential purposes and constituting a separate household unit;

“dwelling vessel” (住家船隻) means a local vessel which -

- (a) is used, constructed or adapted principally for dwelling purposes; and
- (b) tends to remain stationary in any area of the waters of Hong Kong;

“dynamically supported craft” (動力承托的航行器) means a passenger carrying vessel that is operable -

- (a) 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; or
- (b) at speeds such that the function $V(gL)^{-1/2}$ is equal to, or greater than, 0.9:

where, in consistent units -

“V” means maximum speed;

“g” means the acceleration force due to gravity;

“L” means the waterline length;

“engine operator” (輪機操作員), in relation to a local vessel, means the person who is in charge of the vessel’s machinery;

“Government surveyor” (政府驗船師) means a person appointed under section 5 of the Merchant Shipping (Safety) Ordinance (Cap. 369) to be a Government surveyor;

“identity card” (身分證) means an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177);

“improvement notice” (敦促改善通知書) means a notice under section 73(1);

“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
- (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;

“licensed” (已領牌、領牌) means licensed under regulations made under section 89;

“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 connection with cargo handling;

“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, hooks, plate, clamp, shackle, swivel, eyebolt, bridle, beam, spreader, rope and wire, used on a vessel in connection with cargo handling;

“lighthouse” (燈塔) includes a lightship and any floating or other light exhibited for the guidance of vessels, other than a beacon or buoy;

“local certificate of competency” (本地合格證書) means a certificate of competency issued under Part V;

“local vessel” (本地船隻) means -

- (a) any vessel used solely within the waters of Hong Kong, whether registered under the Merchant Shipping (Registration) Ordinance (Cap. 415) or in a place outside Hong Kong;
- (b) any vessel regularly employed in trading to or from Hong Kong unless registered in a place outside Hong Kong;

- (c) any vessel possessed or used for pleasure purposes in the waters of Hong Kong;
- (d) any vessel employed in sea fishing plying regularly in the waters of Hong Kong, or using the waters of Hong Kong as a base; or
- (e) any vessel, not being a vessel referred to in paragraph (a), (b), (c) or (d), in respect of which a permit referred to in section 89(2) is in force;

“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;

“non-domestic premises” (非住宅處所) means any premises other than domestic premises;

“operating licence” (船隻運作牌照), in relation to a local vessel, means its licence issued under regulations made under section 89;

“owner” (船東), in relation to a local vessel, means -

- (a) the person or persons named in the vessel’s certificate of ownership as the owner of the vessel;
- (b) in the absence of such a certificate, the person or persons owning the vessel;

“passenger” (乘客) means any person carried in a vessel other than -

- (a) a member of the crew;
- (b) a child under 1 year of age;

“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;

“pleasure vessel” (遊樂船隻) means any launch, yacht, inflatable vessel, junk, lorcha or other vessel that -

- (a) has an engine installed in it, or is designed to have an engine installed in it or carried on it, whereby the vessel may be propelled by mechanical means;
- (b) is possessed or used exclusively for pleasure purposes; and
- (c) is not let for hire or reward other than under the terms of a charter agreement or hire-purchase agreement,

but does not include any launch, yacht, inflatable vessel, junk, lorcha or other vessel that has never been launched in the waters of Hong Kong;

“pleasure vessel operator” (遊樂船隻操作人), in relation to a pleasure vessel, means a person who is in charge of the vessel;

“port” (港口) means any area of the waters of Hong Kong which is declared to be a port under section 56 of the Shipping and Port Control Ordinance (Cap. 313);

“port facility” (港口設施) means any aid to navigation, mooring or signal station;

“signal station” (信號站) means a signal station as specified in regulations made under the Shipping and Port Control Ordinance (Cap. 313);

“specified” (指明), in relation to a form, means specified under section 71;

“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;

“use of signals of distress regulations” (遇險訊號使用規例) means the Merchant Shipping (Safety) (Use of Signals of Distress) Regulations (Cap. 369 sub. leg.);

“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.

3. Application

(1) Subject to subsections (2), (3) and (4), this Ordinance shall, except where otherwise specially provided, apply to all local vessels whether in or beyond the waters of Hong Kong.

(2) Subject to subsection (3), this Ordinance shall, except where otherwise specially provided, apply to a local vessel referred to in paragraph (e) of the definition of “local vessel” in section 2 only while it is within the waters of Hong Kong.

(3) Parts IV and V shall not apply to a local vessel -

- (a) referred to in paragraph (e) of the definition of “local vessel” in section 2; or

- (b) for the time being used for any purpose by the Government.
- (4) This Ordinance shall not apply to any local vessel certified, under the provisions of the Merchant Shipping (Safety) Ordinance (Cap. 369), as a passenger ship.
- (5) Nothing in this Ordinance shall derogate from the provisions of any other law.

PART II

LOCAL VESSELS ADVISORY COMMITTEE, SUBCOMMITTEES AND AUTHORIZED SURVEYORS

4. Local Vessels Advisory Committee

- (1) There is hereby established a committee to be known as the Local Vessels Advisory Committee.
- (2) The Committee shall consist of -
 - (a) the Deputy Director of Marine who shall be the Chairman;
 - (b) two senior officers of the Marine Department appointed by the Director;
 - (c) a police officer nominated by the Commissioner of Police; and
 - (d) the following persons appointed by the Director -
 - (i) a person who, in the opinion of the Director, has expertise in the ship building and repairing industry;
 - (ii) a person who, in the opinion of the Director, has expertise in naval architecture;

- (iii) a person who, in the opinion of the Director, has expertise in ship survey work;
- (iv) a person who, in the opinion of the Director, has expertise in the marine insurance industry;
- (v) a person who, in the opinion of the Director, has expertise in the field of seafarers' training;
- (vi) a person who, in the opinion of the Director, has expertise in the field of seafarers' welfare associations;
- (vii) a person who, in the opinion of the Director, has expertise in cargo vessels' operations;
- (viii) a person who, in the opinion of the Director, has expertise in launch and excursion vessels' operations;
- (ix) a person who, in the opinion of the Director, has expertise in ferry vessels' operations;
- (x) a person who, in the opinion of the Director, has expertise in river trade cargo operations;
- (xi) a person who, in the opinion of the Director, has expertise in pleasure boating operations; and
- (xii) a person who, in the opinion of the Director, has expertise in the fishing industry.

(3) The members of the Committee appointed under subsection (2) (d) shall be appointed for a period of 3 years or for such lesser

period as the Director may in any particular case determine and shall be eligible for reappointment.

(4) Any member of the Committee appointed under subsection (2)(d) may, at any time by notice in writing to the Director, resign from the Committee.

(5) 5 members of the Committee shall form a quorum at any meeting of the Committee.

(6) The Chairman of the Committee shall preside at all meetings of the Committee but, if the Chairman is absent from any meeting or any part thereof, he may nominate a member to preside in his absence as Chairman at the meeting or part thereof.

(7) The Chairman of the Committee or any member presiding in his absence shall have a vote on all matters coming before the Committee; and in the case of an equality of votes he shall also have a casting vote.

(8) The Director shall appoint an officer of the Marine Department to be the secretary of the Committee.

(9) The secretary of the Committee shall furnish to the Director a record in writing of every meeting of the Committee.

(10) Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply to the Committee and appointments to the Committee except in so far as that Part is inconsistent with the provisions of this Ordinance.

(11) Subject to the provisions of this Ordinance, the Director may make rules regulating the procedures at meetings of the Committee.

(12) For the avoidance of doubt, it is hereby declared that rules made under subsection (11) are not subsidiary legislation.

5. Functions of Committee

(1) Without prejudice to any other provisions of this Ordinance, the Director may seek the advice of the Committee on any matter which is connected with or incidental to -

- (a) the performance of his functions, or the exercise of his powers, under this Ordinance; or
- (b) the general regulation or control of local vessels in Hong Kong.

(2) The Committee shall advise the Director on any matter in respect of which its advice is sought under subsection (1).

6. Subcommittees

(1) The Committee may establish subcommittees and appoint the members thereof, which may include persons who are not members of the Committee, and the Committee shall appoint a chairman for each subcommittee.

(2) Any matter may be referred by the Chairman of the Committee to a subcommittee.

(3) The Chairman of the Committee shall have the right to attend and vote as a member at any meeting of any subcommittee, whether or not he was appointed as a member of that subcommittee.

(4) The Chairman of the Committee or the chairman of a subcommittee may convene a meeting of the subcommittee.

(5) Business shall not be transacted at a meeting of any subcommittee unless at least 1/4 of the members are present, and

provided that the quorum of a subcommittee shall not be less than 2 members.

(6) Notwithstanding subsection (1), a subcommittee may co-opt additional persons as members of the subcommittee, and shall at all times furnish the Chairman of the Committee with particulars of all persons co-opted.

(7) Upon the conclusion of its deliberations a subcommittee shall prepare a report covering all aspects of its work for the consideration of the Committee, which report shall be forwarded to the Chairman and the secretary of the Committee for inclusion on the agenda of the next meeting of the Committee.

(8) Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply to a subcommittee and appointments to the subcommittee -

- (a) as if the subcommittee were a committee;
- (b) except in so far as that Part is inconsistent with the provisions of this Ordinance.

7. Authorization of surveyors

(1) The Director may authorize in writing a person, or a person belonging to a class of persons, who is not a public officer to be a surveyor for the purposes of this Ordinance subject to such conditions, if any, as the Director thinks fit and specified in the authorization.

(2) Where the Director refuses to authorize a person as a surveyor for the purposes of this Ordinance, or authorizes a person as a surveyor for the purposes of this Ordinance subject to conditions,

he shall serve a notice in writing on the person setting out the reasons for the refusal or conditions, as the case may be.

(3) Where the Director is satisfied that an authorized surveyor has contravened any of the conditions of his authorization, he may serve a notice in writing on the surveyor revoking the authorization and setting out the reasons for the revocation.

(4) The Director, or a Government surveyor authorized in writing by the Director to do so, may carry out an audit check of any survey carried out by an authorized surveyor for the purposes of this Ordinance.

(5) For the avoidance of doubt, it is hereby declared that the Director may authorize a person as a surveyor for the purposes of this Ordinance subject to the condition that he is such a surveyor only in relation to a local vessel of which he is the owner.

(6) A certificate in the specified form issued by a Government surveyor, or surveyor authorized for the purposes of this Ordinance, in respect of a survey carried out on a local vessel may have endorsed on it a statement to the effect that the vessel is not fit to operate safely -

- (a) beyond the waters of Hong Kong;
- (b) in such other waters, if any, as are specified in the certificate.

PART III

CODES OF PRACTICE

8. Approval of codes of practice by Director

(1) Subject to subsection (8), for the purpose of providing practical guidance in respect of any requirements under this Ordinance, the Director may -

- (a) approve and issue such codes of practice (whether prepared by him or not) as in his opinion are suitable for that purpose; and
- (b) approve such codes of practice issued or proposed to be issued otherwise than by him as in his opinion are suitable for that purpose.

(2) Where a code of practice is approved under subsection (1), the Director shall, by notice in the Gazette -

- (a) identify the code concerned and specify the date on which its approval is to take effect; and
- (b) specify for which of the requirements under this Ordinance the code is so approved.

(3) The Director may -

- (a) from time to time revise the whole or any part of any code of practice prepared by him under this section; and
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

and the provisions of subsection (2) shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(4) The Director may at any time withdraw his approval from any code of practice approved under this section.

(5) Where under subsection (4) the Director withdraws his approval from a code of practice approved under this section, he shall, by notice in the Gazette, identify the code concerned and specify the date on which his approval of it is to cease to have effect.

(6) References in this Ordinance to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(7) The power of the Director under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by him shall include power to approve a part of such a code and, accordingly, in this Ordinance “code of practice” (工作守則) may be read as including a part of such a code.

(8) The Director shall, before approving a code of practice under subsection (1) or any revision or proposed revision of the code under subsection (3), consult with -

- (a) the Committee; and
- (b) such other interested persons as he thinks fit.

(9) For the avoidance of doubt, it is hereby declared that different codes of practice may be approved under subsection (1) for different classes of local vessels, and may be so approved for the same or different requirements referred to in that subsection.

9. Use of approved codes of practice in proceedings under this Ordinance

(1) A failure on the part of any person to observe any provision of a code of practice approved under section 8 shall not of itself render the person liable to any civil or criminal proceedings but where in

any proceedings under this Ordinance a person is alleged to have contravened a requirement under this Ordinance, being a requirement for which there was an approved code of practice at the time of the alleged contravention, subsection (2) shall have effect with respect to such code in relation to those proceedings.

(2) Any provision of a code of practice which appears to a specified body to be relevant to a requirement under this Ordinance alleged to have been contravened shall be admissible in evidence in the proceedings under this Ordinance concerned and if it is proved that there was at any material time a failure to observe any provision of the code which appears to that body to be relevant to any matter which it is necessary to prove in order to establish a contravention of such requirement, that matter shall be taken as proved in the absence of evidence that such requirement was in respect of that matter complied with otherwise than by way of observance of that provision.

(3) In any proceedings under this Ordinance, a code of practice which appears to a specified body to be the subject of a notice under section 8 shall be taken to be the subject of such notice in the absence of evidence to the contrary.

(4) In this section -
“proceedings under this Ordinance” (根據本條例進行的法律程序) includes any criminal proceedings where a person is alleged to have committed an offence by reason of a contravention of a requirement under this Ordinance;

“specified body” (指明當局) means -

- (a) a magistrate;
- (b) a court; or

- (c) the Administrative Appeals Board.

PART IV

CERTIFICATION AND LICENSING OF LOCAL VESSELS

10. Application

This Part shall not apply to any local vessel -

- (a) which is a pleasure vessel -
 - (i) from a place outside Hong Kong; and
 - (ii) which does not remain in the waters of Hong Kong for more than 182 days out of 365 consecutive days;
- (b) which is a pleasure vessel -
 - (i) not fitted with an engine; and
 - (ii) in the opinion of the Director, incapable of being fitted with an engine;
- (c) which is a licensed dwelling vessel;
- (d) which has never been launched;
- (e) referred to in paragraph (e) of the definition of “local vessel” in section 2.

11. Local vessel must be certificated

- (1) Every local vessel shall be certificated.
- (2) Where subsection (1) is contravened, the owner of the local vessel, his agent and the coxswain of the vessel commit an offence and each of them is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

12. Ownership of local vessel

(1) The owner of a local vessel shall be -

- (a) an individual who holds a valid identity card and who is ordinarily resident in Hong Kong; or
- (b) a company or overseas company within the meaning of the Companies Ordinance (Cap. 32).

(2) The Director shall refuse to certificate a local vessel or to transfer its certificate of ownership to a new owner where the owner or transferee, as the case may be, is not a person referred to in subsection (1).

