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

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A BILL

To

~~Enhance security of ships and port facilities and for that purpose to~~To implement the December 2002 amendments to the International Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Security Code and related provisions in the Convention; and to provide for incidental or related matters.

Enacted by the Legislative Council.

1. Short title ~~and commencement~~

~~(1)~~This Ordinance may be cited as the Merchant Shipping (Security of Ships and Port Facilities) Ordinance.

~~[(2) Subject to subsections (3) and (4), this Ordinance comes into operation on the day on which it is published in the Gazette.]~~

~~[(3) The power under section 6(1) may be exercised before the day on which this Ordinance is published in the Gazette.]~~

~~[(4) A recognized security organization may perform any function referred to in section 6(2)(c) before the day on which this Ordinance is published in the Gazette.]~~

2. Ordinance binds the Government

This Ordinance binds the Government.

3. Interpretation

(1) In this Ordinance, unless the context otherwise requires -

“Administration” (主管機關), in relation to a ship, means the government of the state whose flag the ship is entitled to fly;

“authorized officer” (獲授權人員) means –

- (a) any officer of the Marine Department ~~in~~of or above the rank of Marine Inspector Class II ~~or above;~~

(b) any police officer ~~in~~of or above the rank of sergeant ~~or above~~; or

(c) any ~~other~~ public officer authorized under section 9;

“the Code” (《規則》) means the International Ship and Port Facility Security Code adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on 12 December 2002;

“Contracting Government” (締約政府) means the government of a party to the Convention;

“the Convention” (《公約》) means the International Convention for the Safety of Life at Sea, 1974 (SOLAS);

“designated port facility” (經指定的港口設施) means a port facility designated as a designated port facility under section 7;

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

“high-speed craft” (高速船) means a craft capable of a maximum speed in metres per second equalling to or exceeding $3.7V^{0.1667}$ where V is the displacement corresponding to the design waterline (m^3);

“Hong Kong ship” (香港船舶) means a ship which is registered in Hong Kong under the Merchant Shipping (Registration) Ordinance (Cap. 415);

“international voyage” (國際航程) means a voyage from -

(a) a place of a party to the Convention to a place outside the party; or

(b) a place outside a party to the Convention to a place of the party;

“management” (管理人), in relation to a port facility, means the owner, occupier or operator of the port facility;

“non-Hong Kong ship” (非香港船舶) means a ship other than a Hong Kong ship;

“port facility” (港口設施) means ~~an area of land or sea~~ location (including an anchorage, a waiting berth and an approach from seaward) where ship/port interface takes place; declared as a port facility under section 7;

“recognized security organization” (經認可的保安組織) means a recognized security organization recognized under section 8;

“Secretary” (局長) means the Secretary for Economic Development and Labour;

“ship/port interface” (船/港界面) means interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or provisions of port services to or from the ship;

“ship” (船舶) means –

- (a) a ~~passenger~~ ship (including a high-speed craft ~~which~~) that carries more than ~~twelve~~¹² passengers) ~~that~~ and is engaged on international voyages; or
- (b) a cargo ship (including a high-speed craft) of 500 gross tonnage or upwards that is engaged on international voyages,

and includes a mechanically propelled vessel capable of engaging in drilling operations for the exploration for or ~~exploration~~exploitation of resources beneath the sea-bed such as liquid or gaseous hydrocarbons, sulphur or salt, not on location.

(2) A reference in this Ordinance to the Convention or the Code is a reference to the Convention or the Code, as the case may be, as amended from time to time.

4. Application to ships and vessels

(1) ~~Subject to subsections (2) and (3),~~ This Ordinance applies to–

- (a) to a Hong Kong ship, whether or not it is in Hong Kong;
and

(b) to a non-Hong Kong ship intending to enter Hong Kong or while it is in Hong Kong; and

(c) for the purposes of imposing restriction for abating or containing any security threat, to any vessel in Hong Kong.

