

## **LEGISLATIVE COUNCIL BRIEF**

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

#### **INTRODUCTION**

This paper briefs Members on the Merchant Shipping (Security of Ships and Port Facilities) Rules (“the Rules”) made under the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (13 of 2004) (“the Ordinance”) to implement the maritime security provisions adopted by the International Maritime Organization (IMO) under the December 2002 amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS) and the associated International Ship and Port Facility Security (ISPS) Code. The Rules will be tabled at the Legislative Council on 30 June 2004.

#### **BACKGROUND**

2. The development of the maritime security provisions under the 2002 amendments to SOLAS and the ISPS Code was triggered by the terrorist attacks on 11 September 2001. It aims to establish an international framework through which government agencies and the shipping and port industries co-operate to detect and deter acts that threaten security in maritime transport. As the Central People’s Government is a contracting government to SOLAS which is applicable to Hong Kong, these provisions will be binding on Hong Kong upon commencement on 1 July 2004. Hong Kong is required to give effect to the requirements through domestic legislation.

3. In brief, the provisions require ships engaged on international voyage and port facilities serving such ships to develop security plans incorporating measures to respond to different security levels.

Contracting Governments are required to set security levels and ensure that ships flying their flag, port facilities within their jurisdiction, as well as foreign ships visiting their ports or within their territorial waters are in compliance with the requirements. All applicable ships are required to carry an International Ship Security Certificate that is issued by the ship's flag administration or its authorized recognized security organization whilst all applicable port facilities shall have their security plan approved by the authority appointed by its Government. Ships found not in compliance with the provisions will be subject to control measures, which may include denial of entry into ports or expulsion from ports.

4. Subsequent to the endorsement of the Executive Council on 2 March 2004, the Bill was introduced into the Legislative Council on 24 March 2004 and passed on 23 June 2004. The Ordinance was gazetted and commenced on 25 June 2004 which is the primary local legislation to give effect to the maritime security provisions. In essence, the Ordinance confers the Director of Marine, who has been appointed as the "Designated Authority" responsible for ensuring the implementation of the maritime security provisions under SOLAS, various powers that are required to implement the provisions in Hong Kong including the power to designate port facilities, recognize security organizations, set security levels and issue security instructions, inspect and control ships and port facilities, and to grant exemptions from any provisions of the Ordinance. Section 6(1) of the Ordinance empowers the Secretary for Economic Development and Labour to make rules for the purposes of the Ordinance.

## **THE RULES**

5. On 30 June 2004, we will table the Rules made under the Ordinance. The Rules are outlined in the ensuing paragraphs.

### ***Merchant Shipping (Security of Ships and Port Facilities) Rules***

6. The Rules, at Annex A, provide for –

- (i) powers of the Director of Marine to set security levels, to issue security instructions when the highest security level is set, to delegate functions relating to security of ships and port facilities to recognized security organizations, and to declare an area of the waters of Hong Kong closed to all vessels or any class or type of vessels in order to abate or contain security threat;
- (ii) the specified provisions of SOLAS and the ISPS Code that Hong Kong ships and non-Hong Kong ships intending to enter Hong Kong or in Hong Kong, the owners or managers of such ships, and port facilities shall comply with;
- (iii) powers of the Director of Marine to impose control measures under SOLAS on ships intending to enter Hong Kong or in Hong Kong;
- (iv) the requirements and arrangements about International Ship Security Certificate;
- (v) the requirements on port facilities about security plans;
- (vi) the requirements on ships and port facilities to comply with security levels set by the Director of Marine;
- (vii) the requirements on ships and port facilities to keep record as specified;
- (viii) offences and penalties for non-compliances with the Rules; and
- (ix) appeal arrangement and the charging of fees for related services.

7. Under the Rules, the security requirements that ships and port facilities have to comply with, and the control measures that would be

imposed on ships in Hong Kong ports, are stipulated by referring directly to the provisions of SOLAS and the ISPS Code. The Rules also spell out the various arrangements for the implementation of such requirements.

