

LEGISLATIVE COUNCIL BRIEF

PROTECTION OF THE HARBOUR (AMENDMENT) BILL 2024

INTRODUCTION

At the meeting of the Executive Council on 26 November 2024, the Council ADVISED and the Chief Executive ORDERED that the Protection of the Harbour (Amendment) Bill 2024 (“the Bill”) at **Annex A** should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

2. The Protection of the Harbour Ordinance (Chapter 531) (“PHO”) was enacted in June 1997 based on a Private Member’s Bill and consists of only four sections (**Annex B**). While the principle of protecting the harbour¹ “against excessive reclamation”² should be upheld, the PHO lacks operational details. Further, as held in two judgments in 2004 and 2008 following judicial review (“JR”) challenges, the rigid and stringent threshold for rebutting the “presumption against reclamation” stipulated under the PHO (“the Presumption”) indiscriminately covers all harbour reclamations across the board, even if they only involve small-scale or non-permanent reclamations. For the five reclamation projects in the harbour implemented since the said court judgments (**Annex C**), one was a boardwalk along the eastern coastal area of Hong Kong Island and some were temporary reclamations. While the boardwalk is intended to enhance public enjoyment of the harbourfront and temporary reclamation will not cause irreversible damage to the harbour upon reinstatement, both still had to go

¹ “Harbour” as defined in the Interpretation and General Clauses Ordinance (Chapter 1) means the waters of Hong Kong within the boundaries specified in Schedule 3 thereto. To facilitate understanding, a map showing the boundaries of the harbour as defined in that Schedule is at **Annex B**. We recommend maintaining the geographical scope of the harbour.

² According to the explanatory memorandum to the Protection of the Harbour Bill, the purpose of the Bill was “to ensure that Victoria Harbour will be protected against excessive reclamation”.

through an onerous process, involving disproportional efforts by the relevant departments, to show that they can fulfil the “overriding public need” test to rebut the Presumption. The scale and design of the boardwalk project had also been adjusted from what it would have ideally been, merely for the purpose of managing the JR risks. Moreover, notwithstanding the community’s rising aspiration for a more connected and vibrant harbour, some potential enhancement projects (e.g. landing steps improvement, pier enhancement) have to be given up altogether in view of the disproportionate work and time required to tackle the PHO implications.

3. The restrictive regime under the PHO is not conducive to the delivery of the vision shared by the Government, the Harbourfront Commission (“HC”) and the community in creating an attractive, vibrant, accessible and sustainable harbour of vitality for the people and the visitors. The stumbling effect is increasingly acute as promenades on both sides of the Victoria Harbour are taking shape, and the community has aspired for better facilities and experiences along the harbourfront.

4. While reaffirming that the Government has no plan to initiate large-scale harbour reclamation to form land for housing, commercial or industrial developments, we have engaged the community in discussion since 2023 on how best the PHO should be amended to better serve the community. Our proposed amendments are along two main directions, namely –

- (a) other than harbour enhancement reclamations and harbour non-permanent reclamations to be exempt from the Presumption and dealt with under a streamlined mechanism as set out under (b) below, all harbour reclamations will continue to be subject to the stringent Presumption and a new formalised mechanism will be introduced to regulate such reclamations to enhance certainty and transparency; and
- (b) small-scale reclamations for the purpose of harbourfront enhancement or harbour non-permanent reclamations meeting certain criteria may be pursued according to streamlined procedures involving the granting of exemption by the Financial Secretary (“FS”) for such reclamations from the Presumption.

The above proposals were generally positively received during the five-month public engagement exercise ended in August 2023. The LegCo

Panel on Development and HC were each consulted twice in March 2023 and June 2024 respectively. The proposals met with cross-party support from the LegCo while most HC members were supportive. The proposals also received generally positive feedback from the media. The legislative proposals presented in this brief have been finalised taking into account comments received.

Providing a clearer mechanism for regulating reclamations in the Victoria Harbour

5. The two court judgments in 2004 and 2008 have shaped the implementation of the PHO over the past two decades. In supplementing how the PHO should operate, the 2004 judgment provides that the Presumption could be rebutted by establishing an “overriding public need” for reclamation. The “overriding public need” test involves considerations as to whether – (i) the need is compelling and present; (ii) there is no reasonable alternative to reclamation; and (iii) the extent of reclamation is minimal. The court further held that there must be cogent and convincing materials (“CCM”) to justify that there is an overriding public need to rebut the Presumption. However, the judgment does not specify a standardised assessment mechanism (e.g. details regarding the preparation, publication, consultation or further submission of the CCM to a higher authority). In the absence of a clear mechanism, the initiating departments would have to bear an undue burden in conducting the relevant assessment and assessing whether the Presumption could be rebutted, bearing in mind the possibility of legal challenges.

6. Under the proposed amendments, harbour reclamations (except for those exempt from the Presumption) will continue to be subject to the stringent threshold for rebutting the Presumption. For these harbour reclamations not exempt from the Presumption, specific amendments include –

- (a) incorporation of the three considerations in the 2004 judgment for rebutting the Presumption; and
- (b) introduction of a new formalised mechanism to guide the preparation of an “*Overriding Public Need Assessment Report*” (“OPNA report”) by relevant public officers, known as “*specified officers*” (“SOs”) in the Bill, which is similar to the CCM prepared

by an initiating department³; publication of the OPNA report for public comments; submission of the OPNA report and comments received to CE-in-C; and CE-in-C to determine whether the Presumption is rebutted. Clear statutory time periods governing the public inspection on the OPNA report and the submission for CE-in-C's consideration will be set out in the PHO, giving certainty in the timeframe of the process as well as aligning with the "2+5" statutory time period under various development-related procedures such as those under the Town Planning Ordinance (Chapter 131). In terms of public participation, apart from receiving public comments during the 60-day period, SOs should continue the established administrative arrangements of consulting key stakeholders, including the HC, District Councils ("DCs") and other stakeholders to collate views on the need for reclamation.