13. Certificated local vessel must be licensed

(1) Every certificated local vessel shall be annually licensed except that this subsection shall not apply during any period when the vessel is the subject of a written permission under section 66 which is in force.

(2) Where subsection (1) is contravened, the owner of the local vessel, his agent and the coxswain commit an offence and each of them is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

14. Offences in relation to carrying of passengers

(1) No unlicensed local vessel shall carry any passenger.

(2) No licensed vessel shall carry any passenger unless the conditions of its operating licence permit the carriage of passengers.

(3) No licensed vessel shall carry more passengers and crew than may lawfully be carried under the conditions of its operating licence.

(4) If without reasonable excuse subsection (1) or (2) is contravened, the owner of the vessel, his agent and the coxswain commit an offence and each of them is liable on conviction to a fine at level 5 and to imprisonment for 2 years, and to an additional fine at level 2 in respect of each passenger carried on the vessel in contravention of that subsection.

(5) If without reasonable excuse subsection (3) is contravened, the owner of the vessel, his agent and the coxswain commit an offence and each of them is liable on conviction to a fine at level 4 and to imprisonment for 1 year, and to an additional fine at level 1 in respect of each person carried in excess of the number that may lawfully be carried.

15. Additional licence fees

(1) Without prejudice to the liability for an offence under section 13(2), the Director may, in the case of -

- (a) a local vessel which is not licensed, require the owner of the vessel to pay, in addition to the prescribed licence fee for the issue of an operating licence, the prescribed licence fees which would have become payable if the vessel has been licensed from the date the vessel has been without a licence in contravention of section 13(1);
- (b) a local vessel the operating licence of which is not renewed from the date of expiry of the previous licence,

require the owner of the vessel to pay, in addition to the prescribed licence fee for the renewal of the licence, the prescribed licence fees which would have become payable if the operating licence had been renewed from the date of expiry of the previous operating licence.

(2) The owner of a local vessel may be required to pay the additional licence fees payable under subsection (1) in respect of a period prior to the issue or renewal of an operating licence whether or not he was the owner of the vessel during that entire period.

(3) The additional licence fees under subsection (1) shall not be payable in respect of any period during which the operating licence of the vessel was terminated by notice to the Director.

PART V

LOCAL CERTIFICATES OF COMPETENCY AND INQUIRIES

16. Local certificate of competency for persons employed as coxswains, etc.

(1) The Director shall cause examinations to be conducted for the grant of local certificates of competency required to be held by persons employed as coxswains, engine operators or pleasure vessel operators on vessels, and shall appoint examiners for that purpose.

- (2) The Director may make rules providing for -
- (a) the issue by the Director of local certificates of competency and the method of granting such certificates;

- (b) the classes and grades of local certificates of competency and the endorsements appropriate to each class and grade;
- (c) the combining of 2 or more classes or grades of local certificate of competency in one document if appropriate;
- (d) the addition or removal of endorsements on local certificates of competency;
- (e) the recognition of one type of local certificate of competency as equivalent to another type of local certificate of competency for all or specified purposes;
- (f) the procedure for applying for a local certificate of competency and for the conduct of examinations under subsection (1);
- (g) the subjects to be taken at such examinations or the manner in which those subjects are to be specified;
- (h) the standards of competency to be attained by candidates in order to pass such examinations and other conditions to be satisfied by candidates, and applicants for a local certificate of competency;
- (i) the requirements to be satisfied for a person to be exempted under subsection (5) from any part of such an examination;
- (j) the requirements to be satisfied for the grant of a local certificate of competency under subsection (4);
- (k) the recognition of certificates of competency issued by the Director under any enactment or by the

appropriate authority of another jurisdiction as equivalent, for all purposes or for purposes specified by the Director, to local certificates of competency required to be held by any person under this Ordinance;

- (l) the issue of a copy of any local certificate of competency which has been lost, destroyed, damaged or defaced;
- (m) the surrender of local certificates of competency upon their expiry or replacement;
- (n) fees and forms, in relation to examinations conducted under subsection (1), the issue of local certificates of competency and recognition of certificates of competency as equivalent to local certificates of competency;
- (o) generally, provisions in respect of local certificates of competency.

(3) The Director may publish any rules made under subsection (2) in such manner as he thinks fit, and shall, on payment of such charge as the Director may determine, provide a copy of the rules to any person.

(4) The Director may grant a local certificate of competency as a coxswain, engine operator or pleasure vessel operator to a person without requiring him to undergo the appropriate examination specified in the rules made under subsection (2), if the person produces to the Director suitable documentary evidence, or satisfies the Director in a manner specified in the rules, of his competence for the grant of such a certificate.

(5) Without prejudice to subsection (4), the Director may exempt a person from undergoing any part of the appropriate examination for

the grant of a local certificate of competency specified in the rules made under subsection (2), if the person satisfies the Director in a manner specified in the rules that he is qualified for such exemption.

(6) Rules made under subsection (2) may direct that no local certificate of competency shall be granted to any person unless -

- (a) he has reached such minimum age as may be specified therein; and
- (b) he has obtained such experience or performed such service on such class of vessel as may be specified therein.

(7) Rules made under subsection (2) may direct that a local certificate of competency shall expire upon the holder's attaining such age as may be specified therein but that it may thereafter be extended for such periods and in such manner as may be so specified.

(8) For the avoidance of doubt, it is hereby declared that rules made under this section are not subsidiary legislation.

17. Inquiry into fitness or conduct of holder of local certificate of competency

(1) Where it appears to the Director that the holder of a local certificate of competency -

- (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason; or
- (b) has been seriously negligent in the discharge of his duties,

the Director may cause an inquiry to be held and may, if he thinks fit, suspend, pending the outcome of the inquiry, the certificate and require the holder to deliver it to him.

(2) Where an inquiry is to be held under this section -

(a) the inquiry shall be -

(i) held by one or more persons appointed by the Chief Justice; and

(ii) conducted in accordance with rules made under section 20 (which rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors); and

(b) the persons holding the inquiry shall for the purpose of the inquiry have the powers given by section 18(1).

(3) The persons holding an inquiry under this section and the assessors assisting them shall be remunerated at a rate which shall take account of the amount of work and time occupied by them upon the business of the inquiry and such remuneration shall be determined by the Secretary for Economic Services either generally from time to time or specifically in any particular case:

Provided that nothing in this subsection shall be construed to authorize the payment of remuneration to any person employed full time in any office of emolument under the Government.

(4) The persons holding an inquiry under this section into the fitness or conduct of the holder of a local certificate of competency -

(a) may, if satisfied of any of the matters specified in subsection (1)(a) or (b), cancel or suspend the certificate or censure him;

(b) may make such order with regard to the costs of the inquiry or any part thereof (including witnesses' costs) as they think just, and such order shall be

enforced by them in the same way as an order for costs under the Magistrates Ordinance (Cap. 227); and

- (c) shall make a report on the case to the Director, and if the certificate is cancelled or suspended the holder, unless he has delivered it to the Director pursuant to subsection (1), shall deliver it forthwith to the persons holding the inquiry or to the Director.

(5) Any costs which a person is ordered to pay under subsection (4) (b) may be recovered from him by the Director.

18. Powers of persons holding inquiry, etc.

- (1) The persons holding an inquiry under section 17 may -
 - (a) make such examination and investigation as they consider necessary for the purpose of the inquiry;
 - (b) require any person who they have reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (a) -
 - (i) to attend at a place and time specified by the persons holding the inquiry;
 - (ii) to answer (in the absence of persons other than any persons whom the persons holding the inquiry may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the persons holding the inquiry think fit to ask;

- (iii) to sign a declaration of the truth of his answers;
- (c) require the production of, and inspect and take copies of or of any entry in -
 - (i) any books or documents which by virtue of any provisions of the Merchant Shipping Ordinance (Cap. 281), the Shipping and Port Control Ordinance (Cap. 313), the Merchant Shipping (Safety) Ordinance (Cap. 369), the Merchant Shipping (Seafarers) Ordinance (Cap. 478) or this Ordinance are required to be kept;
 - (ii) any other books or documents which they consider it necessary for them to see for the purposes of any examination or investigation under paragraph (a);
- (d) require any person to afford them such facilities and assistance with respect to any matters or things within that person's control, or in relation to which that person has responsibilities as the persons holding the inquiry consider are necessary to enable them to exercise any of the powers conferred on them by this section.

(2) A person shall be obliged to answer questions put to him under this section by the persons holding the inquiry, but if the answers might tend to incriminate him, and he so claims before answering the question, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings

for an offence under section 36 of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer, and the persons holding the inquiry shall, before asking any question under this section, inform the person concerned of the limitation imposed by this subsection in respect of the admissibility in evidence of the question and any answer given.

(3) Any person who refuses to attend as a witness before any person having the powers specified in subsection (1), after having been required in the exercise of any such power to do so, or refuses or neglects to make any answer, or to give any return, or to produce any document in his possession or under his control, or to make or subscribe any declarations required by any such person in the exercise of any such power, commits an offence and is liable on conviction to a fine at level 2.

19. Re-hearing of and appeal from inquiries, etc.

(1) Where an inquiry has been held under section 17, the Director may, on application by any person or otherwise, order the whole or part of the case to be re-heard, and shall do so -

- (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
- (b) if there appears to him to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) Where a re-hearing is to be held under this section -

- (a) the re-hearing shall be held by one or more persons appointed by the Chief Justice, who may provide for the

re-hearing to be held by the persons who held the inquiry to which the order under subsection (1) relates;

- (b) the re-hearing shall be conducted in accordance with rules made under section 20; and
- (c) section 17(2) (b), (3), (4) and (5) shall, with any necessary modifications, apply to and in relation to the re-hearing as it applies to and in relation to an inquiry.

(3) Where the persons holding an inquiry have decided to cancel or suspend the local certificate of competency of any person or have found any person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who -

- (a) has an interest in the inquiry;
- (b) has appeared at the hearing;
- (c) is affected by the decision or finding; and
- (d) is dissatisfied in point of law with the decision or finding,

may appeal to the Court of First Instance.

(4) Where the persons holding a re-hearing under this section have -

- (a) confirmed (whether with or without variation) a decision at an inquiry to cancel or suspend the local certificate of competency of any person or a finding at an inquiry that any person was at fault; or

- (b) decided to cancel or suspend the local certificate of competency of any person or have found any person at fault,

then, in either case, that person or any other person who -

- (i) has an interest in the re-hearing;
- (ii) has appeared at the re-hearing;
- (iii) is affected by the decision or finding; and
- (iv) is dissatisfied in point of law with the decision or finding,

may appeal to the Court of First Instance.

(5) If on an appeal under subsection (3) or (4) the Court or First Instance is of the opinion that the decision or finding of the persons holding the inquiry or re-hearing was erroneous in point of law, the Court may -

- (a) allow the appeal and give such directions in the matter as it thinks proper; or
- (b) remit the matter to those persons for determination in accordance with the Court's decision on the point of law.

20. Rules as to inquiries, etc.

(1) The Chief Justice may make rules for the conduct of inquiries under section 17 and for the conduct of any re-hearing under section 19.

(2) Without prejudice to the generality of subsection (1), rules made under this section may provide for the appointment and summoning

of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

21. Power to restore certificate, etc.

Where a local certificate of competency has been cancelled or suspended under this Part, the Director, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

22. Offences relating to local certificates of competency

- (1) Any person who -
 - (a) makes, assists in making or procures to be made any false representation for the purpose of procuring, either for himself or for any other person, a local certificate of competency;
 - (b) fraudulently uses a local certificate of competency or copy of a local certificate of competency which has been forged, altered, cancelled or suspended or to which he is not entitled; or
 - (c) fraudulently lends his local certificate of competency or allows it to be used by any other person,

commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(2) Where a person is convicted of an offence under subsection (1), the Director may cancel, or suspend for any period, the local certificate of competency in respect of which the offence is committed.

23. Surrender of local certificates of competency

If -

- (a) a person fails to deliver a local certificate of competency as required under section 17(1) or (4); or
- (b) on the cancellation or suspension of a local certificate of competency under section 22, the holder of the certificate, or any person in possession of it, without reasonable excuse fails to deliver it to the Director on being required by him to do so,

he commits an offence and is liable on conviction to a fine at level 2.

PART VI

SAFETY OF NAVIGATION

24. Power to give directions

The Director may give to an owner or his agent or to a coxswain of, or other person who appears to the Director to have control over, a local vessel such directions as he thinks fit in any particular case -

- (a) for controlling the vessel when entering or leaving the waters of Hong Kong;

- (b) for controlling the navigation and movement of the vessel in the waters of Hong Kong;
- (c) as to the place and manner in which the vessel shall be berthed, moored, anchored or secured;
- (d) for the removal of the vessel from any berth, mooring or anchorage to another berth, mooring or anchorage;
- (e) prohibiting the berthing, mooring or anchoring of the vessel in any particular place;
- (f) for ensuring the safety of, or preventing the outbreak of fire on, the vessel in the waters of Hong Kong;
- (g) for preventing pollution of the waters of Hong Kong.

25. Power to give directions by notice in the Gazette

(1) Without prejudice to the generality of section 24, the Director may, by notice in the Gazette, give to an owner or his agent or to a coxswain of, or other person who appears to the Director to have control over, any vessel belonging to a class, type or description of vessel specified in the notice such directions as the thinks fit in respect of any matter in relation to which the Director may give directions under that section.

(2) A notice under subsection (1) which has not been repealed, or which has not expired, on or before the effluxion of the period of 6 months immediately following the day on which it is published in the Gazette shall expire on the day immediately following that period.

- (3) It is hereby declared that a notice under subsection (1) -
- (a) is subsidiary legislation;

(b) may be in the same terms as another notice under that subsection where that first-mentioned notice is to come into operation upon or after the expiration of that second-mentioned notice.

(4) Without prejudice to the generality of section 84(5) or (6), subsections (1), (2), (3) and (4) of that section shall not apply to a direction given in a notice under subsection (1).

26. Closure of waters

(1) Where the Director reasonably believes that it is necessary in the interests of safety to close any area of the waters of Hong Kong to all vessels, or to any vessel belonging to any class, type or description of vessel, he may, by notice in the Gazette, close that area to such vessels or vessel, as the case may be.

(2) A notice under subsection (1) which has not been repealed, or which has not expired, on or before the effluxion of the period of 6 months immediately following the day on which it is published in the Gazette shall expire on the day immediately following that period.

(3) It is hereby declared that a notice under subsection (1) -

- (a) is subsidiary legislation;
- (b) may be in the same terms as another notice under that subsection where that first-mentioned notice is to come into operation upon or after the expiration of that second-mentioned notice;
- (c) shall not apply to any vessel which is being used for any fire services, ambulance, police, customs and excise or Marine Department purpose if compliance with

the notice is likely to hinder the use of that vessel for that purpose.

