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**Paper for the House Committee meeting on 3 July 2015**

**Report of the Subcommittee on Merchant Shipping (Prevention of  
Pollution by Garbage) Regulation and Merchant Shipping  
(Prevention of Pollution by Garbage) Regulation (Repeal) Regulation**

**Purpose**

This paper provides information on the background of a new set of Merchant Shipping (Prevention of Pollution by Garbage) Regulation ("the new Garbage Regulation") and Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Repeal) Regulation ("the Repeal Regulation") made under section 3 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) ("the Ordinance"). It also summarizes the views and concerns expressed by members of the Panel on Economic Development ("the Panel") on related issues.

**Background**

International Convention for the Prevention of Pollution from Ships

2. The International Convention for the Prevention of Pollution from Ships ("MARPOL") was adopted by the International Maritime Organization ("IMO") to stipulate regulations aimed at preventing and minimizing pollution from ships.

3. Annex V to MARPOL, which entered into force in 1988, deals with the prevention of pollution caused by the disposal of different types of garbage. It completely bans the disposal of all forms of plastics into the sea and specifies the distances from land and the manner in which certain types of garbage may be disposed of.

4. IMO makes revisions to the MARPOL Annexes from time to time. All ocean-going vessels ("OGVs") have to comply with the MARPOL requirements as and when they come into effect, or else they may be denied from entering ports of members of IMO. According to the Administration, OGVs registered in Hong Kong so far have no problems with compliance. As an associate member of IMO and to maintain Hong Kong's status as an international maritime centre, it is necessary to keep local legislation aligned with the latest standards in MARPOL.

#### Local legislation

5. MARPOL Annex V has been implemented in Hong Kong through the existing Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap. 413J) ("the old Garbage Regulation") which governs the discharge of garbage from ships<sup>1</sup> within Hong Kong waters as well as from Hong Kong ships<sup>2</sup> wherever they are. "Garbage" is defined to mean "all kinds of victual, domestic or operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except sewage originating from ships". More stringent discharge requirements are imposed on waters within the Special Areas, which are areas designated by IMO for higher level of protection due to their oceanographic and ecological importance<sup>3</sup>. Discharge of garbage from a ship into the sea within a Special Area is prohibited except for food wastes, which are to be discharged at not less than 12 nautical miles from the nearest land<sup>4</sup>. Discharge of garbage other than plastics is permitted for waters outside the Special Areas subject to distance requirements from the nearest land. Since the "nearest land" of China is already beyond Hong Kong waters, practically the discharge of all garbage from ships into Hong Kong waters is prohibited under the old Garbage Regulation.

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<sup>1</sup> Subject to section 2(2) of the old Garbage Regulation.

<sup>2</sup> "Hong Kong ship" means (a) a ship registered in Hong Kong; and (b) a vessel required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

<sup>3</sup> Special Areas designated under MARPOL Annex V include the Mediterranean Sea, Baltic Sea, Black Sea, Red Sea, "Gulfs" Area, North Sea, the Antarctic Area, and the Wider Caribbean Region including the Gulf of Mexico and the Caribbean Sea.

<sup>4</sup> "Nearest land" means, in general, the baseline from which the territorial sea of the territory in question is established in accordance with international law. On this basis, for China, the "nearest land" is beyond Hong Kong waters.

6. IMO has introduced substantial amendments to MARPOL Annex V by virtue of Resolution MEPC.201(62) which came into effect on 1 January 2013. In view of the significant changes made to both the structure and requirements of MARPOL Annex V, the Administration has repealed the old Garbage Regulation and substituted it with the new Garbage Regulation for the implementation of the latest version of MARPOL Annex V in Hong Kong. The new Garbage Regulation will come into operation on 1 July 2015.

