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

**Background brief**

**Purpose**

This paper provides information on the background of a new set of Merchant Shipping (Prevention of Pollution by Garbage) ("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. 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 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 other types of garbage may be disposed of.
4. IMO makes revisions to the MARPOL Annexes from time to time. All ocean-going vessels have to comply with the MARPOL requirements as and

when they come into effect, or else they may be denied from entering international ports. According to the Administration, Hong Kong registered ships engaged in international voyage 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 existing Garbage Regulation") which governs the discharge of garbage from ships within Hong Kong waters as well as Hong Kong ships 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>1</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>2</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 existing Garbage Regulation.

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, the Administration has repealed the existing Garbage Regulation and substituted it with the new Garbage Regulation for the implementation of the latest version of MARPOL Annex V in Hong Kong.

7. The key changes include the following –

(a) the definition of "garbage" is expanded to include nine categories of

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<sup>1</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>2</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.

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 definitions will be provided for each of the nine categories;

- (b) the discharge requirements of garbage from ships (or fixed or floating platforms located at sea) are tightened by prohibiting discharge of additional categories of garbage outside or within Special Areas; and
- (c) new requirements for displaying placard of the applicable discharge requirements, carrying a Garbage Management Plan and keeping a Garbage Record Book etc by certain types of ships (or fixed or floating platforms located at sea).

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. DRA enables timely implementation of international requirements that are technical in nature and are commonly applied in other jurisdictions across the world. 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") must be 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 Regulations**

### The new Garbage Regulation

9. The new Garbage Regulation seeks to implement the latest requirements of MAPROL Annex V. The main provisions are set out below –

- (a) Part 2 sets out the prohibitions on discharge of garbage from ships, and the exceptions to the prohibitions. It also sets out special requirements on ships operating in the Antarctic area.

- (b) Part 3 sets out requirements imposed on ships, in particular, the requirements to display placards, and maintain a Garbage Management Plan and a Garbage Record Book.
- (c) Part 4 contains provisions to —
  - (i) empower the Director of Marine to grant exemption;
  - (ii) deal with the appointment and powers of Government surveyors.
- (d) Part 5 provides for offences, penalties and defences.

### The Repeal Regulation

10. The Repeal Regulation repeals the existing Garbage Regulation in view of the making of the new Garbage Regulation.

11. Both the new Garbage Regulation and the Repeal Regulation come into operation on 1 July 2015.

### **Panel discussions**

12. At the meeting of the Panel on 16 December 2014, the Administration consulted members on the proposed amendments to the existing Garbage Regulation. Noting that the proposed amendments would apply to all ships within Hong Kong waters and all Hong Kong ships wherever they were, some members suggested that the Administration should carry out early and wide publicity on the proposed amendments. In particular, the fishing trade should be well informed about the requirement of displaying placards to notify the crew and passengers of the applicable disposal requirements imposed on ships of 12 metres or more in length overall. The Administration took note of the suggestion.

### **Latest position**

13. At the meeting of the House Committee on 17 April 2015, Members agreed to form a subcommittee to study the two Regulations.

## List of relevant papers

| <b>Issued by</b>                    | <b>Meeting date/<br/>Issue date</b> | <b>Paper</b>  |
|-------------------------------------|-------------------------------------|---|
| Panel on Economic Development       | 16 December 2014                    | <a href="#">Agenda</a><br><a href="#">Minutes</a><br><a href="#">Background brief</a><br><a href="#">Information paper issued by the Administration</a> |
| Transport and Housing Bureau        | 8 April 2015                        | <a href="#">Legislative Council brief</a>   |
| Legislative Council Secretariat     | 16 April 2015                       | <a href="#">Legal Service Division Report</a>   |
| International Maritime Organization | --                                  | <a href="#">MARPOL Annexes</a><br>(English version only)  |