(4) If without reasonable excuse a vessel the subject of a notice under subsection (1) enters an area of the waters of Hong Kong the subject of that notice, the coxswain of the vessel commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

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

(1) Subject to any special provision in or under this Ordinance, the collision regulations and the use of signals of distress regulations shall apply to all local vessels wherever they may be, and shall, for the purpose of their application by virtue of this section, be read and construed as if references to “ships” were references to “local vessels within the meaning of the Merchant Shipping (Local Vessels) Ordinance (of 1999)” and references to “registered in Hong Kong” were deleted.

(2) If any of the collision regulations is contravened by a local vessel, the owner of the vessel, his agent, the coxswain and any person for the time being responsible for the conduct of the vessel shall each be guilty of an offence and liable on conviction to a fine at level 4.

(3) It shall be a defence to a charge under subsection (2) for the person charged to prove that he took all reasonable precautions to prevent the contravention to which the charge relates.

(4) If the coxswain of a vessel uses or displays or causes or permits any person under his authority to use or display-

- (a) any signal prescribed by the collision regulations except in the circumstances and for the purposes prescribed by the use of signals of distress regulations; or
- (b) any private signal, whether registered or not, which is liable to be mistaken for any signal prescribed by the collision regulations,

he commits an offence and is liable on conviction to a fine at level 4 and shall further be liable to pay compensation for any labour undertaken, risk incurred or loss sustained in consequence of the signal having been supposed to be a signal of distress; and that compensation may, without prejudice to any other remedy, be recovered in the same manner as salvage.

28. Port clearance to be obtained before departure

(1) Subject to subsection (2), no local vessel shall depart the waters of Hong Kong unless there is in relation to the vessel a valid port clearance in writing obtained in the prescribed manner.

- (2) Subsection (1) shall not apply -
- (a) to any vessel for the time being used for any purpose by the Government;
 - (b) to any vessel of a class that is exempted by the Director by notice in the Gazette from the operation of this section; or
 - (c) to any vessel that is obliged to leave any port or the waters of Hong Kong due to weather conditions, or other circumstances beyond the control of its coxswain, in

the interests of safety of the vessel, its cargo, crew or passengers.

(3) If subsection (1) is contravened, the coxswain commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

29. Assistance to be rendered in event of collision

(1) where two vessels collide and either of those vessels is a local vessel it shall be the duty of the coxswain or person in charge of the local vessel involved in the collision, if and so far as he can do so without danger to his own vessel, crew and passengers, if any -

(a) to render to the other vessel, the coxswain, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger caused by the collision, and to stay by the other vessel until he has ascertained that there is no need of further assistance; and

(b) to give to the coxswain or person in charge of the other vessel-

- (i) the name of his vessel;
- (ii) the name of the port to which it belongs; and
- (iii) the names of the ports from which it comes and to which it is bound.

(2) If the coxswain or person in charge of any vessel involved in a collision fails without reasonable cause to comply with subsection

(1), he commits an offence and is liable on conviction to a fine at level 5.

30. Unseaworthy vessels

Any owner, agent or coxswain who permits a local vessel to operate while it is in an unseaworthy or unsafe condition, whether by reason of overloading or from any other cause whatsoever, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

31. Cutting of moorings

Any person, other than the Director or a person authorized by him, who without lawful excuse cuts a mooring or fastening of a local vessel commits an offence and is liable on conviction to a fine at level 2.

32. Endangering the safety of others

Any person (wherever he may be) who by any unlawful act, or in any manner whatsoever without reasonable excuse, endangers or causes to be endangered the safety of any person conveyed in or being in or upon any local vessel or in the sea commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 4 years; and
- (b) on summary conviction to a fine of \$200,000 and to imprisonment for 2 years.

33. Scuttling or beaching vessel

Any person who, by any unlawful act or in any manner whatsoever without reasonable excuse -

- (a) disables, abandons, scuttles or beaches any local vessel within the waters of Hong Kong; or
- (b) fails to notify the Director thereof within 24 hours immediately following that disablement, abandonment, scuttling or beaching,

commits an offence and is liable -

- (i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 4 years; and
- (ii) on summary conviction to a fine of \$200,000 and to imprisonment for 2 years.

PART VII

PORT FACILITIES

34. Use of port facilities

(1) Subject to any other provisions of this Ordinance, no person shall use a port facility otherwise than for the purpose for which it is provided.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

35. Damage, etc., to aids to navigation

(1) Any person who wilfully or negligently -

- (a) removes, alters, damages, destroys, or interferes with, any aid to navigation or mooring; or

(b) makes fast to any aid to navigation,

commits an offence and is liable on conviction to a fine at level 2.

(2) If an offence under subsection (1) is committed by a person on or in respect of a local vessel, then, in addition to that person, the owner of the vessel, his agent and the coxswain of the vessel commit an offence and each of them is liable on conviction to a fine at level 2.

36. Liability for damage to port facilities, etc.

(1) Where any damage is caused by a local vessel to any port facility, pier, breakwater or other property owned by the Government, the owner of the vessel, his agent and the coxswain of the vessel shall, without prejudice to the liability for an offence under this Ordinance, be jointly and severally liable for any loss arising out of the damage to the extent that such loss is attributable to any fault on the part of the vessel or to any wilful or negligent act of any person on the vessel.

(2) Such loss may be recovered by the Director as a civil debt.

PART VIII

REPAIRS OR BREAKING UP OF LOCAL VESSELS AND CARGO HANDLING

37. Interpretation

In this Part, unless the context otherwise requires- “inspector” (督察) means a person appointed under section 39; “machinery, equipment or appliance” (機械、裝備或裝置), in the case of -

- (a) repairs to a local vessel, means any machinery, equipment or appliance provided or used for that purpose;
- (b) the breaking up of a local vessel, means any machinery, equipment or appliance provided or used for that purpose;
- (c) cargo handling, means any lifting appliance or lifting gear provided or used for that purpose;

“person in charge of works” (工程負責人) means -

- (a) the owner or coxswain of, or other person having control over, a local 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;

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

“repairs”, (修理) in relation to-

- (a) any local 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 coxswain 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 coxswain; and
- (b) any local 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 local vessel;
- (b) the breaking up of a local vessel; or
- (c) cargo handling on a local vessel.

38. Application

This Part shall not apply to -

- (a) a local vessel which is outside the waters of Hong Kong; or
- (b) repairs to, or the breaking up of, a local vessel which is -
 - (i) in a dock other than a floating dock; or
 - (ii) on a slip or mechanical lift.

39. Appointment of inspectors

The Director shall appoint such persons as he thinks fit to be inspectors for the purposes of this Part.

40. 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 local 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 local 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) The owner or coxswain of, or other person having control over, a local 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; or
- (c) without reasonable excuse withholds any information as to who is the owner or coxswain of, or person having control over, a local 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 on conviction to a fine at level 3 and to imprisonment for 6 months.

41. Restriction on carrying out repairs or breaking up of local vessels

(1) Subject to subsection (2), no owner or coxswain of, or other person having control over, a local 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 local 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 on conviction to a fine at level 5 and to imprisonment for 2 years.

42. Safe atmosphere

(1) Where a local 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 on conviction to a fine at level 4 and to imprisonment for 1 year.

43. Directions regarding repairs or breaking up of local vessels

(1) The Director may direct any person who, in the opinion of the Director, is the owner or coxswain of a local vessel, or who claims or appears to the Director to exercise control over a local 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 local 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 the 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 on conviction to a fine at level 3 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.

44. 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

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(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 on conviction to a fine at level 4 and to imprisonment for 1 year;

(b) fails to comply with any direction given to him under subsection (2) commits an offence and is liable on conviction to a fine at level 3 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.

45. 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 on conviction to a fine at level 4 and to imprisonment for 1 year;
- (b) fails to comply with any direction given to him under subsection (2) commits an offence and is liable on conviction to a fine at level 3 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.

PART IX
POLLUTION

46. Interpretation

In this Part -

“mixture containing oil” (含油混合物) means any mixture of oil with water or with any other substance, and any waste consisting of or arising from oil;

“occupier” (佔用人), in relation to -

- (a) a place on land, if it has no occupier, means the owner thereof; and
- (b) a vehicle, means the person in charge of the vehicle and not the occupier of the land on which the vehicle stands;

“oil” (油) means oil of any description, spirit produced from oil of any description and coal tar;

“smoke” (煙霧) includes soot, ash, grit and gritty particles emitted in smoke or steam.

47. Discharge of oil into the waters of Hong Kong

(1) If any oil or mixture containing oil is discharged into the waters of Hong Kong, then the following commit an offence -

- (a) the person by whom the oil or mixture containing oil is so discharged or caused to be discharged; and

- (b) whether or not the person referred to in paragraph (a) has been charged with an offence -
- (i) if the discharge is from a local vessel, the owner and the coxswain of the vessel, unless the owner or coxswain, as the case may be, proves that the discharge took place and was caused as mentioned in subparagraph (ii);
 - (ii) if the discharge is from a local vessel but takes place in the course of a transfer of oil to or from another vessel or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other vessel or that place, the owner and the coxswain of that other vessel or, as the case may be, the occupier of that place;
 - (iii) if the discharge is from a place on land, the occupier of that place, unless he proves that the discharge was caused by the act of a person who is in that place without the permission (express or implied) of the occupier;
 - (iv) if the discharge takes place otherwise than as mentioned in subparagraph (i), (ii) or (iii) and is the result of any operations for the exploration of the seabed and subsoil or the exploration of their natural resources, the person carrying on the operations.

(2) Reference in subsection (1) to the discharge of oil or mixture containing oil, or to its being discharged, from a local vessel or place on land includes a reference to the escape of the oil or mixture containing oil, or (as the case may be) to its escaping, from that vessel or place on land.

(3) Any person who commits an offence under this section is liable on conviction to a fine of \$200,000.

48. Defences under section 47

(1) Where a person is charged with an offence under section 47 as the owner or coxswain of a local vessel it shall be a defence to prove that the oil or mixture containing oil was discharged for the purpose of -

- (a) securing the safety of the vessel;
- (b) preventing damage to the vessel or its cargo; or
- (c) saving life,

unless the court is satisfied that the discharge of the oil or mixture containing oil was not necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) Where a person is charged as mentioned in subsection (1) it shall also be a defence to prove -

- (a) that the oil or mixture containing oil escaped in consequence of damage to the local vessel and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture containing oil; or

- (b) that the oil or mixture containing oil escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

49. Duty to report discharge of oil into Hong Kong waters

- (1) If any oil or mixture containing oil -
 - (a) is discharged from a local vessel into the waters of Hong Kong;
 - (b) is found to be escaping or to have escaped from a local vessel into any such waters; or
 - (c) is found to be escaping or to have escaped into any such waters from a place on land,

the owner or coxswain of the vessel, or the occupier of the place on land, as the case may be, shall forthwith report the occurrence to the Director.

(2) A report made under subsection (1) by the owner or coxswain of the local vessel shall state whether the occurrence falls within paragraph (a) or (b) of that subsection.

(3) Any person who fails to make a report as required by this section commits an offence and is liable on conviction to a fine at level 2.

50. Discharges under the Water Pollution Control Ordinance

No offence under section 47 is committed by, and no obligation arises under section 49 on the part of, any person who makes a discharge or deposit of oil or a mixture containing oil under and in accordance with a licence for the purposes of the Water Pollution Control Ordinance (Cap. 358).

51. Emission of smoke from local vessel

(1) Subject to subsection (2), no local vessel in the waters of Hong Kong shall emit smoke in such quantity as to be a nuisance.

(2) Subsection (1) shall not apply to the emission of smoke in circumstances affecting the safety of life or of the vessel.

(3) If subsection (1) is contravened, the owner of the local vessel, his agent and the coxswain of the vessel commit an offence and each of them is liable on conviction for a first offence to a fine at level 3 and for a second or subsequent offence to a fine at level 4.

PART X

SEIZURE, REMOVAL AND DETENTION OF VESSELS

52. Seizure, etc. of local vessel

(1) In this section, “specified ground” (指明理由), in relation to a local vessel, means -

- (a) the vessel is so situated or in such a condition that it -
 - (i) endangers the safety of persons, other vessels or property;
 - or
 - (ii) poses a hazard to the environment;

- (b) the vessel is not certificated or licensed or is not the subject of a written permission under section 66 which is in force or a permit referred to in section 89(2) which is in force; or
- (c) the owner of the vessel does not comply, or no longer complies, with section 12(1).

(2) An authorized officer may seize and remove or cause to be removed from any place or premises or from any part of the waters of Hong Kong any local vessel in respect of which he has reason to believe that a specified ground is applicable to the vessel.

(3) Subject to section 54, a vessel removed under subsection (2) may be detained by the Director.

(4) The Director shall, as soon as practicable after detaining a vessel under subsection (3) -

- (a) serve a notice in the specified form in the Chinese and English languages on the owner of the vessel or his agent or the person who appears to the Director to exercise control over the vessel;
- (b) where no such owner, agent or person can be found, or whose identity is not known, publish that notice in-
 - (i) the Gazette; and
 - (ii) a Chinese language newspaper and an English language newspaper circulating generally in Hong Kong.

(5) A detention order shall specify in relation to the local vessel the subject of the order -

- (a) the names (if known to the Director) of the persons whom the Director believes to be the owner of the vessel, his agent and the coxswain;
- (b) the name (if known to the Director) of the person whom the Director believes to be the owner or otherwise entitled to the possession of any cargo or other things on board;
- (c) a description of the vessel and the place at which it was seized;
- (d) a description of the cargo and other things on board;
- (e) the reason for the detention;
- (f) the position where the vessel will be secured, anchored or moored during its detention;
- (g) the action required to secure the release of the vessel including the costs of any action taken or caused to be taken by the Director under this section in respect of the vessel; and
- (h) a reasonable period within which the release of the vessel may be effected (being, in any case, not less than 3 months from the date on which the vessel was seized).

(6) For the purpose of subsection (5)(g), the costs of any action taken or caused to be taken under this section shall include all disbursements and other expenses incurred thereby by the Director.

53. Detained vessels may only be moved as permitted, etc.

- (1) A local vessel the subject of a detention order-
 - (a) shall be moved as directed in writing by the Director;
 - (b) shall not be otherwise moved except in accordance with the permission in writing of the Director.
- (2) Any person who contravenes subsection (1) commits an offence and is liable -
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 4 years;
 - (b) on summary conviction to a fine of \$200,000 and to imprisonment for 2 years.

