

LEGISLATIVE COUNCIL BRIEF

MERCHANT SHIPPING (PREVENTION AND CONTROL OF POLLUTION) (SPECIFICATION OF SUBSTANCES) (AMENDMENT) ORDER 2004

Introduction

This paper briefs Members on the Merchant Shipping (Prevention and Control of Pollution) (Specification of Substances) (Amendment) Order 2004 (“Amendment Order”) at Annex. The Amendment Order is made under section 6(10) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) (“Ordinance”).

Purpose

2. The purpose of the Amendment Order is to align Hong Kong legislation with the amendments to the Annex to the Protocol Relating to Intervention of the High Seas in Cases of Pollution by Substances other than Oil, 1973 (“Protocol”).

Background

3. The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (“Convention”) established the internationally agreed rules permitting necessary measures to be taken on the high seas by a Contracting Party when threatened by grave and imminent risk of oil pollution as a result of maritime casualty.

4. The Protocol extended the provisions of the Convention to cover pollution caused by substances other than oil. A list of “substances other than oil” was annexed to the Protocol. Both the Convention and the Protocol are implemented in Hong Kong through the Ordinance. The “substances other than oil” are specified in the Merchant Shipping (Prevention and Control of Pollution) (Specification of Substances) Order (Cap.413F) made under the Ordinance.

5. On 11 October 2002, the International Maritime Organisation (“IMO”) adopted Resolution MEPC.100 (48) which revised the list of “substances other than oil” annexed to the Protocol. The Resolution was deemed to have been accepted by Parties to the Protocol on 22 March 2004 and the revision came into effect internationally on 22 June 2004.

6. To allow sufficient time for consideration of the Amendment Order by the Legislative Council, the Director of Marine will specify a date on which the Amendment Order shall come into effect in Hong Kong after the completion of the negative vetting process. The commencement notice will be published in the Gazette. In the interim period, the Director of Marine will rely on paragraph (b) of the definition of “any substance other than oil” given in section 6(9) of the Ordinance, or section 11B of the Shipping and Port Control Ordinance (Cap. 313) to handle shipping casualties caused by new “substances other than oil”.

The Amendment Order

7. The Amendment Order will specify “substances other than oil” in accordance with IMO’s Resolution MEPC.100 (48).

Legislative Timetable

8. The legislative timetable for the Amendment Order is as follows:-

Publication in the Gazette	25 June 2004
Tabling at Legislative Council	30 June 2004
Commencement of the Amendment Order	On a date to be appointed by the Director of Marine

Implications

9. The Amendment Order is in conformity with the Basic Law, including the provision on human rights. It will not affect the binding effect of the Ordinance. The highly technical amendments it makes have no financial, civil service, economic or environmental implications.

Public Consultation

10. The amendments effected by the Amendment Order will not affect the public at large. As it is in line with internationally accepted standards, no public consultation is considered necessary. We have obtained the support of the Legislative Council Panel on Economic Services for the relevant amendments on 15 January 2004.

Publicity

11. A press release will be issued on 25 June 2004. A spokesman will be made available to answer public and media enquiries. The Marine Department will notify the industry by issuing a Marine Department Notice.

Enquiry

12. Any enquiry on this brief can be addressed to Mr. P F Chun, Assistant Director of Marine (2852 4408) or Miss Florence Chan, Assistant Secretary for Economic Development and Labour (2537 2842).

Economic Development Branch
Economic Development and Labour Bureau
25 June 2004

**MERCHANT SHIPPING (PREVENTION AND CONTROL OF
POLLUTION) (SPECIFICATION OF SUBSTANCES)
(AMENDMENT) ORDER 2004**

(Made under section 6(10) of the Merchant Shipping
(Prevention and Control of Pollution)
Ordinance (Cap. 413))

1. Commencement

This Order shall come into operation on a day to be appointed by the Director of Marine by notice published in the Gazette.

2. Section substituted

Section 1A of the Merchant Shipping (Prevention and Control of Pollution) (Specification of Substances) Order (Cap. 413 sub. leg. F) is repealed and the following substituted –

“1A. Interpretation

In this Order –

“BLG/Circ.13” (《BLG/13 號通函》) means the circular issued by IMO bearing “BLG/Circ.13” as its reference number;

“Consolidated Edition 2002” (《2002 年綜合版》) means the publication published by IMO entitled ‘MARPOL 73/78 Consolidated Edition, 2002’;

“1998 IBC Code” (《1998 年國際化學品規則》) means the 1998 edition of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by IMO;

“1993 IGC Code” (《1993 年國際氣體規則》) means the 1993 edition of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk published by IMO;

“2002 IMDG Code” (《2002 年國際海運危險貨物規則》) means the 2002 edition of the International Maritime Dangerous Goods Code published by IMO;

“IMO” means the International Maritime Organization;

“MARPOL 73/78” (《73/78 年防污公約》) means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;

“MEPC.2/Circ.9” (《MEPC.2/9 號通函》) means the circular issued by IMO bearing “MEPC.2/Circ.9” as its reference number, as modified by IMO on 23 January 2004.”.

3. Section substituted

Section 2 is repealed and the following substituted –

‘2. Specification of substances

A substance on board a ship is a substance other than oil for the purposes of paragraph (a) of the definition of “any substance other than oil” in section 6(9) of the Ordinance if –

- (a) it is a substance specified in the Schedule; and
- (b) it is carried on board the ship as cargo, or it is the residue of a quantity of the same substance previously carried on board the ship.”.

4. Schedule substituted

The Schedule is repealed and the following substituted –

“ SCHEDULE [s. 2]

SUBSTANCES OTHER THAN OIL

1. Noxious liquid substances, as defined in Annex II to MARPOL 73/78 as contained in the Consolidated Edition 2002, when carried in bulk, and –

- (a) categorized or provisionally categorized as Category A or B in –

- (i) Chapter 17 of 1998 IBC Code; or
 - (ii) Lists 1 to 4 attached to MEPC.2/Circ.9; or
 - (b) identified in the list attached to BLG/Circ.13 with –
 - (i) “2”, “(2)”, “2/BOD” or “2/D” in column B, and “XX” in column E, of the list; or
 - (ii) “XXX” in column E of the list.
- 2. Harmful substances in packaged form, as defined in Annex III to MARPOL 73/78 as contained in the Consolidated Edition 2002, which –
 - (a) are identified as severe marine pollutants with “PP” in column “MP” of the Index to the 2002 IMDG Code; or
 - (b) meet the criteria for severe marine pollutants as specified in paragraph 2.10.4.1.2 of the Code.
- 3. Radioactive materials, as defined in paragraph 2.7.1 of the 2002 IMDG Code, which are transported –
 - (a) in type B (U) or type B (M) packages as specified in paragraph 2.7.7.1.5 of the Code;
 - (b) in type C packages as specified in paragraph 2.7.7.1.6 of the Code;
 - (c) as fissile materials as defined in paragraph 2.7.2 of the Code; or
 - (d) under special arrangements as specified in paragraph 7.1.14.10 of the Code.
- 4. Liquefied gases, identified in Chapter 19 of the 1993 IGC Code, when carried in bulk.”.

Director of Marine

21 June 2004

Explanatory Note

On 11 October 2002, the International Maritime Organization adopted a resolution made by its Marine Environment Protection Committee regarding amendments to the list of substances annexed to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other Than Oil, 1973. This Order amends the Merchant Shipping (Prevention and Control of Pollution) (Specification of Substances) Order (Cap. 413 sub. leg. F) to give effect to those amendments as regards substances other than oil in the domestic law which implements the Protocol.