### **LEGISLATIVE TIMETABLE**

8. The legislative timetable for the Rules is –

|                                    |                         |
|------------------------------------|-------------------------|
| Publication in the Gazette         | 29 June 2004            |
| Tabling at the Legislative Council | 30 June 2004            |
| Implementation                     | immediate upon gazettal |

9. To enforce the maritime security provisions under SOLAS and the ISPS Code and exercise control on ships, it is necessary to have the Rules enacted on or before 1 July 2004. The Rules will take effect immediately upon gazettal.

### **IMPLICATIONS OF THE PROPOSAL**

B

10. The proposal has economic implications as set out at Annex B. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, civil service and environmental implications. Although there will be revenue generated from services provided for implementing the requirements under the Rules, the amount to be collected on cost recovery basis is expected to be very small and hence the financial implication is negligible. The Marine Department will absorb the additional work through its existing staff and resources. The proposal does not have major sustainability implications but would help Hong Kong shipping and port industries maintain a leading position in the region. The Rules will be binding on the Government.

11. Failure to comply with the convention requirements will not only undermine the security standard for our ships and port facilities, breach the international obligations under SOLAS but also cause serious adverse effect on the commercial operations of the shipping and port industries of Hong Kong. For example, Hong Kong registered ships to which Chapter XI-2 applies and which do not carry a valid International Ship Security Certificate may be delayed, detained or expelled from a foreign port.

### **PUBLIC CONSULTATION**

12. We have consulted the Shipping Consultative Committee and the Port Area Security Advisory Committee, and secured their support. Comments from individual members of these committees have been taken into account in finalizing the Rules. The Rules have also been examined and agreed by the Bills Committee.

### **PUBLICITY**

13. A press release will be issued on 29 June 2004. A spokesman will be made available to answer public and media enquiries.

### **ENQUIRIES**

14. Any enquires on this brief can be addressed to Mr K L Lee, Chief, Marine Accident Investigation of the Marine Department (Tel: 2852 4603) or Mr H B Chan, Assistant Secretary of the Economic Development and Labour Bureau (Tel: 2121 2304).

**Economic Development and Labour Bureau**  
**26 June 2004**

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

**CONTENTS**

| <b>Rule</b>               |  | <b>Page</b> |
|---------------------------|--|-------------|
| <b>PART 1</b>             |  |             |
| <b>GENERAL PROVISIONS</b> |  |             |
| 1.                        | Interpretation   | 1           |
| 2.                        | Setting of security levels                                   | 2           |
| 3.                        | Security instructions  | 2           |
| 4.                        | Delegation of functions to recognized security organizations | 3           |
| 5.                        | Declaration of closed area                                   | 4           |
| <b>PART 2</b>             |  |             |
| <b>SHIPS</b>              |  |             |
| 6.                        | Hong Kong ships to comply with the Convention                | 4           |
| 7.                        | Non-Hong Kong ships to comply with the Convention            | 5           |
| 8.                        | Companies to comply with the Convention                      | 5           |
| 9.                        | Ship security officers and company security officers         | 5           |
| 10.                       | Control of ships in Hong Kong                                | 5           |
| 11.                       | Control of ships intending to enter Hong Kong                | 6           |
| 12.                       | Maintenance of security system on Hong Kong ships            | 6           |
| 13.                       | Certificates for Hong Kong ships                             | 6           |
| 14.                       | International Ship Security Certificates                     | 6           |
| 15.                       | Obligations of companies in relation to ships                | 7           |
| 16.                       | Interim International Ship Security Certificates             | 8           |
| 17.                       | Cancellation of certificates                                 | 8           |

|     |  |    |
|-----|--|----|
| 18. | Hong Kong ships outside Hong Kong to comply with requirements of security levels | 9  |
| 19. | Ships in Hong Kong waters to comply with requirements of security levels         | 9  |
| 20. | Duty to notify the Director of non-compliance                                    | 10 |
| 21. | Ships to complete and keep Declarations of Security                              | 10 |
| 22. | Duty to keep information and records   | 11 |