54. Revocation of detention orders, etc.

- (1) The Director may revoke a detention order at any time.
- (2) The Director shall, upon the request in writing of the owner of a local vessel, his agent or the coxswain, revoke a detention order of which that vessel is the subject if the Director is satisfied that the action referred to in section 52(5)(g) specified in the order has been carried out.
- (3) Where the period referred to in section 52(5)(g) specified in a detention order expires without the Director being satisfied that the action referred to in section 52(5)(g) specified in that order has been carried out, then section 56 shall, with all necessary modifications, apply to and in relation to the vessel as if it were an abandoned vessel.

55. Beaching, etc. of local vessel

- (1) Where a local vessel -

- (a) is on fire;
- (b) has suffered damage by fire, explosion or collision; or
- (c) is disabled, stranded or out of control because of damage, bad weather or mechanical failure,

the Director may, if he has reasonable grounds to believe that any of the circumstances specified in subsection (2) prevail, direct the owner of the vessel, his agent or the coxswain -

- (i) to beach the vessel;
- (ii) to take the vessel outside the limits of a port; or
- (iii) to take such other action as the Director thinks fit.

(2) The circumstances for the purpose of subsection (1) are that the vessel -

- (a) is, or is likely to become, a danger to life to other vessels, aircraft or navigation;
- (b) is causing, or is likely to cause, pollution of the waters of Hong Kong;
- (c) is causing, or is likely to cause, damage to port facilities or other property.

(3) If without reasonable excuse any direction given under subsection (1) is not complied with, the owner of the vessel, his agent or the coxswain to whom the direction is given commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

56. Removal, etc. of stranded, abandoned or sunken vessels

(1) The Director may give to the owner, his agent or the coxswain of, or other person who claims or appears to the Director to exercise control over, a local vessel which is stranded, abandoned or sunk in the waters of Hong Kong such directions as he thinks fits in respect of the removal, movement, anchoring, mooring, securing, raising or destruction of the vessel.

(2) If without reasonable excuse any direction given under subsection (1) is not complied with, the person to whom the direction is given commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(3) The Director may seize and detain a vessel referred to in subsection (1) together with any cargo and other things on board if -

- (a) a direction given under subsection (1) is not complied with;
- (b) after reasonable inquiry he is unable to ascertain the ownership of the vessel or to trace the owner of the vessel, his agent or the coxswain; or
- (c) no person claims or appears to the Director to exercise control over the vessel.

(4) For the purposes of seizing a vessel, cargo or other things under subsection (3), the Director may take, or cause to be taken, any action that is necessary including the employment of pilots and the use of tugs and equipment to remove, move, anchor, moor, secure or raise the vessel, cargo and other things.

(5) The Director shall publish in the Gazette and in a Chinese language newspaper and an English language newspaper circulating generally in Hong Kong a notice of a seizure effected under subsection (3) and the notice shall specify -

- (a) the names (if known to the Director) of the persons whom the Director believes to be the owner of the vessel, his agent and the coxswain;
- (b) the name (if known to the Director) of the person whom the Director believes to be the owner or otherwise entitled to the possession of any cargo or other things on board;
- (c) a description of the vessel and the place at which it was seized;
- (d) a description of the cargo or other things on board; and
- (e) a reasonable period within which and the place at which a claim shall be submitted to the Director for the release of the vessel, cargo or other things on board.

(6) If a valid claim to a vessel, cargo or other things seized under subsection (3) is submitted at any time before a notice is published under subsection (5) or within the period specified in a notice published under that subsection, the Director shall, on payment to him of all expenses involved in the seizure and custody of the vessel, cargo or other things, as the case may be, release the vessel, cargo or other things to the claimant.

(7) If the release of a vessel, cargo or other things is not obtained in pursuance of subsection (6), the Director may sell, or otherwise dispose of in such manner as he thinks fit, the vessel, cargo or other things, as the case may be, and in the case of sale the proceeds, after deducting all expenses payable under subsection (6) and any reasonable expense incurred in the sale, shall be paid to the person

making a valid claim thereto within 1 year after the date of sale or forfeited to the Government if not claimed within that period.

(8) Without prejudice to any action which may be taken under subsections (6) and (7), the Director may recover the cost of any action taken or caused to be taken under this section including all disbursements and other expenses incurred thereby by the Director as a civil debt from the owner (if known to the Director).

PART XI

DUTIES TO REPORT COLLISIONS AND FIRES, ETC.

57. Duty to report collisions, etc.

- (1) Where, within the waters of Hong Kong or elsewhere -
 - (a) a local vessel is involved in a collision with another vessel, a port facility or other property;
 - (b) a local vessel sinks or becomes stranded or disabled;
 - (c) a person is killed or seriously injured on board a local vessel as a result of an accident;
 - (d) an explosion or fire occurs on board a local vessel;
 - (e) damage is caused by a local vessel to a port facility or other property; or
 - (f) a person, cargo or equipment is lost overboard from a local vessel,

the owner of the vessel, his agent or the coxswain shall report the occurrence forthwith to the Director orally, by means of signals, or in writing and shall furnish to the Director in writing full particulars thereof within 24 hours after the occurrence.

- (2) The owner of a local vessel, his agent or the coxswain who -
 - (a) without reasonable excuse fails to comply with subsection (1); or
 - (b) makes a report or furnishes any particulars under subsection (1) which he knows to be false in any material particular,

commits an offence and is liable on conviction to a fine at level 3.

(3) For the purpose of subsection (1) (c), a person shall be deemed to be seriously injured if he is admitted to a hospital immediately after he sustains the injury for observation or treatment.

58. Duty to report fires on local vessel

(1) Where -

- (a) a fire occurs on board a local vessel within the waters of Hong Kong; or
- (b) a local vessel which is on fire arrives within the waters of Hong Kong,

the owner of the vessel, his agent or the coxswain shall report such occurrence or arrival forthwith to the Director of Fire Services.

(2) The Director of Fire Services and any member of the Fire Services Department of or above the rank of Principal Fireman may, at any time of day or night, board any local vessel in the waters of Hong Kong for the purpose of extinguishing a fire on board the vessel whether or not the fire has been reported to the Director of Fire Services, and may take with him such persons as may be necessary to assist him for such purpose.

(3) The owner of a local vessel, his agent or the coxswain who without reasonable excuse fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 3.

59. Compliance by owner, agent or coxswain

Where by or under this Ordinance -

- (a) any obligation or duty is placed on the owner of a local vessel, his agent or the coxswain of a local vessel;
- (b) any direction is given to the owner of a local vessel, his agent or the coxswain of a local vessel; or
- (c) the owner of a local vessel, his agent or the coxswain of a local vessel is required to comply with any requirement,

it shall, except where it is otherwise expressly provided, be sufficient if such obligation or duty, direction or requirement is met or complied with either by the owner of the vessel, his agent or the coxswain of the vessel.

PART XII

POWERS OF AUTHORIZED OFFICERS
AND INVESTIGATING OFFICERS

60. Powers of authorized officers

(1) Without prejudice to any other provisions of this Ordinance, an authorized officer may, at any time of day or night, stop and board any local vessel for the purpose of -

- (a) inspecting or searching the vessel or any part thereof;

- (b) investigating any occurrence specified in section 57(1), whether or not such occurrence has been reported to the Director under that section;
 - (c) making such examination and investigation as may be necessary where any provisions of this Ordinance or any other enactment has been contravened in respect of the vessel or by any person on board the vessel, or where an authorized officer has reasonable grounds for suspecting that such contravention has taken place;
 - (d) directing the conduct of any other authorized officer who may be on board the vessel;
 - (e) observing, inspecting or searching any person -
 - (i) for the time being on board the vessel;
 - (ii) employed, engaged or dwelling on board the vessel; or
 - (iii) employed or engaged in loading or unloading the vessel;or
 - (f) taking any action which he considers necessary -
 - (i) to provide against fire or accident on board the vessel;
 - (ii) to preserve peace and good order on board the vessel; or
 - (iii) to prevent or detect any offence under this Ordinance or any other enactment in respect of the vessel or by any person on board the vessel.
- (2) Any police officer of or above the rank of Sergeant may -

- (a) take into custody and remove from any local vessel in the waters of Hong Kong any person who he suspects on reasonable grounds of -
 - (i) having committed an offence under this Ordinance or any other enactment; or
 - (ii) having boarded, or remained on board, the vessel without the permission of the owner of the vessel, his agent or the coxswain of the vessel; or
- (b) direct a local vessel, in respect of which he suspects on reasonable grounds that an offence under this Ordinance or any other enactment has been committed, to proceed together with any persons on board to the nearest Marine Police Base or Marine Office.

(3) An authorized officer boarding a local vessel under subsection (1) may take with him such persons as may be necessary to assist him for the purposes of this section.

(4) The coxswain of a local vessel, when required to stop the vessel by an authorized officer in the exercise of his powers under subsection (1), shall stop the vessel and permit the authorized officer to board the vessel.

(5) Any coxswain who without reasonable excuse -

- (a) fails to comply with a direction given under subsection (2) (b); or
- (b) contravenes subsection (4),

commits an offence and is liable on conviction to a fine at level 2.

61. Powers of investigating officers

(1) Subject to subsection (3), for the purpose of any investigation by an inspector under section 40 or by an authorized officer under section 60, an inspector or authorized officer may -

- (a) require that a local vessel which he has boarded or any part of it, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary to carry out the investigation;
- (b) take such measurements and photographs and make such recordings as he considers necessary;
- (c) inspect, seize and remove from the vessel any article or substance in respect of which he suspects on reasonable grounds that an offence under this Ordinance has been committed;
- (d) in the case of any article or substance removed under paragraph (c), detain it for so long as is necessary -
 - (i) to examine it and to cause it to be subjected to any process or test;
 - (ii) to ensure that it is not tampered with before the examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Ordinance;
- (e) require any person whom he has reasonable cause to believe to be able to give any information relevant to the investigation to answer (in the absence of persons

other than a person nominated by him to be present and any persons whom the inspector or authorized officer may allow to be present) such questions as the inspector or authorized officer thinks fit to ask and to sign a declaration of the truth of his answers;

- (f) require the production of, inspect, and take copies of any entry in, the log book of the vessel or any document (including an identity card) which it is necessary for him to see for the purposes of the investigation.

(2) No answer given by a person in pursuance of a requirement imposed under subsection (1) (e) shall be admissible in evidence against that person or the spouse of that person in any proceedings.

(3) For the purpose of an investigation under section 40, the powers of an inspector shall be limited to matters to which Part VIII relates or to offences under that Part.

(4) Any person who -

- (a) contravenes any requirement imposed by an inspector or authorized officer under subsection (1); or
- (b) prevents any other person from appearing before an inspector or authorized officer or from answering any question to which an inspector or authorized officer may by virtue of subsection (1) (e) require an answer,

commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

62. Powers of authorized officers to enter premises, etc.

(1) Subject to this section, an authorized officer may, on producing, if so required, some duly authenticated document showing his authority, enter any premises, other than domestic premises, at any time between the hours of 7 a.m. and 7 p.m. for the purposes of -

- (a) ascertaining whether there is, or has been, on the premises, any local vessel that appears to be or to have been possessed or used in contravention of any of the provisions of this Ordinance; and
- (b) taking any action authorized or required to be taken by or under this Ordinance in respect of any such vessel found on the premises.

(2) A magistrate may, if satisfied by information on oath that -

- (a) admission to any premises, other than domestic premises, has been refused or that refusal is apprehended, or that such premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry, or that it is reasonable for the purposes of this Ordinance in the circumstances of the case that entry be effected between the hours of 7 p.m. and 7 a.m.; and
- (b) there is reasonable ground for entry into the premises for any of the purpose of subsection (1),

issue a warrant authorizing an authorized officer to effect entry, if need be by force:

Provided that such warrant shall not be issued unless the magistrate is satisfied that notice of the intention to apply for a warrant has been given to the occupier of the premises, or that the

premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry, or that it is reasonable for the purposes of this Ordinance in the circumstances of the case that entry be effected between the hours of 7 p.m. and 7 a.m. as may be appropriate.

(3) A magistrate may, if satisfied by information on oath that there is reasonable ground for entry into domestic premises for any of the purposes of subsection (1), issue a warrant authorizing an authorized officer to effect entry between the hours of 7 a.m. and 7 p.m., if need be by force:

Provided that such warrant shall not be issued unless the magistrate is satisfied that notice of the intention to apply for a warrant has been given to the occupier of the premises, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

(4) Any authorized officer entering any premises by virtue of the provision of subsection (1) or of a warrant issued under subsection (2) or (3) may take with him such persons as may be necessary, and on leaving any unoccupied premises which he has so entered, shall leave such premises as effectually secured against trespassers as he found the same to be at the time of entry.

(5) Every warrant issued under subsection (2) or (3) shall continue in force until the purpose for which the entry is necessary has been satisfied.

PART XIII

GENERAL POWERS OF DIRECTOR

63. Director may require certain information

(1) Where -

(a) a local vessel is involved in any occurrence specified in section 57(1);

or

(b) the coxswain, person in charge or person in control of a local vessel is suspected of having committed an offence under this Ordinance involving the use of the vessel,

the Director may, within 3 months after the occurrence or alleged offence, serve on the owner of the vessel or his agent a written notice requiring him to furnish to the Director, within 21 days after the date of the notice, a written statement signed by the owner or his agent, specifying the name and address of the coxswain, person in charge or person in control of the vessel at the time of the occurrence or alleged offence.

(2) Subject to subsection (3), the owner of a local vessel or his agent who fails to comply with a notice served on him under subsection (1) within the time specified in that subsection commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(3) In proceedings for an offence under subsection (2), it shall be a defence to show that the accused person did not know, and could not with reasonable diligence have ascertained, the name or address of the coxswain, person in charge or person in control of the vessel

at the time of the occurrence or alleged offence referred to in subsection (1).

(4) The provisions of this section shall be in addition to and shall not derogate from section 57.

64. Refusal of permission to enter, leave, etc.

(1) Notwithstanding any other provisions in this Ordinance, the Director may, if he is satisfied that there is reason for doing so, give directions -

- (a) refusing permission for a local vessel or class, type or description of local vessel to enter or leave the waters of Hong Kong; or
- (b) requiring the removal of a local vessel or class, type or description of local vessel from the waters of Hong Kong.

(2) Without limiting the generality of subsection (1) and without prejudice to any of the Director's powers under this Ordinance, the Director may give directions prohibiting the entry of a local vessel into, or requiring the removal of a local vessel from, the waters of Hong Kong if in his opinion the condition of that vessel or the nature or condition of anything it contains is such that its presence in the waters of Hong Kong may involve -

- (a) grave and imminent danger to the safety of any person or property; or
- (b) grave and imminent risk that the vessel may, by sinking, foundering or otherwise, prevent or seriously

prejudice the use of any part of the waters of Hong Kong by other vessels.

(3) Any directions under subsection (1) or (2) may be given as respects the vessel in question to the owner or the coxswain of the vessel.

(4) At any time any directions under subsection (1) or (2) are given to any person, the Director shall inform that person of the grounds for giving such directions.