~~(2)~~ The regulation made under section 6 may—

~~(a) apply to non-Hong Kong ships intending to enter Hong Kong; and~~

~~(b) impose restriction in relation to any vessel for the purposes of abating or containing any security threat.~~

~~(3)~~ (2) This Ordinance does not apply to –

(a) warships;

(b) naval auxiliaries; and

(c) other vessels owned or operated by a government and used only on government non-commercial service.

5. **Extent of application to certain designated port facilities**

The Director may specify the extent of application of the Convention and the Code in relation to any designated port facility which, ~~in his opinion~~ –

(a) is used primarily by vessels not engaged on international voyages; and

(b) is required occasionally to serve ships to which this Ordinance applies.

6. **Regulation Rules**

(1) The Secretary may make regulation rules for the purposes of this Ordinance ~~as stated in the long title.~~

(2) Without prejudice to the generality of subsection (1), regulation rules made under this section may –

(a) require compliance with the Convention and the Code in relation to ships and designated port facilities;

- (b) create offences for the purpose of paragraph (a) and provide for ~~penalty in the form of~~ imprisonment not exceeding 3 years and a fine not exceeding \$500,000;
- (c) empower the Director to ~~authorize any recognized security organization, subject to perform any function~~ the exceptions specified in section 4.3 of part A of the Code, delegate to any recognized security organization functions relating to security of ships or designated port facilities that may be performed by such recognized security organization under the Code;
- (d) make supplementary procedural provision for the delegation pursuant to the power under paragraph (c): –
 - ~~(i) the recognition of recognized security organization under section 8; and~~
 - ~~(ii) the authorization of such organization pursuant to paragraph (c);~~
- (e) provide for the setting of security levels by the Director;
- (f) make provision for appeal against a decision made ~~pursuant to by the Convention and the Code~~ Director under this Ordinance;
- (g) empower the Director or any person designated by him to give security instructions when the highest security level is set;
- (h) require compliance with requirements of the security levels referred to in paragraph (e) in relation to ships and designated port facilities;
- (i) require compliance with security instructions referred to in paragraph (g);
- (j) confer on the ~~Secretary or the~~ Director any power that may be exercised by –

- (i) a Contracting Government;
- (ii) ~~the~~an Administration; or
- (iii) any person who is authorized by a Contracting Government,

under Chapter XI-2 of the Convention or the Code;

- (k) make ~~administrative~~ provision for –
 - (i) specification of extent of application under section 5; and
 - (ii) ~~declaration—designation~~ of ~~designated~~ port ~~facility~~facilities under section 7;
- (l) empower the Director to charge fees and make provision for the recovery of such fees;
- (m) empower the Director to declare any area of the waters of Hong Kong to be an area closed to all vessels or to any class or type of ~~vessel~~vessels for security reasons.

(3) The ~~regulation~~rules made under this section ~~may, to the extent required for the operation of section 4,~~ have effect outside Hong Kong.

(4) The ~~regulation~~rules made under this section may amend the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) to make any decision made under the ~~regulation~~rules subject to appeal under that Ordinance.

(5) ~~For the avoidance of doubt, the regulation~~The rules made under this section may refer to the provisions of the Convention and the Code without setting them out.

7. ~~Declaration—Designation~~ of ~~designated~~ port facility

- (1) The Director may by notice published in the Gazette –
 - ~~declare as a port facility any area of land or sea (including any building or structure on such area) at which interactions~~

~~that occur when a ship is directly or immediately affected by actions involving the movement of persons or goods or provisions of port services to or from the ship take place; vary any such port facility; or~~

- (a) ~~designate any port facility as a designated port facility;~~
- (b) ~~vary any particulars of a designated port facility including the delineation of its boundary, its hours of operation or name; or~~
- (c) declare that ~~any such~~ a ~~designated~~ port facility ceases to be a ~~designated~~ port facility.