7. The key changes include the following –

- (a) the definition of "garbage" is amended to include nine categories of substances generated during the normal operation of ships (or discharged from fixed or floating platforms located at sea), i.e. food wastes, domestic wastes, operational wastes, all plastics, cargo residues, incinerator ashes, cooking oil, fishing gear and animal carcasses. Separate definition is provided for each of the nine categories;
- (b) the discharge requirements of garbage from ships (or fixed or floating platforms located at sea) into the sea are tightened by prohibiting discharge of additional categories of garbage outside or within Special Areas; and
- (c) new requirements for –
  - (i) every ship of 12 metres or more in length overall to display a placard to notify the crew and passengers of the applicable discharge requirements;
  - (ii) every ship of 100 gross tonnage ("GT") or above, and every ship certified to carry 15 or more persons, to carry a Garbage Management Plan ("GMP") which sets out procedures for minimizing, collecting, storing, processing and discharge of garbage; and
  - (iii) every ship of 400 GT or above, and every ship certified to carry 15 or more persons engaged in voyage (except where the voyage is of one hour or less in duration), to keep a Garbage Record Book ("GRB"), .

8. Section 3A of the Ordinance allows for the application of "direct reference approach" ("DRA") in its regulations for the purpose of giving effect to provisions of international agreements applicable to Hong Kong. DRA means making direct reference to provisions under international agreements in local legislation so as to apply those provisions locally. According to the Administration, DRA enables timely implementation of international requirements that are technical in nature and are commonly applied in other jurisdictions across the world. Further, if Hong Kong ships cannot comply with those requirements, they may be denied entry to other ports. However, DRA may not be appropriate for implementing all requirements under international agreements. When adopting this approach, various factors as set out in paragraph 9 of the Legislative Council Brief (File Ref: THB(1)PML 8/10/90/8) ("LegCo Brief") have been taken into account. Annex C to the LegCo Brief contains the provisions of the new Garbage Regulation, being reviewed against the aforesaid factors, that have been identified to be suitable for the application of DRA.

### **The Subcommittee**

9. At the House Committee meeting held on 17 April 2015, members agreed that a subcommittee should be formed to study the two pieces of subsidiary legislation in detail. The membership list of the Subcommittee is in **the Appendix**.

10. Under the chairmanship of Hon Cyd HO Sau-lan, the Subcommittee held three meetings, including a meeting to receive views from three deputations, viz. Living Islands Movement, Living Lamma and WWF-Hong Kong. Members also noted the submission from Eco Marine.

11. To allow more time for the Subcommittee to scrutinize the subsidiary legislation and prepare its report for the House Committee, it was scheduled for the Chairman to move a resolution at the Council meeting of 13 May 2015 to extend the scrutiny period of the two pieces of subsidiary legislation to the Council meeting of 3 June 2015. However, the Council sitting of 13 May 2015 was unable to deal with the motion to extend the scrutiny period, the 28-day period for amending the two pieces of subsidiary legislation according to the negative vetting procedure as specified in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) expired at the Council sitting of 13 May 2015.

## **Deliberations of the Subcommittee**

### *Amendment of the definition of "garbage"*

12. The Subcommittee has been advised by the Administration that operators of Hong Kong ships should have no problem in complying with the new Garbage Regulation in respect of discharge of garbage. For instance, the cleaning agents and additives (contained in cargo hold wash water, deck wash water or external surfaces wash water) available in the market for use by ships have proper certification and descriptions specifying whether they contained substances classified as Harmful to the Marine Environment ("HME") as required under MARPOL Annex V. Nevertheless, the Administration has undertaken to step up publicity about the said cleaning agents and additives.

### *New requirements for placard, GMP and GRB*

13. Members have taken note that IMO had issued guidelines to provide direction for relevant ships to comply with the requirements for –

- (a) GMP, including the procedures for garbage collection, processing and transportation from the source of generation to the reception facility; and
- (b) GRB, i.e. entry for each discharge of garbage into the sea or to a reception facility and each completed incineration should include the date and time of the discharge/incineration, position of the ship, category of the garbage and the estimated amount of garbage discharged/incinerated.