(5) If any directions of the Director under subsection (2) were not reasonably necessary to prevent or reduce the danger or risk provided therein, a person incurring expense or suffering damage as a result of any action taken in compliance with the Director's directions shall be entitled to claim and recover compensation from the Government.

(6) Nothing in this section shall affect the exercise of any powers under section 6 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413).

(7) If a local vessel which is refused permission under subsection (1) (a) or which is prohibited under subsection (2) to enter the waters of Hong Kong so enters without reasonable excuse, the owner of the vessel, his agent and the coxswain of the vessel each commits an offence and is liable on conviction to a fine of \$250,000 and to imprisonment for 2 years and to an additional fine of \$25,000 for each day during which the vessel remains in the waters of Hong Kong without reasonable excuse after so entering.

(8) If a local vessel which is refused permission under subsection (1) (a) to leave the waters of Hong Kong so leaves without reasonable excuse, the owner of the vessel, his agent and the coxswain

of the vessel each commits an offence and is liable on conviction to a fine of \$250,000 and to imprisonment for 2 years.

(9) If without reasonable excuse a direction under subsection (1) (b) or (2) for the removal of a local vessel from the waters of Hong Kong is not complied with, the owner of the vessel, his agent and the coxswain of the vessel each commits an offence and is liable on conviction to a fine of \$250,000 and to imprisonment for 2 years and to an additional fine of \$25,000 for each day during which the vessel remains in the waters of Hong Kong without reasonable excuse.

65. Dead vessel

(1) No dead vessel shall, except with the permission of the Director, enter, or be brought into, the waters of Hong Kong.

(2) If without reasonable excuse subsection (1) is contravened, the owner of the dead vessel, his agent and the coxswain of the dead vessel commit an offence and each of them is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

66. Laid-up vessel

(1) In this section, “laid-up vessel” (閑置船隻) means any local vessel, other than a dead vessel, 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.

(2) Subject to subsection (3), no laid-up vessel shall, except with the written permission of the Director, be berthed, moored or anchored at any place in the waters of Hong Kong.

(3) Subsection (2) shall not apply to a laid-up vessel which is dry-docked or within the precincts of, or berthed or moored alongside, a dockyard.

(4) The Director may attach conditions to a written permission under this section.

(5) Where the Director refuses to grant permission under this section in respect of a laid-up vessel, or attaches conditions to such a permission, he shall serve a notice in writing on the person who sought such permission setting out his reasons for the refusal or conditions, as the case may be.

(6) Where the Director is satisfied that any of the conditions attached to a written permission under this section have been contravened, he may serve a notice in writing on the person who sought such permission revoking the permission and setting out the reasons for the revocation.

(7) If without reasonable excuse subsection (2) is contravened, or any conditions attached under subsection (4) are contravened, the owner of the local vessel, his agent and the coxswain of the vessel commit an offence and each of them is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

67. Recovery of penalty by sale of vessel

(1) Where the owner of a local vessel, his agent or the coxswain of a local vessel who is convicted of an offence under this Ordinance fails to pay any fine imposed in respect of the offence, the Director may sell the vessel in respect of which the offence was committed and apply the proceeds in payment of the fine, and the balance (if any),

after deducting any reasonable expense incurred in the sale, shall be paid to the owner of the vessel if claimed within 6 months after the date of the sale or forfeited to the Government if not claimed within that period.

(2) Not less than 14 days before a vessel is sold under subsection (1), the Director shall give to the owner of the vessel or his agent notice in writing of the intended sale, but notice under this subsection shall not be necessary where there is no such owner or agent or the Director is unable to find the owner or agent.

(3) Any vessel sold under this section shall be transferred to the purchaser thereof, at the expense of the purchaser, by a bill of sale from the Director which shall confer upon such purchaser an absolute title to such vessel.

68. Director may give effect to directions in certain cases

(1) Where a person who is given a direction under this Ordinance fails to comply with it, the Director may, whether or not the person is or will be prosecuted for an offence under this Ordinance, take or cause to be taken such action as may be necessary to give effect to the direction.

(2) Where no person to whom a direction under this Ordinance may be given exists or can be found, the Director may take or cause to be taken such action as he would have directed to be taken if such person existed or could be found.

(3) In a case of emergency affecting the safety of life or property the Director may take or cause to be taken such action as he would have directed to be taken under this Ordinance.

(4) For the purpose of taking any action under this section in respect of any local vessel or property, the Director may board the vessel or enter the property without the permission of the owner of the vessel or his agent or of the coxswain of the vessel, or the owner or occupier of the property, as the case may be, and take with him such persons as may be necessary to assist him for that purpose.

(5) The Director may recover the cost of any action taken or caused to be taken under this section -

- (a) as a civil debt from the person to whom the direction (if any) was given, or the owner of the vessel or property in respect of which the action was taken; or
- (b) where the cost incurred in respect of a vessel cannot for any reason be recovered under paragraph (a) or where there is no owner of the vessel, by sale of the vessel and applying the proceeds in payment of the cost and the balance (if any), after deducting any reasonable expense incurred in the sale, shall be paid to the person who satisfies the Director that he is entitled to the balance.

(6) For the purpose of subsection (5), the cost of any action taken or caused to be taken under this section shall include all disbursements and other expenses incurred thereby by the Director.

69. Director's general power of exemption

(1) The Director may, on application made to him in the specified form or on his own initiative, by notice in writing exempt any person or any local vessel or any class, type or description of local vessel

from any requirement under this Ordinance, subject to such conditions as the Director may specify in the notice.

(2) Where a person without reasonable excuse fails to comply with any condition specified in a notice under subsection (1), he commits an offence and is liable on conviction to a fine at level 3.

(3) For the avoidance of doubt, it is hereby declared that a notice under subsection (1) is not subsidiary legislation.

70. Director's permission to do restricted acts

(1) Where it is provided under this Ordinance that no person shall do, or cause or permit to be done, any specified act without the permission of the Director, the Director may -

- (a) on application made to him in such manner as he may determine; and
- (b) on payment to him of the prescribed fee (if any),

permit the specified act to be done subject to such conditions as he may specify generally or in any particular case.

(2) Except where this Ordinance provides for a written permission, a permission under this Ordinance may be granted orally or by means of signals.

(3) A written permission granted under this Ordinance shall be -

- (a) kept on the local vessel or at the place in which the act in respect of which the permission is required is being done; and
- (b) produced for inspection by the Director, an authorized officer, or by any other officer appointed for the purposes of this Ordinance, on demand or within such

time and at such place as the Director or such officer may specify.

(4) If any person to whom a written permission is granted under this Ordinance without reasonable excuse fails to comply with subsection (3) (a) or to produce it under subsection (3) (b), he commits an offence and is liable on conviction to a fine at level 1.

(5) A permission granted under this Ordinance may be withdrawn or cancelled by the Director -

- (a) if any condition of the permission is not complied with; or
- (b) if the Director considers it necessary to do so for any other reason.

(6) Where a person without reasonable excuse fails to comply with any condition of a permission granted under this Ordinance, he commits an offence and is liable on conviction to a fine at level 3.

71. Power of Director to specify forms

(1) Subject to subsection (2), the Director may specify the form of any document required under this Ordinance to be in the specified form and the form of such other documents required for the purposes of this Ordinance as he thinks fit.

(2) The Director's power under subsection (1) shall be subject to any express requirement under this Ordinance for a form, whether specified or otherwise, to comply with that requirement, but that requirement shall not restrict the exercise of that power in respect of that form to the extent that, in the opinion of the Director, his

exercise of that power in respect of that form does not contravene that requirement.

- (3) The Director's power under subsection (1) may be exercised in such a way as to -
- (a) include in the specified form of any document referred to in that subsection a statutory declaration -
 - (i) to be made by the person completing the form; and
 - (ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;
 - (b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Director thinks fit.
- (4) A form specified under this section shall be -
- (a) completed in accordance with such directions and instructions as are specified in the form;
 - (b) accompanied by such documents as are specified in the form; and
 - (c) if the completed form is required to be provided to -
 - (i) the Director;
 - (ii) another person on behalf of the Director; or
 - (iii) any other person,so provided in the manner, if any, specified in the form.

72. Delegation by Director

(1) Subject to subsection (3), the Director may, either generally or in any particular case, delegate to any other public officer the performance or exercise on his behalf of any of the functions or powers imposed or conferred upon him under this Ordinance.

(2) Where any function or power imposed or conferred on the Director under this Ordinance is performed or exercised by any other public officer, the Director shall, unless the contrary is proved, be deemed to have delegated to the public officer under subsection (1) the performance or exercise of the function or power.

(3) No delegation under subsection (1) shall be made of any power

- (a) to amend a Schedule to the regulations made under this Ordinance;
- (b) under this Ordinance to make regulations; or
- (c) under section 69, except in respect of a provision specified in writing for the purposes of this section by the Secretary for Economic Services.

73. Improvement notices

(1) Where the Director is of the opinion that a person -

- (a) is contravening a requirement under this Ordinance; or
- (b) has contravened such a requirement in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice stating that he is of that opinion, specifying the requirement as to which he is of that opinion, giving

particulars of the reasons why he is of that opinion, and directing that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against that direction may be made under section 87) as is specified in that notice.

(2) An improvement notice may include instructions as to the measures to be taken to remedy any contravention or matter to which such notice relates, and any such instructions may be framed -

- (a) to any extent by reference to any code of practice approved under section 8; and
- (b) so as to afford the person on whom the notice is served a choice between different ways of remedying such contravention or matter.

(3) Subject to subsection (4), a direction specified in an improvement notice shall take effect immediately or on such later date, if any, as is specified in such notice, notwithstanding that an appeal has been or may be made under section 87 against such direction.

(4) Where -

- (a) an appeal is made under section 87 against a direction specified in an improvement notice; and
- (b) the Director is satisfied that the matter to which such direction relates is not an imminent danger to any person or property,

the Director shall suspend that part of such notice which contains such direction upon such terms as he thinks fit and, for that purpose, the Director shall have such powers as are necessary to give effect to that suspension.

74. Ancillary provisions in relation to improvement notices

- (1) Without prejudice to the generality of section 73(2), an improvement notice -
- (a) may include instructions as to repairs or alterations to be effected to a local vessel (whether constructed before, on or after the commencement of this section) the subject of the contravention or matter to which the notice relates if, but only if, the Director states in the notice that he is satisfied that the repairs or alterations are necessary -
 - (i) for the proper maintenance and operation of the vessel to ensure that it is seaworthy for the purposes for which the vessel is, or is to be, used; or
 - (ii) to remove or abate the effect of alterations which have been made to the vessel -
 - (A) since the vessel was last surveyed under this Ordinance; and
 - (B) without the Director's approval in writing;
 - (b) shall, where paragraph (a) is applicable, afford the person on whom the notice is served the choice of decommissioning the vessel as an alternative to effecting the repairs or alterations.
- (2) Where a person on whom an improvement notice is served to which subsection (1) applies fails to effect the repairs or alterations

to, or to decommission, the local vessel the subject of the contravention or matter to which the notice relates, then the Director -

- (a) may, with or without notice to the person -
 - (i) effect the repairs or alterations to the vessel; or
 - (ii) decommission the vessel until such time, if any, as the repairs or alterations are effected;
- (b) shall, where paragraph (a) (ii) is applicable, prominently display on or near the vessel a notice, in the Chinese and English languages -
 - (i) stating that the vessel has been decommissioned by the Director under this Ordinance; and
 - (ii) setting out the provisions of subsection (3).

(3) No person shall without the consent in writing of the Director -

- (a) put a local vessel into service where he knows or ought reasonably to know that the vessel has been decommissioned by the Director under this Ordinance; or
- (b) remove or mark, or damage or destroy, a notice referred to in subsection (2) (b).

(4) Where under subsection (2) (a) the Director has effected any repairs or alterations to, or the decommissioning of, a local vessel, the expenses thereof shall -

- (a) be borne by the person on whom the improvement notice concerned was served;
- (b) be recoverable from the person as a civil debt due to the Government.

(5) Any person who contravenes subsection (3)(a) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months and, in the case of a continuing offence, to a daily penalty of \$2,000.

(6) Any person who contravenes subsection (3)(b) commits an offence and is liable on conviction to a fine at level 2.

75. Director to be allowed to board

(1) The coxswain of a local vessel shall allow and assist the Director to board the vessel as soon as he comes alongside the vessel and shall give to the Director such information as he may be required to give under this Ordinance.

(2) Any coxswain or crew member of a local vessel who -

- (a) fails to allow, or fails to assist, the Director to board the vessel; or
- (b) delays or impedes the Director from boarding the vessel,

commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

PART XIV

EVIDENCE AND GENERAL OFFENCES

76. Proof of identity of coxswain, etc. in proceedings

If, in any proceedings for an offence under this Ordinance involving a local vessel, there is produced to the court or a magistrate a statement furnished under section 63 which -

- (a) purports to have been signed by the accused person; and
- (b) states that the accused person was the coxswain, person in charge or person in control of the vessel at the time of the offence,

the court or magistrate shall admit the statement as prima facie evidence that the accused person was the coxswain, person in charge or person in control of the vessel at the time of the offence.

77. Use of official log book, etc. in evidence

(1) In any legal proceedings for a contravention of this Ordinance, any entry in the official log book, if any, of a local vessel, deck log book, engine room log book or other similar document, or a document purporting to be a copy of any such entry and to be certified as a true copy by any person specified in subsection (2), shall, until the contrary is proved -

- (a) be admitted in evidence and be sufficient evidence of the matters stated therein; and
- (b) in the case of such a copy, be presumed that it is so certified.

(2) For the purpose of subsection (1), the persons who may certify copies of entries in an official log book, deck log book, engine room log book or other similar document are -

- (a) the Director or any person authorized by him in writing in that behalf;
- (b) a magistrate;
- (c) a justice of the peace;
- (d) a notary public, as defined in the Legal Practitioners Ordinance (Cap. 159).

78. False information

Without prejudice to any other provisions of this Ordinance, any person who, being required to give any information to the Director or any other person under this Ordinance, fails without reasonable excuse to give such information or gives any information, whether in writing, orally or otherwise, which he knows to be false or misleading as to a material particular commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

79. Penalty for fraudulent use

Without prejudice to any other provisions of this Ordinance, any person who fraudulently alters or uses, or permits to be fraudulently altered or used, a document issued under this Ordinance, or a duplicate of any such document, commits an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

80. Obstruction

(1) Any person who obstructs the Director, or any other person, performing or exercising any function or power under this Ordinance

commits an offence and, subject to subsection (2), is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(2) The owner of a local vessel, his agent or the coxswain of a local vessel who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

81. Notice to appear before magistrate in respect of offences

(1) Notwithstanding section 8 of the Magistrates Ordinance (Cap. 227), if an officer of the Marine Department of the rank of Marine Inspector Class II or above reasonably suspects that an offence under this Ordinance has been committed by the coxswain of a local vessel such officer may serve on the coxswain personally or by handing the same personally to the senior officer on board the vessel or to the person appearing to be in charge or command of the vessel at the time of such service a notice requiring the coxswain to appear before a magistrate to be dealt with according to law.