(2) A notice published under subsection (1) is not subsidiary legislation.

(3) The ~~management owner, occupier or operator~~ of a port facility may appeal to the Administrative Appeals Board against a decision of the Director –

- (a) to ~~designate declare or not to designate~~ the port facility ~~as a designated port facility~~; or
- (b) ~~to declare or~~ not to declare that the port facility ceases to be a ~~designated~~ port facility.

(4) ~~An~~The lodging of an appeal under subsection (3) ~~against a decision~~ does not prevent ~~this Ordinance the decision~~ from ~~applying or continuing to apply to the port facility concerned taking effect~~.

(5) The Director shall make, in such manner as he thinks fit, available for inspection free of charge by the public a list of all ~~designated~~ port facilities.

8. Recognized security organizations

(1) The Director may in writing recognize any person or organization who –

- (a) has appropriate expertise in security matters and appropriate knowledge of ship and port operations; and

(b) is widely recognized in the international maritime community as having good standing, as a recognized security organization.

(2) The Director may revoke a recognition given under subsection (1) if he is satisfied that the recognized security organization concerned does not meet the requirements prescribed in subsection (1)(a) and (b).

(3) The Director shall not exercise his power under subsection (2) without –

(a) giving adequate prior notice of his intention to do so to the recognized security organization concerned; and

(b) giving the organization an opportunity to make representation.

(4) Any person or organization aggrieved by a decision of the Director to revoke a recognition under subsection (2) may appeal to the Administrative Appeals Board against the decision.

(5) ~~An~~The lodging of an appeal under subsection (4) against a decision does not prevent the decision from taking effect.

9. Authorized Officers

(1) The Director may authorize in writing any public officer to be an authorized officer.

(2) An authorized officer may perform ~~any~~ functions that ~~is~~ are ~~provided for in~~ conferred or imposed pursuant to this Ordinance, the Convention and the Code on him.

10. Inspections and control of ships

Subject to sections 12 and 13, an authorized officer may, for the purposes of ascertaining whether ~~and or~~ ensuring that the provisions of this Ordinance which relate to ships are complied with, exercise one or more of the following powers –

- (a) to board and inspect a ship;
- (b) to require the master or owner or charterer of a ship or any person who is responsible for the operation of the ship or any other person on board the ship to produce such documents and give such information as specified by an authorized officer;
- (c) to examine and copy any document referred to in paragraph (b);
- (d) to take such measurements and photographs and make such ~~recordings~~records as he considers necessary;
- (e) to direct any person referred to in paragraph (b) to take such actions as are necessary to ensure that the provisions are complied with;
- (f) if the master contravenes a direction made under paragraph (e), to detain the ship until the direction is complied with.

11. Inspections of designated port facilities

Subject to sections 12 and 13, an authorized officer may, for the purposes of ascertaining whether ~~and or~~ ensuring that the provisions of this Ordinance which relate to designated port facilities are complied with, exercise one or more of the following powers –

- (a) to enter and inspect a designated port facility;
- (b) to require the ~~management owner, occupier or operator~~ of a designated port facility to produce such documents and give such information as specified by an authorized officer;
- (c) to examine and copy any document referred to in paragraph (b);
- (d) to take such measurements and photographs and make such ~~recordings~~records as he considers necessary;

- (e) to direct any person referred to in paragraph (b) to take such actions as are necessary to ensure that the provisions are complied with.

12. Magistrate's warrants

(1) An authorized officer shall not enter any part of a ship or ~~a designated~~ port facility which is used solely for dwelling purpose pursuant to section 10 or 11 except by virtue of a warrant issued by a magistrate under subsection (2).

(2) If a magistrate is satisfied by information on oath by an authorized officer that it is necessary, for the ~~purposes-purpose~~ of ascertaining whether ~~and or~~ ensuring that the provisions of this Ordinance which relate to ships or ~~designated~~ port facilities are complied with, to enter any part of a ship or ~~a designated~~ port facility which is used solely for dwelling purpose pursuant to section 10 or 11, he may issue a warrant to an authorized officer to effect entry.

