

**DRAFT**

**MERCHANT SHIPPING (SECURITY OF SHIPS AND  
PORT FACILITIES) REGULATION**

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# **MERCHANT SHIPPING (SECURITY OF SHIPS AND PORT FACILITIES) REGULATION**

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# MERCHANT SHIPPING (SECURITY OF SHIPS AND PORT FACILITIES) REGULATION

(Made under section 6 of the Merchant Shipping (Security of Ships and Port Facilities) Ordinance ( of 2004 ))

## PART I

### GENERAL PROVISIONS

#### [1. Commencement

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

#### 2. Interpretation

“closed area” (封閉區域) means an area declared to be an closed area under section [ ];

“company” (公司), in relation to a ship, means the owner of the ship or any person who is responsible for the operation of the ship;

“company security officer”(公司保安官員) means [ ];

“Interim Security Certificate”(臨時保安證書) means [ ];

“port facility security officer” (港口設施保安官員) means [ ].

“Security Certificate” (保安證書) means;

“security level” (保安級別) means the security level set under section [ ];

“ship security assessment” (船隻保安評定) means [ ];

“ship security officer” (船舶保安官員) means [ ]; a plan referred to

“ship security plan” (船舶安全計劃) means [ ];

### **3. Recognized Security Organization to issue security certificate**

The Director may authorize in writing a recognized security organization to issue International Ship Security Certificates.

### **4. Ships to comply with Convention and Code**

(1) A ship shall comply with the provisions of Chapter XI-2 of the Convention and part A of the Code that apply to it, and take into account the guidance contained in part B of the Code. *(cf. paragraph 2 of Regulation XI-2/4 of the Convention)*

(2) If a ship, in contravention of paragraph 5 of Regulation XI-2/4 of the Convention, fails to notify the Director of its failure to comply with any requirement of Chapter XI-2 of the Convention or part A of the Code that applies to it, the master of the ship commits an offence and is liable on conviction to a fine at level [ ] and to imprisonment for [ ] years. *(cf. paragraph 5 of Regulation XI-2/4 of the Convention)*

### **5. Port facilities to comply with Convention and Code**

A port facility shall comply with the provisions of Chapter XI-2 of the Convention and part A of the Code that apply to it, and take into account the guidance contained in part B of the Code. *(cf. paragraph 1 of Regulation XI-2/10 of the Convention)*

### **6. Obligations of companies**

The company of a ship shall give the company security officer, the master or the ship security officer of the ship such supports as are necessary for each of them to perform their respective functions under Chapter XI-2 of the Convention and part A of the Code. *(cf. section 6.2 of the Code)*

## **7. Company security officers**

(1) The company of a ship shall designate a company security officer for the ship as required under section 11.1 of the Code. (*cf: section 11.1 of the Code*)

(2) If a company security officer fails to carry out his duties or responsibilities under section 11.2 of the Code [ ]. (*cf: section 11.2 of the Code*)

## **8. Ship security officers**

(1) The company of a ship shall designate a ship security officer for the ship as required under section 12.1 of the Code. (*cf: section 12.1 of the Code*)

(2) If a ship security officer fails to carry out his duties or responsibilities under section 12.2 of the Code [ ]. (*cf: section 12.2 of the Code*)

## **9. Training, etc. on ship security**

(1) The training required under section 13 of the Code shall be provided to –

- (a) the company security officer of the company of a ship; or
- (b) the ship security officer of a ship.

(*cf: sections 13.1 and 13.2 of the Code*)

(2) The shipboard personnel of a ship shall comply with the requirements specified in section 13.3 of the Code. (*cf: sections 13.3 and 12.2.7 of the Code*)

(3) Drills shall be carried out in respect of a ship as required under section 13.4 of the Code. (*cf: sections 13.4 and 12.2.6 of the Code*)

(4) The company security officer of a ship shall participate in exercises on ship security as required under section 13.5 of the Code. (*cf: section 13.5 of the Code*)

**10. Port facility security officers**

(1) A port facility security officer shall be designated for each port facility as required by section 17.1 of the Code. (*cf: section 17.1 of the Code*)

(2) A port facility security officer shall carry out his duties as required under section 17.2 of the Code. (*cf: section 17.2 of the Code*)

**11. Ship security officers to comply with Code**

A ship security officer shall comply with the provisions of the Code that apply to him and take into account the guidance contained in part B of the Code.

**12. Company security officers to comply with Code**

A company security officer shall comply with the provisions of the Code that apply to him and take into account the guidance contained in part B of the Code.

**13. Port facility security officers to comply with Code**

A port facility security officer shall comply with the provisions of the Code that apply to him and take into account the guidance contained in part B of the Code.