(2) A notice under subsection (1) -

(a) shall be in the specified form;

(b) shall be signed by the officer by whom it is served; and

(c) shall state -

(i) the name of the coxswain upon whom it is served and the name of the vessel of which he is the coxswain;

(ii) the offence which is alleged to have been committed with sufficient particulars thereof;

- (iii) the time and place at which the offence is alleged to have been committed; and
- (iv) the time and place at which the coxswain on whom the notice is served is required to appear.

(3) If the coxswain upon whom a notice under subsection (1) has been served fails to appear before a magistrate at the time and place mentioned in the notice, and it is made to appear to the magistrate by oath that the notice was served on the coxswain personally or was handed personally to the senior officer or the person in charge or command of the vessel in accordance with subsection (1), the magistrate may issue a warrant for the apprehension of the coxswain and to bring the coxswain before him or another magistrate to be dealt with according to law duly endorsed as to the amount of bail, if any, upon which the coxswain may be released in the meantime.

(4) If the coxswain upon whom a notice under subsection (1) has been served appears before a magistrate in accordance with the notice, or is brought before a magistrate by a warrant issued under subsection (3), the magistrate may hear and determine the offence alleged in the notice as if a complaint had been made or an information had been laid against the coxswain in respect of the offence and for such purposes, the provisions of the Magistrates Ordinance (Cap. 227) relating to the hearing of a complaint or information and the proceedings thereon shall apply with all necessary modifications.

(5) If the coxswain upon whom a notice under subsection (1) has been served is brought before a magistrate by a warrant issued under subsection (3), the magistrate may, in addition to any other penalty, order the coxswain to pay costs, of not more than \$400, solely in respect of the warrant.

(6) Any costs ordered to be paid under subsection (5) shall be recoverable under section 14 of the Costs in Criminal Cases Ordinance (Cap. 492) as a civil debt due to the Government.

(7) Notwithstanding anything to the contrary in the Magistrates Ordinance (Cap. 227), a magistrate may permit a representative to appear on behalf of a coxswain upon whom a notice under subsection (1) has been served where such representative satisfies the magistrate that -

- (a) the coxswain has left Hong Kong;
- (b) he is authorized to enter a plea of guilty on behalf of the coxswain; and
- (c) he is himself authorized and financially able to pay any fine imposed within 7 days or such longer time as the magistrate may allow.

82. Time limit for prosecution of offences

Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under this Ordinance may be brought at any time within 2 years next after the commission of the offence or within 6 months after the first discovery thereof by the prosecutor, whichever period expires first.

PART XV

MISCELLANEOUS

83. Power of Chief Executive to give directions

(1) The Chief Executive may give to the Director and to any public officer such directions as he thinks fit, either generally or in any particular case, with respect to the performance or the exercise of their functions or powers under this Ordinance.

(2) A person to whom a direction is given by the Chief Executive under subsection (1) shall, in the performance or the exercise of his functions or powers under this Ordinance, comply with that direction.

84. Giving of directions and offence of non-compliance

(1) A direction given under this Ordinance may be given orally or in writing, or by means of signals.

(2) If requested by any person who is given a direction orally or by means of signals the person giving the direction shall confirm the direction in writing.

(3) A direction given under this Ordinance shall be complied with -

(a) forthwith; or

(b) where a time limit for compliance is specified in the direction, within such time limit,

notwithstanding that the direction has not been confirmed under subsection (2).

(4) Where under this Ordinance a direction may be given to a coxswain of a local vessel it shall be sufficient if the direction is given to a person on board the vessel who is on duty to accept any direction on behalf of the coxswain, and if there is no such coxswain or such coxswain cannot be traced, the direction may be given to the owner of the vessel or his agent or to any other person who appears

to the person giving the direction to be in control of the vessel at that time.

(5) The giving of a direction under this Ordinance shall not diminish or in any way affect the responsibility of the coxswain in relation to his vessel, persons on board, its cargo or any other person or property.

(6) Without prejudice to any other express penalty for failure to comply with a direction, any person who without reasonable excuse fails to comply with a direction given to him under this Ordinance commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

85. Service of documents

(1) Where for the purposes of this Ordinance any document is to be served on a person, that document may be served by any officer of the Marine Department of the rank of Marine Inspector Class II or above -

- (a) in any case by delivering the document personally to the person to be served, or by leaving it for him at his last known place of business or residence;
- (b) if the document is to be served on the coxswain of a local vessel, where there is one, by leaving it for him on board the vessel with the person being or appearing to be in charge or command of the vessel or a member of the crew of the vessel;
- (c) if the document is to be served on a person belonging to a local vessel, by leaving it for him on board the

vessel with the coxswain of the vessel or with a person being or appearing to be in charge or command of the vessel;

- (d) if the document is to be served on the coxswain of a local vessel, where there is no coxswain and the vessel is in Hong Kong -
 - (i) on the owner of the vessel or his agent residing in Hong Kong; or
 - (ii) where no such owner or his agent is known or can be found, by affixing the document to the mast or other prominent part of the vessel;
- (e) if the document is to be served on the owner of a local vessel or his agent -
 - (i) by leaving it for him at the address of the owner or his agent which is endorsed on the certificate of ownership issued in respect of the vessel;
 - (ii) in respect of a vessel which is not registered, by leaving the document for him at the office of the owner or his agent (if known), as the case may be, or with some person being or appearing to be in charge of the office;
 - (iii) by leaving the document for him on board the vessel with the coxswain of the vessel, or some person being or appearing to be in charge or command of the vessel or a member of the crew of the vessel.

(2) Any document referred to in subsection (1) which is to be served on the owner of a local vessel, his agent or the coxswain of a local vessel may be addressed to the owner, agent or coxswain, as the case may be, without specifying his name.

86. Indemnity against damage, etc.

No action in respect of any damage to property or injury to person shall lie against the Director or any other officer performing or exercising any function or power under section 52, 55, 56 or 68.

87. Appeals

An appeal may be made to the Administrative Appeals Board -

- (a) against a decision of the Director -
 - (i) to refuse to authorize under section 7 a person as a surveyor for the purposes of this Ordinance;
 - (ii) to attach conditions to an authorization under section 7;
 - (iii) to revoke an authorization under section 7;
 - (iv) to serve a detention order (which appeal may relate only to the costs specified in the order by virtue of section 52(5)(g));
 - (v) to give a direction under section 53(1)(a);
 - (vi) to refuse to comply with a request under section 54(2);
 - (vii) to refuse to grant permission under section 66;

- (viii) to attach conditions to a permission under section 66;
 - (ix) to revoke a permission under section 66;
 - (x) to give a direction specified in an improvement notice;
- (b) by -
- (i) in the case of paragraph (a)(i), the person seeking to be authorized as a surveyor for the purposes of this Ordinance;
 - (ii) in the case of paragraph (a)(ii) or (iii), the authorized surveyor concerned;
 - (iii) in the case of paragraph (a)(iv), (v) or (vi), the owner, his agent or a person who appears to exercise control over the local vessel concerned;
 - (iv) in the case of paragraph (a)(vii), (viii) or (ix), the person who sought or was granted, as the case may be, the permission concerned or (if different) the owner of the local vessel concerned, his agent or the coxswain of the local vessel concerned;
 - (v) in the case of paragraph (a)(x), any person aggrieved by the direction specified in the improvement notice.

88. Regulations relating to fees

- (1) The Financial Secretary may by regulation prescribe or provide for -
 - (a) fees to be paid in respect of the grant of certificates, clearances, licences, permits and other documents, or the performance of services or surveys or grant of facilities under this Ordinance; and
 - (b) fees to be paid whenever by or under this Ordinance the official signature of the Director to any certificate, authorization, consent, licence, permit or exemption, or to any alteration, transfer or renewal thereof, addition thereto or endorsement thereon, is requested or required, or wherever a search of any register kept under this Ordinance is granted.

(2) Any fees prescribed under this section 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 the matters to which this Ordinance relates, 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.

89. Regulations - general

- (1) The Secretary for Economic Services may make regulations in respect of local vessels for all or any of the following matters -
 - (a) the regulation, control, use and speed of vessels;
 - (b) the certification of vessels;

- (c) the licensing of vessels and the renewal of licences, and in the case of vessels that have, contrary to the regulations made under this section, not been licensed for any period, for the payment of licence fees or penalty in respect of the period during which the vessels were not licensed;
- (d) the cancellation or suspension of certificates or licences;
- (e) empowering an authorized officer to seize and remove or cause to be removed from any place or premises or from any part of the waters of Hong Kong and to detain vessels, without notice to the owners thereof, which he has reason to believe are not certificated or licensed in accordance with regulations made under this section, together with any things on board and any trailer or other device whereby such vessels are transported;
- (f) the disposal by way of sale or otherwise of unclaimed vessels or things which have been seized, removed and detained pursuant to regulations made under this section and the payment of the proceeds, if any, of any such disposal into the general revenue;
- (g) the design and construction of vessels, the equipment required to be carried on board vessels and matters incidental thereto;
- (h) the accommodation for passengers and crew, and means for their safety and escape;

- (i) the life-saving appliances and fire-fighting apparatus to be provided on vessels, and the training of the crew in the use of such appliances or apparatus;
- (j) the survey or inspection of vessels and the issue (and cancellation) of certificates of survey or inspection;
- (k) the classification of vessels;
- (l) the prevention of collisions at sea, including giving effect to any international agreement applicable to Hong Kong so far as the agreement relates to the prevention of collisions at sea;
- (m) prescribing what signals may be used by vessels as signals of distress;
- (n) 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;
- (o) prescribing the circumstances and manner in which warnings of navigational dangers shall be reported;
- (p) the employment on vessels of a coxswain and deck and engineering crew who possesses local certificates of competency, or certificates of competency recognized as equivalent to local certificates of competency by regulations made under this section;
- (q) the number and grade of crew to be employed on vessels;
- (r) the engagement and discharge of crew, their conditions of employment, and their hours of work and rest periods;
- (s) the duties of owners, their agents and crew;
- (t) regulating the noise, vibration and smoke which may be caused by vessels;

- (u) regulating the hiring of vessels and the carriage of passengers and the plying limits;
- (v) empowering the Director to provide anchorages and mooring areas for vessels, and to control and regulate their use;
- (w) the use of piers and the embarkation and disembarkation of persons;
- (x) the inquiry into charges of incompetency, misconduct or negligence of or by coxswains or deck or engineering crew and prescribing the procedure at such inquiries;
- (y) the registration of persons dwelling in any specified type or class of vessels;
- (z) empowering the Director to amend any Schedule to the regulations;
- (za) appeals to the Administrative Appeals Board -
 - (i) against any decision of the Director made under the regulations;
 - (ii) by any person aggrieved by any such decision;
- (zb) the establishment of typhoon shelters and typhoon anchorages and the control of their use and the vessels therein;
- (zc) the prohibition or control of fishing within specified areas of the waters of Hong Kong (including empowering the Director to so prohibit or control), the control of fishing by the use of bright lights, and the control of the erection and working of fishing stakes;
- (zd) 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;
- (ze) 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;
 - (zf) the packaging, marking, loading, placing, moving, inspection, stowing, securing, segregating, testing and measuring of cargo on vessels in the interests of safety of vessels and persons on them (including the health of such persons);
 - (zg) prescribing the insurance that is required to be taken out for or in relation to local vessels or a class of local vessels, empowering the Director to approve insurers for the purposes of such insurance and empowering the Director to specify, by notice in the Gazette, the minimum amount of protection to be afforded by such insurance in relation to local vessels or a class of local vessels;
 - (zh) 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 local vessels, the operation, use and maintenance of hatches and hatch coverings on local vessels in connection 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);

- (zi) establishing piers and terminals and controlling their use;
- (zj) the provision of port facilities and control over their use;
- (zk) the procedure to be followed, and the provisions to be complied with, by vessels entering or leaving the waters of Hong Kong;
- (zl) the prevention of hazards to navigation and the removal and disposal of objects which are a hazard to navigation;
- (zm) the control of dead vessels, laid-up vessels, or vessels stranded, abandoned or sunk in the waters of Hong Kong, and the supply of information in relation thereto;
- (zn) 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;
- (zo) the prevention and control of pollution of the waters of Hong Kong;
- (zp) 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;
- (zq) 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;
 - (zr) empowering the Director to give directions in any particular case in relation to such matters as may be specified;
 - (zs) prescribing any other matter which is to be or may be prescribed under this Ordinance;
 - (zt) generally providing for the better carrying out of the provisions and purposes of this Ordinance.

(2) The Secretary for Economic Services may make regulations providing for the issue by the Director of a permit in respect of a vessel to enable the vessel to enter and remain in the waters of Hong Kong where the vessel may not otherwise lawfully enter or remain in the waters of Hong Kong.

(3) Regulations made under this section for the regulation, control, use and licensing of dwelling vessels may -

- (a) empower the Director to declare any area of the waters of Hong Kong to be an area closed to dwelling vessels and within which no dwelling vessel may enter or remain;
- (b) empower the Director to -
 - (i) order the removal, within such time as may be prescribed, of any dwelling vessel from any part of the waters of Hong Kong being an area in respect of which a licence is

- required or being an area declared to be closed to dwelling vessels;
- (ii) seize, remove and detain any dwelling vessel in respect of which an order for removal has been made and not complied with;
 - (iii) remove any person or property found on any dwelling vessel that has been seized and detained;
 - (iv) sell, by public auction or otherwise, any dwelling vessel which has been seized and detained;
 - (v) destroy or otherwise dispose of any vessel that has been seized and detained and which he is unable to sell;
 - (vi) pay any proceeds of sale of a dwelling vessel to the owner thereof, if known, or if the owner is not known or does not claim such proceeds, pay the same into general revenue;
- (c) provide for the seizure and disposal of any property found on a dwelling vessel which has been seized and detained and, in particular, may provide that any such property shall become the property of the Government free from the rights of any person and may be disposed of as the Director thinks fit;
- (d) provide for the service of an order to remove a dwelling vessel from any part of the waters of Hong Kong by affixing such order to a prominent part of the vessel.

- (4) Any regulations made under this section may empower the Director to -
- (a) prescribe, by notice in the Gazette, specifications, standards or additional requirements for the purposes of the regulations;
 - (b) issue instructions or directions providing practical guidance with respect to specifications, standards or requirements prescribed by or under the regulations; or
 - (c) grant exemptions from the requirements of the regulations, either generally or in any particular case.