13. Further provisions as to powers of inspection

(1) ~~As far as it is practicable, an~~An authorized officer shall produce proof of his identity and authority upon request before or on exercising his powers under sections 10 and 11.

(2) An authorized officer may, if necessary, use reasonable force in exercising his powers under sections 10 and 11.

(3) A person who fails to comply with a requirement or direction made under sections 10 and 11 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(4) A person who obstructs an authorized officer in exercising his powers under sections 10 and 11 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months.

(5) If, in response to a requirement made under sections 10(b) and 11(b), a person –

- (a) produces or gives to an authorized officer any document or information that he knows to be false in a material particular; or
- (b) recklessly ~~provides~~produces or gives to an authorized officer any document or information that is false in a material particular,

the person commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

14. Exemption

(1) The Director may grant exemption from any provision of this Ordinance for –

- (a) ships engaged on short international voyages on fixed routes between designated port facilities ~~in Hong Kong~~ and ~~areas of land or sea~~ port facilities outside Hong Kong ~~which fall within the description of section 7(1)(a); or~~
- (b) such designated port facilities,

if they are covered by an agreement between the Government and another Contracting Government on alternative security arrangements.

(2) The Director may grant exemption from any provision of this Ordinance for a Hong Kong ship or a class of Hong Kong ships if he is satisfied that security measures which are at least as effective as those provided for in the provision have been implemented in relation to the ship or class of ships.

(3) The Director may grant exemption from any provision of this Ordinance for a designated port facility or a class of designated port ~~facility~~facilities which is not covered by an agreement referred to in subsection (1) if he is satisfied that security measures which are at least as effective as those provided for in the provision have been implemented in relation to the port facility or ~~the~~ class of port ~~facility~~facilities.

15. Master's discretion for ship safety and security

If the master of a ship takes or executes any decision which, in his professional judgment ~~made in good faith~~, is necessary to maintain the safety and security of the ship, the taking or execution of that decision shall not by itself constitute a breach of any duty owed to any person by him under any contract (including an employment contract).—

~~(a) the taking or execution of that decision shall not by itself constitute a breach of any duty owed to any person by him under any contract (including an employment contract); and~~

~~(b) he does not incur any civil liability for the taking or execution of that decision.~~

16. Duty to avoid undue detention or delay

(1) When the Government –

- (a) imposes control measures under paragraph 1 of Regulation XI-2/9 of the Convention; or
- (b) takes steps under paragraph 2 of that Regulation,

it has a duty to make all possible efforts to avoid a ship being unduly detained or delayed.

~~(2)~~ (1) Failure to discharge the duty under subsection (1) shall, for the purpose of the law of tort, be a breach of statutory duty.

~~17. Co-operation with other Contracting Governments~~

~~The Government may—~~

~~request any Contracting Government outside Hong Kong to perform; or~~

~~perform at the request of any Contracting Government outside Hong Kong,~~

~~any function that may be performed at such request under the Convention or the Code.~~

~~The power conferred by subsection (1) may be exercised through the Director.~~

1817. Access to Convention and Code

~~The Director shall put the English and Chinese texts of Chapter XI-2 of the Convention and the Code in a website on the Internet for browsing free of charge.~~

~~(2)~~ The Director shall –

- (a) keep a copy of the English and Chinese texts of Chapter XI-2 of the Convention and the Code at his office; and
- (b) allow the public to inspect such texts during normal business hours free of charge.

Consequential Amendments

Administrative Appeals Board Ordinance

19.18. Schedule amended

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

“64. Merchant Shipping (Security of Ships and Port Facilities) Ordinance (of 2004)	A decision of the Director of Marine under <u>section 7(1)(a) or (c) or 8(2).</u> ”.
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