**14. Functions of recognized security organizations**

Subject to the restrictions specified in sections 9.2.1 or 16.2 of the Code (as the case may be) the Director may authorize in writing a recognized security organization to perform one or more of the following functions –

- (a) carry out a ship security assessment; (*cf: section 8.3 of the Code*)
- (b) prepare a ship security plan; (*cf: section 9.1.1 of the Code*)
- (c) review or approve a ship security plan or any amendment to a ship security plan; (*cf: section 9.2 of the Code*)

- (d) carry out a port facility security assessment; (*cf. section 15.2 of the Code*)
- (e) prepare a port facility security plan; (*cf. section 16.1.1 of the Code*)

## **15. Setting of security levels**

The Director shall set the security level in accordance with Regulation XI-2/3 of the Convention and section 4.1 of the Code. (*cf. Regulation XI-2/3 of the Convention; section 4.1 of the Code*)

## **16. Ships to comply with requirements of security levels**

(1) If a ship, in contravention of paragraph 3 or 4 of Regulation XI-2/4 of the Convention and section 7 of the Code, fails to comply with any requirement of the security level, [the company or the master of the ship] commits an offence and is liable on conviction to a fine at level [ ] and to imprisonment for [ ] years. (*cf. paragraphs 3 and 4 of Regulation XI-2/4 of the Convention; section 7 of the Code*)

(2) If a ship fails to notify the Director of its failure to comply with any requirement of the security level as required by paragraph 5 of Regulation XI-2/4 of the Convention, the master of the ship commits an offence and is liable on conviction to a fine at level [ ] and to imprisonment for [ ] years. (*cf. paragraph 5 of Regulation XI-2/4 of the Convention*)

## **17. Port facilities to comply with requirements of security levels**

If a port facility fails to comply with any requirement of the security level as required by sections 14.1, 14.2, 14.3, 14.4 and 14.4.1 of the Code, [the owner, occupier or operator of the port facility] commits an offence and is liable on conviction to a fine at level [ ] and to imprisonment for [ ] years. (*cf. sections 14.1, 14.2, 14.3, 14.4 and 14.4.1 of the Code*)



## **18. Security instructions**

(1) Where security level 3 is set under section [ ], the Director may, [by what means?], give such security instructions as he considers appropriate to any ship or port facility in accordance with section 4.2 of the Code. (*cf. section 4.2 of the Code*)

(2) The Director may delegate [in writing] his power under subsection (1) to any person as he thinks fit.

## **19. Ships to comply with security instructions**

A ship shall comply with any security instruction given to it under section [ ].

## **20. Information on board a ship**

(1) The company of a ship shall ensure that the ship has on board such information as required by Regulation XI-2/5 of the Convention. (*cf. Regulation XI-2/5 of the Convention*)

(2) A ship shall have on board a valid International Ship Security Certificate or a valid Interim International Ships Security Certificate (as the case may be) issued to the ship. (*cf. paragraph 1 of Regulation XI-2/9 of the Convention*)

(3) A ship shall have on board such information as required by paragraphs 2.1 and 2.3 of Regulation XI-2/9 of the Convention. (*cf. paragraphs 2.1 and 2.3 of Regulation XI-2/9 of the Convention*)

## **21. Ship security alert system**

A ship shall be installed with a ship security alert system as required by Regulation XI-2/6 of the Convention. (*cf. Regulation XI-2/6 of the Convention*)

## **22. Conflict between safety and security requirements**

Where there is a conflict between a safety and a security requirement applicable to a ship, the master of the ship shall act in accordance with paragraph 2 of Regulation XI-2/8 of the Convention. (*cf. paragraph 2 of Regulation XI-2/8 of the Convention*)

## **23. Alternative security arrangements**

If there is an agreement between the Government and another Contracting Government on alternative security arrangements and the agreement covers a ship, the ship shall not conduct any ship-to-ship activities with another ship that is not covered by the agreement. (*cf. paragraph 3 of Regulation XI-2/11 of the Convention*)

### **23A. Control of Ships in Hong Kong**

(1) A ship that is in Hong Kong shall be subject to control by an authorized officer in accordance with paragraph 1 of Regulation XI-2/9 of the Convention.

(2) The Director may require a ship intending to enter Hong Kong to provide the information described in paragraph 2.1 of Regulation XI-2/9 of the Convention.

(3) If, in contravention of subsection (2), no information is provided in relation to a ship, the Director may exercise the power of denial of entry pursuant to paragraphs 2.4 and 2.5 of Regulation XI-2/9 of the Convention in relation to the ship subject to paragraph 3.3 of that Regulation. (*cf. paragraph 2.2 of Regulation XI-2/9 of the Convention*)

(4) The power exercisable by officers duly authorized by a Contracting Government under paragraph 2.4 of Chapter XI-2 of the Convention shall be exercisable by an authorized officer.

## 24. Declaration of security

(1) If a ship is requested under section 5 of the Code to complete a Declaration of Security, –

- (a) the ship shall acknowledge the request as required by section 5.3 of the Code; or
- (b) the master or the ship security officer of the ship shall complete the Declaration of Security in the manner as specified in sections 5.4.1 and 5.5 of the Code.