(5) Any instructions or directions referred to in subsection (4) (b) and any amendment thereof shall be published in such manner as is specified in the regulations or, if not so specified, in such manner as the person issuing them thinks fit, and such publication shall be notified in the Gazette together with advice as to where copies may be obtained.

- (6) Any regulations made under this Ordinance may -
- (a) make different provisions for different circumstances and provide for a particular case or class of cases;
 - (b) be made so as to apply only in such circumstances as are prescribed by the regulations;
 - (c) be made to apply to local vessels wherever they may be;
 - (d) provide that in such cases as are prescribed by the regulations a local vessel shall be liable to be detained or delayed or refused a port clearance by such person as is prescribed by the regulations;

- (e) authorize, or provide for the authorization of, persons to carry out inspections or other matters required by the regulations;
- (f) be made generally for the better and more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential, transitional and supplemental provisions.

(7) Without prejudice to section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), any regulations made under this Ordinance may include regulations which provide for transitional or savings provisions in respect of any of the enactments repealed or amended by this Ordinance.

(8) Any regulations made under this section may prescribe offences in respect of contraventions of the regulations, and may provide for the imposition in respect of any such offence of a fine not exceeding level 6 and of imprisonment for a period not exceeding 2 years.

90. Saving, etc. of certain regulations

It is hereby declared that -

- (a) the collision regulations; and
- (b) the use of signals of distress regulations, shall, except in so far as they

are inconsistent with any of the provisions of this Ordinance or any regulations made thereunder -

- (i) each continue in operation for the purposes of this Ordinance until such time as they are replaced by

regulations made under section 89 which are expressed to be in substitution of those regulations; and

- (ii) each be deemed for all purposes to have been made under section 89 and to be liable to amendment thereby or thereunder.

91. Repeals, consequential amendments and transitional provisions

(1) The Merchant Shipping (Compulsory Third Party Risks Insurance) Regulations (Cap. 281 sub. leg.), the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313 sub. leg.), the Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313 sub. leg.), the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap. 313 sub. leg.), the Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 313 sub. leg.), the Merchant Shipping (Pleasure Vessels) Regulations (Cap. 313 sub. leg.), the Shipping and Port Control Regulations (Speed Restricted Zones for Pleasure Vessels) Notice (Cap. 313 sub. leg.), the Shipping and Port Control Ordinance (Exemption) (1984-89 Consolidation) Notice (Cap. 313 sub. leg.), the Shipping and Port Control (Pleasure Vessels) (Certificates of Competency) Rules (Cap. 313 sub. leg.), the Shipping and Port Control (Local Certificate of Competency Expiry and Revalidation) Rules (Cap. 313 sub. leg.), the Shipping and Port Control Ordinance (Exemption) Notice 1994 (Cap. 313 sub. leg.), the Merchant Shipping (Fire Appliances) Regulations (Cap. 369 sub. leg.), and the Merchant Shipping (Life Saving Appliances) Regulations (Cap. 369 sub. leg.), and all subsidiary legislation made thereunder, are repealed.

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

(3) Where, immediately before the relevant day, there was in existence -

(a) an application -

(i) for a licence within the meaning of section 24 of the former Part; and

(ii) which had not been determined;

(b) an application -

(i) for a local certificate of competency within the meaning of section 24 of the former Part; and

(ii) which had not been determined,

then -

(i) in the case of an application referred to in paragraph (a), the application shall be deemed to be an application to be certificated and licensed;

(ii) in the case of an application referred to in paragraph (b), the application shall be deemed to be an application for a local certificate of competency,

and the provisions of this Ordinance shall be construed accordingly.

(4) A former licence shall be deemed to be a certificate of ownership and an operating licence in respect of the local vessel to which it relates until the expiration of the period of validity it had left to run immediately before the relevant day, and the provisions of this Ordinance shall be construed accordingly.

(5) For the avoidance of doubt, it is hereby declared that subsection (4) shall not operate to prevent a former licence from being

amended, or cancelled, revoked or suspended, or being subject to any similar action, pursuant to the provisions of this Ordinance.

(6) A former local certificate of competency shall be deemed to be a local certificate of competency of the same class and grade, and the provisions of this Ordinance shall be construed accordingly.

(7) Without prejudice to the generality of section 30(2) of the former Part as read with section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), where a local certificate of competency within the meaning of section 24 of the former Part is, immediately before the relevant day, under suspension under section 30 of the former Part, then -

- (a) the certificate shall be deemed to be a local certificate of competency suspended under Part V on and from the relevant day until the date on which-
 - (i) the period of suspension left to serve expires; or
 - (ii) the suspension is lifted by an order under section 30(2) of the former Part,

whichever first occurs; and

- (b) on that date, subsection (6) shall apply to the certificate accordingly.

(8) Where, on the commencement of section 12, the owner of a local vessel is an individual who does not hold a valid identity card, then -

- (a) subsection (1)(a) of that section, in so far as it relates to such a card, shall not apply to the owner in relation to the vessel until the expiration of 12 months immediately following that commencement;

- (b) without prejudice to any other provisions of this Ordinance under which the Director may refuse to certificate the vessel, the Director shall refuse to certificate the vessel if, after the expiration of that period, the owner of the vessel is an individual who does not hold such a card.

(9) In this section -

“former licence” (先前的牌照) means a licence within the meaning of section 24 of the former Part and in force immediately before the relevant day;

“former local certificate of competency” (先前的本地合格證書) means a local certificate of competency within the meaning of section 24 of the former Part and in force immediately before the relevant day;

“former Part” (先前一部) means Part IV of the Shipping and Port Control Ordinance (Cap. 313) repealed by this Ordinance;

“relevant day” (有關日期) means the day of commencement of this section.

SCHEDULE

[s. 91]

CONSEQUENTIAL AMENDMENTS

Pilotage Ordinance

1. Exemption from compulsory pilotage

Section 10D of the Pilotage Ordinance (Cap. 84) is amended -

- (a) by repealing subsection (1)(c) and substituting -

- “(c) local vessels within the meaning of the Merchant Shipping (Local Vessels) Ordinance (of 1999) other than-
- (i) vessels regularly employed in trading to or from Hong Kong;
 - (ii) any vessel referred to in paragraph (e) of the definition of “local vessel” in section 2 of that Ordinance.”;
- (b) in subsection (4), by repealing “Part IV of the Shipping and Port Control Ordinance (Cap. 313)” and substituting “the Merchant Shipping (Local Vessels) Ordinance (of 1999)”.

Ferry Services Ordinance

2. Exempted ferry services

Section 5(2) of the Ferry Services Ordinance (Cap. 104) is amended, in the definition of “permitted service”, in paragraph (b), by repealing everything after “ferry vessel” except the semicolon.

Merchant Shipping Ordinance

3. Certificate or licence required by all ships trading in Hong Kong

Section 3(1)(c) of the Merchant Shipping Ordinance (Cap. 281) is repealed and the following substituted -

“(c) a certificate of ownership within the meaning of section 2 of the Merchant Shipping (Local Vessels) Ordinance (of 1999).”.

4. Interpretation

Section 50A is amended, in the definition of “certificate” and “certificate of competency”, by repealing “IV of the Shipping and Port Control Ordinance (Cap. 313)” and substituting “V of the Merchant Shipping (Local Vessels) Ordinance (of 1999)”.

5. Part repealed

Part XIVA is repealed.

6. Regulations. General powers

Section 114 is amended -

- (a) by repealing subsection (1)(e);
- (b) in subsection (4), by repealing”, or by virtue of section 35 of the Shipping and Port Control Ordinance (Cap. 313)”.

Shipping and Port Control Ordinance

7. Interpretation

Section 2 of the Shipping and Port Control Ordinance (Cap. 313) is amended -

- (a) in the definition of “master”, by repealing “other than a vessel to which Part IV applies”;

- (b) in the definition of “owner”, in paragraph (a)(1), by repealing “or licensed as the owner of the vessel, or in the absence of registration or licensing” and substituting “as the owner of the vessel, or in the absence of registration”;
- (c) in the definition of “ship”, by repealing “vessel propelled by oars” and substituting “local vessel”;
- (d) in the definition of “vessel”, by adding “(other than a local vessel)” after “includes”;
- (e) by adding -

““local vessel” (本地船隻) means a local vessel within the meaning of the Merchant Shipping (Local Vessels) Ordinance (of 1999) except a local vessel referred to in section 3(4) of that Ordinance;”.

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

Section 10(1) is amended -

- (a) by repealing paragraph (a);
- (b) in paragraph (b), by repealing “other”;
- (c) by repealing everything after and including ““vessels” and” and substituting ““vessels”.”.

9. Application

Section 11(a) is repealed.

10. **Part repealed**

Part IV is repealed.

11. **Powers of authorized officers**

Section 59(2)(b) is repealed.

12. **Powers of authorized officers to enter premises, etc.**

Section 60A(1)(a) is repealed.

13. **Director may give effect to directions in certain cases**

Section 62(5) is amended -

- (a) in paragraph (a), by adding “or” at the end;
- (b) in paragraph (b), by repealing “vessel; or” and substituting “vessel.”;
- (c) by repealing paragraph (c).

14. **Appeals**

Section 66(1) is amended by repealing “(other than a decision of the Director under section 30(1))”.

15. **Service of documents**

Section 78(1)(e) is amended -

- (a) in subparagraph (i), by adding “or” at the end;
- (b) in subparagraph (ii), by repealing “office; or” and substituting “office.”;
- (c) by repealing subparagraph (iii).

16. **Regulations**

Section 80(1C)(a) is repealed.

17. **Provisions specified for the purposes of section 58 in respect of which the Director may delegate power to exempt under section 63**

Items 1, 2 and 3 of the Schedule are repealed.

Merchant Shipping (Safety) Ordinance

18. **Application**

Section 3(d) of the Merchant Shipping (Safety) Ordinance (Cap. 369) is repealed and the following substituted-

“(d) local vessels within the meaning of the Merchant Shipping (Local Vessels) Ordinance (of 1999) except a local vessel referred to in section 3(4) of that Ordinance.”.

19. **Prohibition on certain ships proceeding to sea unless relevant regulations complied with**

Section 25A is amended -

(a) by repealing subsection (1)(d) and substituting-

“(d) a vessel required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (of 1999).”;

(b) in subsection (5), by repealing “Shipping and Port Control Ordinance (Cap. 313)” and substituting

“Merchant Shipping (Local Vessels) Ordinance (of 1999)”.

20. Further provisions as to the production of Convention certificates

Section 34(1A) is amended by repealing everything after and including “Shipping” and substituting “Merchant Shipping (Local Vessels) Ordinance (of 1999) for a ship which is a vessel required to be certificated under that Ordinance.”.

21. Production of documentary evidence of compliance with certificate requirements

Section 34A(1)(d) and (2)(b)(ii) is amended by repealing “licensed under Part IV of the Shipping and Port Control Ordinance (Cap. 313)” and substituting “certificated under the Merchant Shipping (Local Vessels) Ordinance (of 1999)”.

Merchant Shipping (Prevention and Control of Pollution) Ordinance

22. Interpretation

Section 2 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) is amended -

- (a) in the definition of “Hong Kong ship”, by repealing paragraph (b) and substituting-

“(b) a vessel required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (of 1999);”;

(b) by adding -

““master” (船長), in relation to -

- (a) a Hong Kong ship referred to in paragraph (a) of the definition of “Hong Kong ship”, means a person (except a pilot) having for the time being the charge or command of the ship;
- (b) a Hong Kong ship referred to in paragraph (b) of the definition of “Hong Kong ship”, means a coxswain within the meaning of the Merchant Shipping (Local Vessels) Ordinance (of 1999);”.

Administrative Appeals Board Ordinance

23. Schedule amended

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

- | | |
|--|--|
| “43. Merchant Shipping

(Local Vessels)

Ordinance (of

1999) | A decision of the

Director of Marine -

(a) to refuse to

authorize under

section 7 a person

as a surveyor; |
|--|--|

- (b) to attach conditions to an authorization under section 7;
- (c) to revoke an authorization under section 7;
- (d) to serve a detention order;
- (e) to give a direction under section 53(1)(a);
- (f) to refuse to comply with a request under section 54(2);
- (g) to refuse to grant permission under section 66;
- (h) to attach conditions to a permission under section 66;
- (i) to revoke a permission under section 66;

- (j) to give a direction specified in an improvement notice under section 73(1).”.

Carriage of Goods by Sea Ordinance

24. Interpretation

Section 2(1) of the Carriage of Goods by Sea Ordinance (Cap. 462) is amended, in the definition of “ship”, by repealing everything after “regularly” and substituting “employed in trading to or from Hong Kong and which is required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (of 1999).”.

Dumping at Sea Ordinance

25. Interpretation

Section 2 of the Dumping at Sea Ordinance (Cap. 466) is amended, in the definition of “Hong Kong vessel”, by repealing “licensed under the Shipping and Port Control Ordinance (Cap. 313)” and substituting “certificated under the Merchant Shipping (Local Vessels) Ordinance (of 1999)”.

Merchant Shipping (Seafarers) Ordinance

26. **Application**

Section 3 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478) is amended-

- (a) in subsection (1)(b), by repealing “licensed under Part IV of the Shipping and Port Control Ordinance (Cap. 313) except, subject to subsection (2),” and substituting “certificated under the Merchant Shipping (Local Vessels) Ordinance (of 1999) except”;
- (b) by repealing subsection (2).

Merchant Shipping (Fees) Regulations

27. **Fees for services outside Hong Kong**

Regulation 5 of the Merchant Shipping (Fees) Regulations (Cap. 281 sub. leg.) is amended -

- (a) in subregulation (1)(a), by repealing “(2) or”;
- (b) by repealing subregulation (2).

28. **Forfeiture of fees for failure to attend for examination**

Regulation 11A is repealed.

29. **Schedule amended**

The Schedule is amended -

- (a) in Part II, by repealing Sections P, Q and R;
- (b) in Part IV -
 - (i) by repealing Note (2);

- (ii) by repealing items 3, 4 and 5;
- (c) by repealing Parts V and VI.

Shipping and Port Control Regulations

30. Application

Regulation 4 of the Shipping and Port Control Regulations (Cap. 313 sub. leg.) is amended -

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

31. Embarkation and loading, etc.

Regulation 25(2) is repealed.

32. Conducting seatrials

Regulation 25A(2) is repealed.

33. Identification and display of signals

Regulation 33 is amended -

- (a) in paragraph (1), by repealing “Subject to paragraph (2), every” and substituting “Every”;
- (b) by repealing paragraph (2).

34. Lights on junks, etc.

Regulation 39(2) is repealed.

35. **Berthing of vessels**

Regulation 44 is amended -

- (a) in paragraph (1), by repealing “Subject to paragraph (3), no” and substituting “No”;
- (b) by repealing paragraph (3).