14. Members have requested the Marine Department ("MD") to provide early assistance to the affected ship operators to enable them to comply with the requirements under the new Garbage Regulation. According to MD, to facilitate the industry's compliance, it has prepared some standard templates of placard for the usage of some 5 800 relevant Hong Kong ships and different kinds of GMP samples for the reference of some 4 400 Hong Kong ships concerned. MD also undertakes to issue guidelines and if necessary, arrange seminars to brief masters and crew members of over 700 ships (including river trade and local fishing vessels) in respect of the keeping of GRB.

15. On enforcement, MD has explained that it has to conduct random inspections of 5% of all non-local ships calling Hong Kong on, inter alia, the requirements of the new Garbage Regulation. It is expected that OGVs will not have difficulties in complying with these new requirements which are already in place at international ports. In addition to OGVs, MD will enforce the new requirements for all local vessels during annual surveys.

*Marine littering/dumping*

16. Some members have expressed grave concern about littering/dumping of refuse into the waters of Hong Kong as large volume of refuse have been found at beaches in Southern Lantau. They cautioned that such illegal activities are particularly serious from the Mainland ships at nights and enforcement actions should be stepped up to tackle the problem.

17. The Administration has advised that the new Garbage Regulation aims to govern the discharge of garbage from ships during their normal operation, whereas section 4D of the Summary Offences Ordinance (Cap. 228) ("SOO") stipulates that, among other things, it is an offence for any person who without lawful authority or excuse deposited or caused or permitted to be deposited any litter into the waters of Hong Kong or in any place (not being a place in respect of which management or control is vested in a public officer or public body) from which it is likely that the litter will be swept by the tide into the waters of Hong Kong. Further, according to the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) ("FP(PCO)O"), marine littering under section 4D(1) of SOO is one of the scheduled offences for which a fixed penalty is to be payable by the person who is given a notice under section 3(1) of FP(PCO)O. While it is difficult to enforce against illegal discharge of garbage at nights, MD will step up patrols and conduct special operations against marine littering. In 2014<sup>5</sup>, there were 10 cases of fixed penalty and one summons action for unlawful deposit of marine litter made under SOO.

18. Members further note that MD has outsourced the marine cleansing services, including marine refuse scavenging and collection of domestic refuse from local vessels and OGVs. The contractor deploys

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<sup>5</sup> Please refer to LC Paper No. CB(4)1043/14-15(01) for corresponding figures in 2012 and 2013.

about 70 vessels<sup>6</sup>, including three Sea Cleaner Class marine refuse scavenging vessels chartered by the Government, to perform marine scavenging service on a daily basis from about 0830 hours to about 1800 hours throughout the year. Besides, the contractor also operates two foreshore cleansing team to clean up areas at foreshore shallow waters and below tidal water line. Under the cleansing services, about 15 000 tonnes of refuse are collected each year, with some 11 000 tonnes of floating refuse, over 2 000 tonnes of refuse from local vessels and over 1 000 tonnes of refuse from OGVs in 2014.

19. Some members have observed that the contractors or their staff on wooden boats are using net scoopers to collect floating refuse. Members urge MD to source contractor services using modern equipment such as mechanical scooping device fitted on ships, and to engage the tertiary sector to design and develop advanced equipment to improve the efficiency of cleaning marine refuse. The Administration should also install closed circuit television or other advanced surveillance cameras at some black spots to curb illegal marine dumping activities. A member points out that the Administration could also gauge the trade to identify the black spots.

20. In reply to members' enquiry, the Administration has advised that the Government Surveyors are responsible for enforcing the Garbage Regulations whereas Marine Officers and Marine Inspectors are tasked to enforce SOO and FP(PCO)O against persons committing offences on marine littering. MD's Harbour Patrol Section operates 25 patrol boats enforcing marine legislation at various districts, six of which performing round-the-clock duty. Moreover, MD's Pollution Control Unit also conducts daily patrol in Hong Kong waters to inspect the cleanliness condition of various zones of Hong Kong waters, monitor the contractor's performance according to the sea cleanliness index<sup>7</sup> and conduct enforcement action against marine littering. Special operations at marine littering black spots, such as promenades and typhoon shelters, are conducted regularly and particularly during weekends and public holidays.