### PART 3

#### DESIGNATED PORT FACILITIES

|     |   |    |
|-----|---|----|
| 23. | Designated port facilities to comply with the Convention                  | 12 |
| 24. | Port facility security officers   | 12 |
| 25. | Port facility security plans  | 12 |
| 26. | Duty to notify the Director of material change in circumstances           | 12 |
| 27. | Withdrawal of approval of port facility security plans                    | 13 |
| 28. | Designated port facilities to comply with requirements of security levels | 13 |
| 29. | Designated port facilities to complete and keep Declarations of Security  | 14 |
| 30. | Rectification of non-compliance   | 14 |

### PART 4

#### MISCELLANEOUS PROVISIONS

|     |         |    |
|-----|---------|----|
| 31. | Appeals | 14 |
| 32. | Fees    | 15 |

#### **Consequential Amendments**

##### **Administrative Appeals Board Ordinance**

|     |                  |    |
|-----|------------------|----|
| 33. | Schedule amended | 16 |
|-----|------------------|----|

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

(Made under section 6 of the Merchant Shipping (Security of Ships and Port Facilities) Ordinance ( 13 of 2004 ))

## PART 1 GENERAL PROVISIONS

### 1. Interpretation

In these Rules, unless the context otherwise requires –

“company” (公司), in relation to a ship, means –

- (a) the owner of the ship; or
- (b) any person, including the manager or bareboat charterer of the ship, who has assumed responsibility for the operation of the ship and, on assuming that responsibility, agreed to take over all duties and responsibilities imposed in respect of the ship by the International Safety Management Code;

“company security officer”(公司保安官員) means a person designated under rule 9(1)(b);

“Declaration of Security” (保安聲明) means an agreement reached between a ship and a port facility or a ship with which it interfaces specifying the security measures that each will implement;

“interim certificate”(臨時證書) means an Interim International Ship Security Certificate issued under rule 16;

“International Safety Management Code” (《國際安全管理規則》) means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization as amended by the Organization from time to time;



“port facility security officer” (港口設施保安官員) means a person designated under rule 24(1);

“port facility security plan” (港口設施保安計劃) means a plan referred to in section 16 of part A of the Code;

“security certificate” (保安證書) means an International Ship Security Certificate issued or endorsed under rule 14;

“security instruction” (保安指示) means an instruction given under rule 3;

“security level” (保安級別) means the qualification of the degree of risk that any suspicious act or circumstance threatening the security of a ship or port facility will occur as set pursuant to section 4.1 of part A of the Code;

“ship security officer” (船舶保安官員) means a person designated under rule 9(1)(a);

“ship security plan” (船舶保安計劃) means a plan referred to in section 9 of part A of the Code.

## **2. Setting of security levels**

The Director shall set security levels pursuant to section 4.1 of part A of the Code by publishing a notice which is accessible through the Internet.

## **3. Security instructions**

(1) Where security level 3 is set by the Director, the Director may give such security instructions as he thinks fit to –

- (a) a Hong Kong ship;
- (b) a non-Hong Kong ship in the waters of Hong Kong; or
- (c) a designated port facility.

(2) Security instructions referred to in subrule (1) shall be given by such means as the Director thinks fit including –

- (a) publishing a notice which is accessible through the Internet;

- (b) making a public announcement by radio or television;
- (c) placing a notice in any daily newspaper in circulation in Hong Kong; and
- (d) issuing a notice to the company or the master of the ship or the management of the designated port facility.

(3) The Director may delegate his power under subrule (1) to such persons as he thinks fit.

(4) The company and the master of a ship or the management of a designated port facility to which a security instruction is given by the Director under subrule (1) shall –

- (a) ensure that the security instruction is complied with without undue delay; and
- (b) where it is impracticable to comply with paragraph (a), notify the Director of that fact without undue delay.

(5) If a security instruction given to a ship in the waters of Hong Kong has been received by the company or the master of the ship but the company or the master, without reasonable excuse, fails to comply with subrule (4), the company or the master (as the case may be) commits an offence and is liable on conviction to a fine at level 5.

(6) If a security instruction given to a designated port facility has been received by the management of the port facility but the management, without reasonable excuse, fails to comply with subrule (4), the management commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.