36. **Vessels alongside berthed vessels**

Regulation 45(3) is repealed.

37. **Anchorage dues**

Regulation 50(2)(a) is repealed.

38. **Port Dues and Fees**

Item 9 of the Thirteenth Schedule is repealed.

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

39. **Citation, interpretation, application and exemption**

Regulation 1(3)(a)(vi) of the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) Regulations (Cap. 369 sub. leg.) is repealed.

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

40. **Citation, interpretation, application and exemption**

Regulation 1(3A) of the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg.) is amended, in the definition of “cargo ship”, by repealing paragraph (f).

Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built Before 1 July 1986) Regulations

41. **Citation, interpretation and application**

Regulation 1(3)(a)(iii) of the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built Before 1 July 1986) Regulations (Cap. 369 sub. leg.) is repealed.

Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built On or After 1 July 1986) Regulations

42. **Application**

Regulation 4(1) of the Merchant Shipping (Safety) (Life-Saving Appliances) (Ships Built On or After 1 July 1986) Regulations (Cap. 369 sub. leg.) is amended -

- (a) in paragraph (b), by adding “and” at the end;
- (b) by repealing paragraph (c).

Merchant Shipping (Safety) (Load

Line) Regulations

43. **Ships to which the regulations apply**

Regulation 1B(d) of the Merchant Shipping (Safety) (Load Line) Regulations (Cap. 369 sub. leg.) is repealed.

**Merchant Shipping (Safety) (Navigational
Equipment) Regulations**

44. **Interpretation and application**

Regulation 2(3) of the Merchant Shipping (Safety) (Navigational Equipment) Regulations (Cap. 369 sub. leg.) is amended by repealing “, fishing vessel or any vessel required to be licensed under Part IV of the Shipping and Port Control Ordinance (Cap. 313)” and substituting “or fishing vessel”.

**Merchant Shipping (Prevention of Oil Pollution)
Regulations (Exemption) Notice**

45. **Repeal**

The Merchant Shipping (Prevention of Oil Pollution) Regulations (Exemption) Notice (Cap. 413 sub. leg.) is repealed.

**Merchant Shipping (Prevention and Control
of Pollution) (Charges for Discharge
of Polluting Waste) Regulation**

46. **Interpretation**

Section 2 of the Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation (Cap. 413 sub. leg.) is amended by repealing the definition of “sea-going ship” and substituting -

““sea-going ship” (可在海域航行船舶) means any vessel other than a vessel required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (of 1999);”.

Merchant Shipping (Seafarers) (Health and Safety:General Duties) Regulation

47. Duty not to interfere with or misuse certain things

Section 7(b) of the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478 sub. leg.) is amended by adding “the Merchant Shipping (Local Vessels) Ordinance (of 1999),” after “(Cap. 369),”.

Explanatory Memorandum

The object of this Bill is to consolidate and amend the law relating to local vessels, in particular in relation to their safety at sea. (See the definition of “local vessel” in clause 2 as read with clause 3 to ascertain the range of local vessels to which the provisions of the Bill will apply). It should be noted that many of the provisions of the Bill are taken from the Shipping and Port Control Ordinance (Cap. 313).

2. Part I (clauses 1, 2 and 3) is preliminary. Clause 2 defines the terms used in the Bill. Clause 3(1) specifies the local vessels to

which the Bill applies, whilst clause 3(2) and (3) makes special provision for the application of the Bill to vessels referred to in paragraph (e) of the definition of “local vessel” in clause 2.

3. Part II (clauses 4 to 7) provides for -

- (a) the establishment of a Local Vessels Advisory Committee (“the Committee”) to advise the Director of Marine (“the Director”) on any matter related to the performance or exercise of the Director’s functions or powers under the Bill, or the general regulation or control of local vessels, on which the Director seeks the Committee’s advice (clauses 4 and 5);
- (b) the establishment of subcommittees of the Committee to report back to the Committee on matters that have been referred to the subcommittees (clause 6); and
- (c) the authorization by the Director of persons as surveyors of local vessels (clause 7). It should be noted that a person may be authorized as a surveyor in relation only to a local vessel owned by him.

4. Part III (clauses 8 and 9) empowers the Director to approve codes of practice (whether or not prepared by him) for the purpose of providing practical guidance in respect of requirements under the Bill, and specifies how approved codes of practice will be used in any proceedings under the Bill where a person is alleged to have contravened such a requirement.

5. Part IV (clauses 10 to 15) provides for the certification and licensing of vessels.

Every local vessel is required to be certificated (except a local vessel referred to in paragraph (e) of the definition of “local vessel” in clause 2) in order that there is a record of who

owns the vessel, and only certain persons may own the vessel. (See clauses 11 and 12 as read with the definition of “certificate of ownership” in clause 2). The certification of a local vessel does not relate to its safety. This is provided for by requiring every certificated vessel to be annually licensed (clause 13). Clause 14 makes it an offence, inter alia, for an unlicensed local vessel to carry any passengers, or a licensed local vessel to carry passengers unless permitted by its license. Clause 15 empowers the Director to charge additional license fees in respect of local vessels which are not continuously licensed.

6. Part V (clauses 16 to 23) provides for the examination and certification of coxswains, engine operators and pleasure vessel operators on local vessels, and for the suspension or cancellation of their local certificates of competency should they be found to be unfit to discharge their duties or seriously negligent in the discharge of their duties. It should be noted that a local certificate of competency may only be cancelled following an inquiry by persons appointed by the Chief Justice for the purpose (clause 17). Rules will be made governing the conduct of inquiries (clause 20).

7. Part VI (clauses 24 to 33) relates to the safety of navigation of local vessels. Clause 24 empowers the Director to give directions to, inter alia, the coxswain of a local vessel, in particular for controlling the movement of local vessels entering or leaving the waters of Hong Kong. (See, also, clauses 68 and 84). Clause 25 empowers the Director to, by notice in the Gazette, give directions to the owners or coxswains of local vessels belonging to a class, type or description of vessel specified in the notice. (See, also, clauses 68 and 84). Clause 26 empowers the Director to, by notice in the Gazette, close

any area of the waters of Hong Kong in the interests of safety. Clause 27 applies the collision regulations and the use of signals of distress regulations to local vessels. (See the definitions of “collision regulations” and “use of signals of distress regulations” in clause 2). Clause 28 requires a local vessel to have a valid port clearance before proceeding to sea. Clause 29 requires the coxswain or person in charge of a local vessel involved in a collision with another vessel to, inter alia, render assistance to the other vessel if there is any danger caused to the other vessel by the collision. Clauses 30 to 33 set out, in the interests of safety, various prohibitions in relation to local vessels. Of these, the most important is clause 30, which makes it an offence for any owner, agent or coxswain to permit a local vessel to operate while it is in an unseaworthy or unsafe condition.

8. Part VII (clauses 34, 35 and 36) relates to port facilities (See the definition of “port facility” in clause 2). Clause 34 makes it an offence to use a port facility for a purpose other than that for which it is provided. Clause 35 makes it an offence to, inter alia, wilfully or negligently damage any aid to navigation or mooring. Clause 36 makes owners and coxswains of local vessels liable for damage caused by such vessels to port facilities, piers, breakwaters or other property owned by the Government.

9. Part VIII (clauses 37 to 45) relates to safety in the carrying out of repairs to local vessels, the breaking up of local vessels and cargo handling on local vessels.

10. Part IX (clauses 46 to 51) relates to the pollution of water and air. Clause 47 makes it an offence to discharge oil into the waters of Hong Kong. Clause 48 provides a defence to that offence. Clause 49 makes it an offence for, inter alia, the owner or coxswain of a local

vessel to fail to report to the Director a discharge of, inter alia, oil from the vessel into the waters of Hong Kong. Clause 50 provides a defence to that offence.

11. Part X (clauses 52 to 56) relates to the seizure, removal and detention of local vessels, in particular on safety grounds. On a ground specified in clause 52(1), an authorized officer may seize and remove a local vessel (clause 52(2)). Following the seizure, the Director may detain the vessel but is required to issue a detention order specifying, inter alia, the action required in order to secure the release of the vessel (clause 52(3), (4), (5) and (6)). A detained local vessel may only be moved as permitted or directed by the Director (clause 53). The Director is required to revoke a detention order if he is satisfied that the action required to secure its release has been carried out (clause 54(2)). The Director may, on safety grounds, require a local vessel to be beached (clause 55). The Director may give to the owner of a local vessel which is stranded, abandoned or sunk in the waters of Hong Kong such directions as he thinks fit in respect of the removal, movement, anchoring, mooring, securing, raising or destruction of the vessel (clause 56).

12. Part XI (clauses 57, 58 and 59) requires the owner, agent or coxswain of a local vessel to make a report to the Director if the vessel is involved in, inter alia, a collision or if there is a fire on the vessel. Clause 59 provides that the owner of a local vessel or his agent or the coxswain may comply with, inter alia, a duty imposed on any one of them.

13. Part XII (clauses 60, 61 and 62) sets out the powers of authorized officers and investigating officers under the Bill, including the power to enter premises pursuant to a warrant.

14. Part XIII (clauses 63 to 75) sets out the general powers of the Director. Clause 63 requires the owner of a local vessel to supply certain information when required to do so by the Director. Clause 64 empowers the Director in specified circumstances to refuse the entry of a local vessel into the waters of Hong Kong or to require a local vessel to depart the waters of Hong Kong. Clause 65 makes it an offence for a dead vessel (See the definition of “dead vessel” in clause 2) to enter or be brought into the waters of Hong Kong without the permission of the Director. Clause 66 makes it an offence for a laid-up vessel to be berthed, moored or anchored at any place in the waters of Hong Kong except with the written permission of the Director. Clause 67 empowers the Director to recover penalties imposed under the Bill by selling the local vessel to which the offence concerned relates. Clause 71 empowers the Director to specify the form of any document required under the Bill. Clause 72 sets out the Director’s power to delegate his functions under the Bill. (See, also, clause 69). Clause 73 empowers the Director to serve an improvement notice where he is, inter alia, of the opinion that a person is contravening a requirement of the Bill.

15. Part XIV (clauses 76 to 82) contains evidentiary and offence provisions. Clause 76 is an evidentiary provision relating to the identity of certain persons in proceedings under the Bill. Clause 77 is an evidentiary provision relating to the use of log books of local vessels in proceedings under the Bill. Clause 78 makes it an offence to refuse to give information, or to knowingly give false information, when required to give information under the Bill. Clause 79 makes it an offence to fraudulently alter or use, or permit to be fraudulently altered or used, a document issued under the Bill. Clause 80 makes

it an offence for any person to obstruct the Director in performing or exercising any function or power under the Bill. Clause 81 empowers certain officers in the Marine Department to require persons suspected of an offence under the Bill to appear before a magistrate “to be dealt with according to law”. Clause 82 specifies the time limit within which proceedings may be brought for an offence under the Bill.

16. Part XV (clauses 83 to 91) contains miscellaneous provisions. Clause 83 empowers the Chief Executive to give directions to the Director and public officers with respect to the performance or exercise of their functions and powers under the Bill. Clause 84 sets out how a direction under the Bill may be given and makes non-compliance with the direction an offence. Clause 85 provides for various forms of service of documents under the Bill. Clause 86 indemnifies the Director and other officers in respect of any action for damages in respect of performing or exercising any function or power under clause 52, 55, 56 or 68. Clause 87 provides for appeals to the Administrative Appeals Board against various decisions of the Director under the Bill. Clauses 88 and 89 provide for the making of regulations under the Bill, including prescribing fees to be paid for various matters under the Bill. Clauses 90 and 91 and the Schedule provide for the savings, repeals, consequential amendments and transitional provisions necessitated by the Bill.

New Classification of Local Vessels

At the last submission to Executive Council, it was proposed that the existing classification of local vessels should be simplified from eleven to five. In brief, the proposed classification was:

(a) **Passenger Carrying-**

(i) *Class 1*

Vessels permitted to carry more than 60 persons plus crew.

(ii) *Class 2*

Vessels permitted to carry more than 12 persons but not more than 60 persons plus crew.

(b) **Non-passenger carrying-**

(iii) *Class 3*

Vessels whose hull is constructed of any material other than wood and permitted to carry no more than 12 persons plus crew.

(iv) *Class 4*

Vessels whose hull is constructed of wood and permitted to carry no more than 12 persons plus crew.

(c) **Pleasure vessels-**

(v) *Class V*

Pleasure vessels permitted to carry no more than 12 persons plus crew.

2. Since the submission, Marine Department has conducted further reviews on the proposed classification and had consulted the local shipping industry. To be more in line with international practices and requirements and to meet the need of the local shipping industry, it is concluded that the proposed classification should be further re-structured and simplified. The new classification of local vessels is as follows:

Class I-Passenger Vessels

- Vessels primarily used for carriage of more than 12 persons plus crew. Vessels under this class are further subdivided into the following types-

Type A vessels-vessels allowed to carry more than 60 persons plus crew. These vessels and will be subject to the same survey standard equivalent to the one presently used for launches and ferry vessels.

Type B vessels-vessels allowed to carry more than 12 persons but not more than 60 plus crew. These vessels will be subject to a survey standard slightly less than the one for Type A vessels.

Type C vessels are those presently known as ‘Kaito operating with ferry licenses’.

These vessels will be licensed to carry more than 12 persons plus crew. They will be subject to a survey standard appropriate for the licensed service.

Class II-Cargo Vessels

Vessels used for a purpose other than fishing and pleasure.

Class III-Fishing Vessels

Vessels used for fishing purpose.

Class IV-Pleasure Vessels

Vessels used for pleasure purpose.

3. The new classification system set out above will be more in line with international practices and requirement. For instance, it is an international practice that commercial vessels used for carriage of large number of persons are required to meet stringent safety standards and operating conditions. This is the very reason that local vessels primarily used for carriage of more than 12 persons are now classified as Class I vessels.

4. Safety standards for vessels are set based on vessels’ operational risk factors, such as number of passengers, type of cargo and plying limits. The previous proposal to classify vessels according to the material of

construction is no longer valid. In the light of this, we propose to group vessels not used for fishing and pleasure purposes as Class II-Cargo Vessels.

5. For vessels used for fishing purpose, we propose to group them as Class III-Fishing vessels to be in line with the new Torremolinos Convention which will be enforced internationally in due course.

6. Under the new classification, “pleasure vessels” will be more clearly defined as vessels used solely for pleasure purpose. Owners of pleasure vessels being used for commercial purposes will be prosecuted. In line with the latest international practice and in view of past safety records, we propose to relax our last proposal and allow pleasure vessels to carry more than 12 persons plus crew. Appropriate standards on manning, construction, life saving and fire prevention equipment will be stipulated under the new legislation for vessels less than 150 gross tons which are not subject to periodic inspection.