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<sup>6</sup> Please refer to LC Paper No. CB(4)1043/14-15(01) for various types of scavenging vessels provided by MD's marine cleansing contractor, with photos at Annex 2.

<sup>7</sup> Please refer to Annex 3 of LC Paper No. CB(4)1043/14-15(01) on standards in marine refuse cleansing and disposal services.

21. The Subcommittee has noted that collection of marine refuse is undertaken by four government departments: gazetted beaches by Leisure and Cultural Services Department, marine parks and marine reserve by Agriculture, Fisheries and Conservation Department, unallocated coastal area by Food and Environmental Hygiene Department, and coastal waters/open waters/typhoon shelters by MD. To enhance the coordination among the relevant government departments in addressing the marine refuse problem, an Inter-departmental Working Group on Clean Shorelines ("WG") under the coordination of the Environment Bureau was established in November 2012. In support of the WG, a study was commissioned and conducted to collect, collate and analyze up-to-date information on the sources, distribution and movement of marine refuse in Hong Kong waters and to suggest measures to further improve the cleanliness of the shorelines.

22. According to the report of the study entitled "Investigation on the Sources and Fates of Marine Refuse in Hong Kong" ("the Study Report") issued in April 2015, over 80% of marine refuse in Hong Kong waters originates from land-based sources, with shoreline and recreational activities being the predominant sources. A member disagrees and considers that marine refuse is mainly due to marine dumping. Deputations echo that refuse found at beaches comes from the sea and originates from ships, with some of them dumped by government contractors. They have urged the Administration to step up publicity and education to encourage the public to produce less refuse while forming good habits in disposing them instead of just leaving them behind at the beaches. The green groups also called on the Administration to work with community groups to enhance the effectiveness of its work on publicity as well as refuse collection. MD responded that its contractor has been dispatching garbage bags to local vessels in typhoon shelters. Moreover, MD frequently works with other government departments and non-government organizations to organize promotion activities, such as publicizing the message of keeping typhoon shelters clean to fishermen organizations during the periods of Lunar New Year and fish moratorium. They also visit yacht clubs, fish markets, marine works sites, mariculture farms and anchorages to publicize the message of keeping the sea clean to the person-in-charge of the vessels and workers in these places, and to remind them to properly dispose of refuse generated from their operations and avoid dumping refuse into the sea. In this connection, to facilitate enforcement, MD will also educate the public on ways to identify ships involved in marine littering/dumping.



*Way forward*

23. Members have noted the Administration's advice that section 4D of SOO provides that it is an offence for "any person who without lawful authority or excuse deposited or caused or permitted to be deposited any litter into the waters of Hong Kong or in any place (not being a place in respect of which management or control is vested in a public officer or public body)". It does not provide an express provision to require foam plastic boxes left idle in the fish market to be fastened. These plastic boxes might be brought into the sea by wind. Members consider that there might be a loophole and urged the Administration to review the legislation to plug the loophole. The Transport and Housing Bureau undertakes to refer the matter for relevant bureau's follow-up.

24. At its meeting on 26 May 2015, the Subcommittee has noted that the Study Report would be considered by the Panel on Environmental Affairs ("EA Panel") at the meeting on 22 June 2015. Members have urged the Administration to provide at the said EA Panel meeting concrete solutions to tackle the problems identified in the Study Report. They also requested the relevant government departments to work closely with the green and community groups in respect of collection of marine refuse.

**Advice sought**

25. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4  
Legislative Council Secretariat  
2 July 2015

**Subcommittee on Merchant Shipping (Prevention of Pollution by Garbage)  
Regulation and Merchant Shipping (Prevention of Pollution by Garbage)  
Regulation (Repeal) Regulation**

**Membership list**

**Chairman** Hon Cyd HO Sau-lan, JP

**Members** Hon Albert CHAN Wai-yip  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
Hon WU Chi-wai, MH  
Dr Hon Kenneth CHAN Ka-lok  
Hon SIN Chung-kai, SBS, JP  
Hon TANG Ka-piu, JP

(Total : 8 members)

**Clerk** Ms Debbie YAU

**Legal Adviser** Miss Evelyn LEE