#### **4. Delegation of functions to recognized security organizations**

Subject to the exceptions specified in section 4.3 of part A of the Code, the Director may, in writing, delegate to a recognized security organization his

functions relating to security of ships or port facilities under Chapter XI-2 of the Convention and part A of the Code.

#### **5. Declaration of closed area**

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

(2) If the master of a vessel, without reasonable excuse, causes the vessel to enter a closed area in contravention of a declaration under subrule (1), he commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(3) The Director shall make a declaration under subrule (1) by such means as he thinks fit including –

- (a) publishing a notice which is accessible through the Internet;
- (b) making a public announcement by radio or television; and
- (c) placing a notice in any daily newspaper in circulation in Hong Kong.

### PART 2

#### SHIPS

#### **6. Hong Kong ships to comply with the Convention**

A Hong Kong ship shall comply with regulations 4, 6 and 8 of Chapter XI-2 of the Convention.

## **7. Non-Hong Kong ships to comply with the Convention**

(1) A non-Hong Kong ship in Hong Kong shall comply with regulations 4, 6 and 8 of Chapter XI-2 of the Convention.

(2) A non-Hong Kong ship intending to enter Hong Kong shall comply with regulations 4 and 9.2 of Chapter XI-2 of the Convention.

## **8. Companies to comply with the Convention**

(1) The company of a ship shall comply with regulations 4, 5 and 8 of Chapter XI-2 of the Convention.

(2) The company of a ship shall provide the master, company security officer and ship security officer of the ship with 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.

## **9. Ship security officers and company security officers**

- (1) The company of a ship shall designate for the ship –
- (a) a ship security officer; and
  - (b) a company security officer.

(2) A ship security officer and a company security officer shall comply with the provisions of part A of the Code that respectively apply to each of them and take into account the guidance contained in part B of the Code.

## **10. Control of ships in Hong Kong**

(1) The Director may impose any control measures referred to in regulation 9.1 or 9.3 of Chapter XI-2 of the Convention on a ship in the waters of Hong Kong.

(2) The master of a ship shall, without undue delay, act upon any direction given pursuant to the regulation referred to in subrule (1) by the Director.

## **11. Control of ships intending to enter Hong Kong**

(1) The Director may impose any control measures referred to in regulation 9.2 or 9.3 of Chapter XI-2 of the Convention on a ship intending to enter the waters of Hong Kong.

(2) The master of a ship shall, without undue delay, act upon any direction given pursuant to the regulation referred to in subrule (1) by the Director.

## **12. Maintenance of security system on Hong Kong ships**

The company and the master of a Hong Kong ship shall ensure that the security system and the associated security equipment of the ship that have been verified are properly maintained as required under section 19.1.4 of part A of the Code.

## **13. Certificates for Hong Kong ships**

(1) The company and the master of a Hong Kong ship shall ensure that the ship holds a valid security certificate or an interim certificate.

(2) The master of a Hong Kong ship shall ensure that the ship has on board either of the certificates referred to in subrule (1) while the ship is engaged on international voyage.

(3) The master of a Hong Kong ship who, without reasonable excuse, fails to comply with subrule (2) commits an offence and is liable on conviction to a fine at level 3.

## **14. International Ship Security Certificates**

(1) Subject to subrule (2), an International Ship Security Certificate may, on application by the company of a Hong Kong ship, be issued or endorsed in respect of the ship by –

- (a) the Director;

- (b) a recognized security organization that is authorized in writing by the Director to issue or endorse the Certificate; or
- (c) upon the request of the Director, another Contracting Government.

(2) A security certificate shall not be issued or endorsed in respect of a Hong Kong ship unless –

- (a) a ship security plan of the ship has been approved by the Director or a recognized security organization; and
- (b) the requirements of verification in accordance with section 19.1 of part A of the Code have been complied with in relation to the ship.

(3) If the Director refuses to issue or endorse (as the case may be) a security certificate, he shall inform the applicant concerned by a notice in writing stating the reasons for his refusal.