*(cf. sections 5.2-5.5 of the Code)*

(2) If a port facility is requested under section 5 of the Code to complete a Declaration of Security, –

- (a) the port facility shall acknowledge the request as required by section 5.3 of the Code; and
- (b) the port facility security officer [or body responsible for shore-side security] shall complete the Declaration of Security in the manner as specified in sections 5.4.2 and 5.5 of the Code.

*(cf. sections 5.3-5.5 of the Code)*

(3) A ship shall keep the Declaration of Security for such period as required under section 5.7 of the Code. *(cf. section 5.7 of the Code)*

(4) A port facility shall keep the Declaration of Security for such period as required under section 5.6 of the Code. *(cf. section 5.6 of the Code)*

## 25. Ship security assessments

(1) A company security officer of a ship shall ensure that a ship security assessment that meets the requirements specified in sections 8.2 and 8.4 of the Code is carried out in respect of the ship. *(cf. sections 8.2 and 8.4 of the Code)*

(2) The company of a ship, shall, in accordance with section 8.5 of the Code, keep, review or accept any ship security assessment carried out in respect of the ship. *(cf: section 8.5 of the Code)*

## **26. Ship security plan**

(1) The company of a ship shall ensure that the content of a ship security plan of the ship meets the requirements specified in section 6.1 of the Code. *(cf: section 6.1 of the Code)*

(2) The manner of submission of a ship security plan of a ship or any amendment to the ship security plan shall meet the requirement specified in section 9.3 of the Code. *(cf: section 9.3 of the Code)*

(3) The ship security plan of a ship –

- (a) shall be developed or written in the language as required by section 9.4 of the Code; or
- (b) shall address the matters specified in section 9.4 of the Code.

*(cf: section 9.4 of the Code)*

(4) The company of a ship shall ensure the independence of the person involved in the preparation or evaluation of a ship security plan of the ship. *(cf: section 9.4.1 of the Code)*

(5) A ship shall keep on board –

- (a) any ship security plan approved in respect of the ship as required under section 9.1 of the Code;
- (b) any approval of amendment to the ship security plan as required under section 9.5.1 of the Code; or
- (c) such records referred to in section 10.1 of the Code for such period as required under that section.

*(cf: sections 9.1, 9.5.1 and 10 of the Code)*

(6) A ship shall keep –

- (a) any ship security plan of the ship in the manner as required under section 9.6 of the Code; or
- (b) such records referred to in section 10.1 of the Code in the manner as required under section 10.3 of the Code.

*(cf: sections 9.6 and 10.3 of the Code)*

- (7) The company or the master of a ship] –
  - (a) shall protect a ship security plan of the ship; or
  - (b) shall protect such records referred to in section 10.1 of the Code,

from unauthorized access or disclosure. *(cf: sections 9.7 and 10.4 of the Code)*

- (8) The records referred to in section 10.1 of the Code shall be kept in the language as required under section 10.2 of the Code. *(cf: section 10.2 of the Code)*

## **27. Port facility security**

A port facility security officer or a ship security officer who fails to take such actions as required to ensure port facility security under sections 14.5 or 14.6 of the Code commits an offence and is liable on conviction to a fine at level [ ] and to imprisonment for [ ] years. *(cf: sections 14.5 and 14.6 of the Code)*

## **28. Cancellation of security certificate**

- (1) The Director may cancel the security certificate issued to a ship if –

- (a)
  - (b)
- (2) [procedural]

## **28A. Appeal against Cancellation of security certificate**

If the security certificate issued to a ship is cancelled under section 28, the company of the ship may appeal to [ ].

## 29. Offence

- (1) A person who –
  - (a) contravenes ...
  - (b) contravenes ...
  - (c)

commits an offence.

- (2) [penalty]

## 30. Port facility security to comply with security instructions

A port facility shall comply with any security instruction given to it under section [        ].

## 31. Delegation of Director's functions to recognized security organizations

Subject to the exceptions specified in section 4.3 of the Code, the Director may in writing delegate his functions under the Chapter XI-2 of the Convention and the Code to a recognized security organization. (*cf. section 4.3 of the Code*)

## 32. Declaration of closed area

(1) If the Director reasonably believes that it is necessary in the interests of public security to close any area of the waters of Hong Kong to all vessels or any class or type of vessel, he may declare that area to be an area closed to those vessels or that class or type of vessel, as the case may be.

(2) If a vessel, without reasonable excuse, enters a closed area in contravention of a notice made under subsection (1), the master of the vessel commits an offence and is liable on conviction to a fine at level [    ] and to imprisonment for [    ] months.

### 33. Fees

The Director may refuse to exercise the power under a provision specified in column 1 of the Schedule if the fee specified correspondingly in column 2 of the Schedule is not paid to him.

#### SCHEDULE

[      ]

#### FEES

Power

Fees

Secretary for Economic Development  
and Labour

2004

**Explanatory Note**