(4) A security certificate is valid for such period as specified in the certificate by the person who issued or endorsed the certificate.

(5) A security certificate ceases to be valid if any of the events mentioned in section 19.3.8 of part A of the Code occurs.

## **15. Obligations of companies in relation to ships**

Where a security certificate has been issued or endorsed in respect of a ship, the company of the ship shall, on transferring its responsibility for the operation of the ship to another company –

- (a) as soon as practicable transmit to that another company all information relating to the certificate; or
- (b) facilitate the verifications carried out for the ship.

## **16. Interim International Ship Security Certificates**

(1) Subject to subrule (2), in a case falling within section 19.4.1 of part A of the Code, an Interim International Ship Security Certificate may on application by the company of a Hong Kong ship be issued pursuant to section 19.4.2 of part A of the Code in respect of the ship by –

- (a) the Director; or
- (b) a recognized security organization that is authorized in writing by the Director to issue the Certificate.

(2) An interim certificate shall not be issued in respect of a Hong Kong ship unless the requirements specified in section 19.4.2 of part A of the Code are verified to have been complied with in relation to the ship.

(3) If the Director refuses to issue an interim certificate, he shall inform the applicant concerned by a notice in writing stating the reasons for his refusal.

(4) An interim certificate is valid until –

- (a) the expiration of 6 months from its date of issue; or
- (b) a security certificate is issued in respect of the ship,

whichever first occurs.

## **17. Cancellation of certificates**

(1) The Director may, by notice in writing to the company of a ship, cancel a security certificate issued or endorsed in respect of the ship if he has reason to believe that –

- (a) regulation 4, 6 or 8 of Chapter XI-2 of the Convention has not been complied with in relation to the ship; or
- (b) the certificate was issued or endorsed on the basis of false or erroneous information.

(2) The Director may, by notice in writing to the company of a ship, cancel an interim certificate issued in respect of the ship if he has reason to believe that –

- (a) any of the requirements specified in section 19.4.2 of part A of the Code has not been complied with in relation to the ship; or
- (b) the certificate was issued on the basis of false or erroneous information.

(3) The Director shall give reasons for cancelling a certificate.

**18. Hong Kong ships outside Hong Kong to comply with requirements of security levels**

(1) Subject to subrule (2), where a security level is set by the Director, the company and the master of a Hong Kong ship outside Hong Kong shall ensure that the ship, without undue delay –

- (a) complies with the requirements specified in section 7 of part A of the Code in respect of the security level; and
- (b) implements the preventive and protective measures specified in its ship security plan in respect of the security level.

(2) If a Hong Kong ship is in the waters of another party to the Convention and the security level set by the government of that party is higher than that set by the Director, the ship shall act on the security level set by that government as if the security level was set by the Director.

**19. Ships in Hong Kong waters to comply with requirements of security levels**

(1) Subject to subrule (2), where a security level is set by the Director, the company and the master of a ship in the waters of Hong Kong shall ensure that the ship, without undue delay –



- (a) complies with the requirements specified in section 7 of part A of the Code in respect of the security level; and
- (b) implements the preventive and protective measures specified in its ship security plan in respect of the security level.

(2) Subrule (1) does not apply if a ship referred to in that subrule has complied with the requirements specified in section 7 of part A of the Code in respect of a security level higher than that set by the Director and has implemented the preventive and protective measures specified in its ship security plan in respect of that higher level.

(3) If the company or the master of a ship, without reasonable excuse, fails to comply with subrule (1), the company or the master (as the case may be) commits an offence and is liable on conviction to a fine at level 5.

## **20. Duty to notify the Director of non-compliance**

(1) The master of a ship shall, without undue delay, notify the Director of the details of any non-compliance by the ship with –

- (a) any of the requirements specified in relation to the ship in rule 18; or
- (b) any of the requirements specified in relation to the ship in rule 19.

(2) The master of a ship who, without reasonable excuse, fails to comply with subrule (1)(b) commits an offence and is liable on conviction to a fine at level 5.

## **21. Ships to complete and keep Declarations of Security**

(1) If a ship is requested by the Director under section 5 of part A of the Code to complete a Declaration of Security, the master or the ship security

officer of the ship shall, without undue delay, complete the Declaration of Security in the manner specified in that section.

(2) After completing a Declaration of Security in respect of a Hong Kong ship, the master or the ship security officer, as the case may be, of the ship shall keep the Declaration of Security on board during the next 10 calls of the ship at any port facility.

## **22. Duty to keep information and records**

(1) A ship intending to enter the waters of Hong Kong shall keep on board the information specified in –

- (a) regulation 5 of Chapter XI-2 of the Convention; and
- (b) regulation 9.2.1 of Chapter XI-2 of the Convention on –
  - (i) where the ship has previously called at not less than 10 port facilities, the last 10 occasions where the ship called at port facilities immediately before it intends to enter the waters of Hong Kong;
  - or
  - (ii) where the ship has previously called at less than 10 port facilities, all occasions where the ship called at port facilities immediately before it intends to enter the waters of Hong Kong.

(2) A Hong Kong ship shall keep on board –

- (a) a ship security plan of the ship developed and approved in accordance with section 9 of part A of the Code;
- (b) all approvals (if any) for amendment to the ship security plan given pursuant to section 9 of part A of the Code;
- (c) the information specified in regulation 5 of Chapter XI-2 of the Convention; and

- (d) in the manner specified in section 10 of part A of the Code, the records specified in section 10.1 of that part for a period of not less than 3 years.

PART 3  
DESIGNATED PORT FACILITIES

**23. Designated port facilities to comply with the Convention**

A designated port facility shall comply with regulation 10.1 of Chapter XI-2 of the Convention.

**24. Port facility security officers**

(1) The management of a designated port facility shall designate a port facility security officer for the port facility.

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

**25. Port facility security plans**

The port facility security officer of a designated port facility shall ensure that a port facility security plan is developed and maintained for the port facility and submitted to the Director for approval in accordance with section 16 of part A of the Code.

**26. Duty to notify the Director of material change in circumstances**

If, since a port facility security plan of a designated port facility has been approved, there has been any material change in the circumstances that may affect the security of the port facility or the implementation of the port facility security plan, the port facility security officer of the port facility shall, without undue delay –

- (a) report the details of the change to the Director;
- (b) cause the port facility security plan to be revised to take into account the change; and
- (c) submit the revised port facility security plan to the Director for approval.

**27. Withdrawal of approval of port facility security plans**

- (1) If the Director has reason to believe that –
  - (a) a material change referred to in rule 26 has occurred in respect of a designated port facility; and
  - (b) the requirements specified in that rule are not complied with in relation to the port facility,

the Director may, by a notice in writing to the management of the port facility, withdraw his approval of the port facility security plan of the port facility.

- (2) The Director shall give reasons for withdrawing his approval.

**28. Designated port facilities to comply with requirements of security levels**

- (1) Where a security level is set by the Director, the management of a designated port facility shall ensure that the port facility, without undue delay –
  - (a) complies with the requirements specified in section 14 of part A of the Code in respect of the security level; and
  - (b) implements the preventive and protective measures specified in its port facility security plan in respect of the security level.

(2) The management of a designated port facility who, without reasonable excuse, fails to comply with subrule (1) commits an offence and is liable on conviction to a fine at level 5.

### **29. Designated port facilities to complete and keep Declarations of Security**

(1) If a designated port facility is requested under section 5 of part A of the Code by the Director to complete a Declaration of Security, the port facility security officer of the port facility shall, without undue delay, complete the Declaration of Security in the manner specified in that section.

(2) After completing a Declaration of Security in respect of a designated port facility, the port facility security officer of the port facility shall keep the Declaration of Security for a period of not less than 1 year.

### **30. Rectification of non-compliance**

(1) If the Director has reason to believe that any requirement of the port facility security plan of a designated port facility is not complied with, he may direct the management of the port facility to rectify the condition of non-compliance within such period as he specifies.

(2) The management of a designated port facility who, without reasonable excuse, fails to comply with any direction made under subrule (1) commits an offence and is liable on conviction to a fine at level 5.

## **PART 4**

### **MISCELLANEOUS PROVISIONS**

### **31. Appeals**

(1) If the company of a ship is aggrieved by a decision of the Director made in respect of the ship under any of the following provisions, it may appeal to a court of survey in accordance with the Merchant Shipping (Court of Survey) Regulations (Cap. 369 sub. leg. A) –

- (a) rule 14 (refusing to issue or endorse a security certificate);
- (b) rule 16 (refusing to issue an interim certificate);
- (c) rule 17(1) (cancelling a security certificate);
- (d) rule 17(2) (cancelling an interim certificate).

(2) If the management of a designated port facility is aggrieved by a decision of the Director made in respect of the port facility under rule 27, the management may appeal to the Administrative Appeals Board against the decision.

(3) An appeal referred to in subrule (1) or (2) may only be made within 14 days after –

- (a) the applicant has received a notice referred to in rule 14(3);
- (b) the applicant has received a notice referred to in rule 16(3);
- (c) the company has received a notice of cancellation referred to in rule 17(1) or (2); or
- (d) the management has received a notice of withdrawal referred to in rule 27(1),

as the case may be.

(4) A court of survey may affirm or reverse a decision appealed against.

(5) The lodging of an appeal under this rule does not by itself operate as a stay of execution of a decision of the Director.

### **32. Fees**

(1) The Director may charge fees in respect of the time spent by an authorized officer on providing services relating to any of the following matters –

- (a) issuing or endorsing a security certificate;
- (b) issuing an interim certificate;
- (c) approving a port facility security plan;
- (d) inspecting for the purpose of removal of detention of ships.

(2) The fee under subrule (1) is charged on an hourly basis and the rate is –

- (a) in the case where an authorized officer is required to inspect a ship or a port facility in the course of providing

- services, \$3,270 for the first hour or part hour and \$1,115 for each subsequent hour or part hour; or
- (b) in any other case, \$1,115 for each hour or part hour.

### **Consequential Amendments**

#### **Administrative Appeals Board Ordinance**

#### **33. Schedule amended**

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

- |   |   |
|---|---|
| “65. Merchant Shipping (Security<br>of Ships and Port Facilities)<br>Rules (L.N. of 2004) | A decision of the Director of<br>Marine under rule 27(1).”. |
|---|---|

Secretary for Economic Development  
and Labour

June 2004

### **Explanatory Note**

These Rules are made under the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (13 of 2004) (“the Ordinance”) to implement the December 2002 amendments to the International Convention for the Safety of Life at Sea, 1974 (“the Convention”) and the International Ship and Port Facility Security Code and related provisions in the Convention.

2. Part 1 sets out the definitions necessary for interpreting the Rules and sets out certain functions that the Director of Marine may execute for the purposes of the Ordinance and these Rules.
3. Part 2 provides for security-related requirements to be complied with in relation to ships and sets out restrictions that are imposed in respect of ships.
4. Part 3 provides for security-related requirements to be complied with in relation to port facilities and sets out restrictions that are imposed in respect of port facilities.
5. Part 4 contains miscellaneous provisions on appeals and fees.



## **IMPLICATIONS OF THE PROPOSAL**

### **Economic implications**

As most ships and port facilities engaged in international trade already have certain existing security arrangements to guard against common crimes or illegal activities such as theft, smuggling, illegal immigrants etc., enhancing security measures according to the Rules will only incur a small amount of additional cost to them. Such additional cost is insignificant compared with their total operation cost, and it applies globally to the shipping and port industries instead of just the local industries. Failure to implement the proposal in Hong Kong will have serious adverse effect on the business of the local industries. If Hong Kong is seen not in compliance with the international convention requirements, the majority of ships registered in Hong Kong would probably switch to other flags and port facilities such as container terminals will lose their competitive edge over other competitors in the region. On the other hand, the ability to implement the requirements effectively and efficiently will be an advantage over other competitors, as shippers would prefer those carriers and port facilities that can provide a secured and smooth service to move their cargoes.