Streamlining the mechanisms for harbour enhancement reclamations ("HERs") and harbour non-permanent reclamations ("NPRs")

7. To address the problem of PHO's indiscriminate application to reclamations of all kinds in the harbour, we propose that the regulation and assessment of HERs and NPRs should be suitably streamlined.

(a) Harbour enhancement reclamations

8. Under a streamlined process pursuant to the proposed amendments, FS may grant exemption from the Presumption to HERs, provided that they are harbour reclamations for construction (including addition and alteration) of any of the structures, features or devices to be set out in a new Schedule to the PHO, and the total area of the harbour occupied underwater or covered at or above water surface, whichever is the largest, by the structure, feature or device constructed in the harbour, does not exceed the statutory limit of 0.8 hectare ("ha")⁴. The proposed mechanism applies to HERs initiated by both government departments and private/ non-governmental organizations.

³ If a project involving harbour reclamations (except for those exempt from the Presumption) is proposed by a private or non-governmental organization (e.g. the Urban Renewal Authority), relevant requirements under the proposed mechanism (e.g. submission of the OPNA report to the Chief Executive in Council ("CE-in-C")) should be fulfilled through the SOs.

⁴ Having reviewed existing and potential harbour enhancement facilities, which encompass works of various nature and size, it is considered that the proposed ceiling of 0.8 ha could generally cover these works.

As an administrative requirement, comments from the HC, relevant DC(s) and stakeholders will be included in the applications for FS' consideration. The list set out in the new Schedule is compiled based on experiences and observations in developing harbourfront and in consultation with relevant government departments and trades. Works under these categories normally lead to insignificant change to the harbour but can positively respond to public needs. The Schedule may be amended by subsidiary legislation subject to negative vetting procedure to reflect changes with time. The list of items to be included in the Schedule, which is reproduced below, has received general support from the respondents of public engagement exercise, with promenade/ boardwalk, cycle track, viewing deck and harbour steps receiving the most support.

List of harbour enhancement works in Schedule to PHO

1. Promenade and boardwalk
2. Cycle track
3. Harbour pool
4. Viewing deck
5. Ramp
6. Mooring
7. Breakwater
8. Seawall
9. Hanger, crane and hardstand for ship repair
10. Wave absorption structure
11. Facility for the operation of typhoon shelter or sheltered anchorage
12. Water supplies, bunkering or battery charging facility for supporting marine operations
13. Device for mitigating extreme climate risks
14. An item specified in the Schedule to the Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127), including pier, landing steps, harbour steps, etc.⁵

⁵ Under the Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127), the Director of Lands may authorize any minor works over and upon any foreshore and sea-bed to construct any one or more of the items specified in the Schedule. The items specified in the said Schedule are (1) Pier; (2) Landing steps; (3) Harbour steps; (4) Slipway; (5) Mooring dolphin; (6) Beacon; (7) Floating pontoon; (8) Submarine pipeline or outfall; (9) Diffuser for open sea discharge; (10) Seawater intake; and (11) Peripheral structure or feature associated with a marine structure.

(b) Harbour non-permanent reclamations

9. Under the proposed amendments, FS may exempt NPR from the Presumption if the area of the harbour occupied underwater or covered at or above water surface, whichever is the largest, by the land formed in the harbour by the NPR at any time during the NPR will not be more than three ha and the expected total duration of NPR does not exceed seven years⁶. As an administrative requirement, comments from the HC, relevant DC(s) and stakeholders will be included in the application for FS' consideration. Upon granting an exemption from the Presumption to an NPR, FS must specify a period not exceeding seven years beginning on the intended starting date of the NPR concerned. The exemption granted will expire at the end of such period unless the period is extended. SOs may apply to FS for extension(s) and FS may not grant an extension unless FS is satisfied, amongst others, that the aggregate duration of the period originally specified and any extension(s) granted would not exceed eight years. To strengthen the monitoring of the progress of NPR and to enable early awareness and intervention by the Administration, we will introduce a statutory requirement for the submission of annual progress reports from the SO to FS. Similar to HERs, the proposed mechanism applies to NPRs initiated by both government departments and private/ non-governmental organizations.

Clarifying that the principle of “protection and preservation” is no longer a separate principle under section 3(1)

10. Opportunity is taken to revise section 3(1) of the PHO to clarify that “protecting and preserving of the harbour as a special public asset and a natural heritage of Hong Kong people” is the purpose of imposing the Presumption. Moreover, to improve clarity of the definition of “reclamation” which means “any works carried out or intended to be carried out for the purpose of forming land from the sea-bed or foreshore”, we would add a definition of the term “sea-bed or foreshore” in the PHO following the similar definition in the Foreshore and Sea-bed (Reclamations) Ordinance

⁶ The statutory limit in area is proposed with reference to the “Central Kowloon Route” project. The harbour area affected at any given time by that project is at most two ha. As regards the duration, it is noted that temporary reclamation works in the “Sha Tin to Central Link” project and “Central-Wan Chai Bypass” project respectively required around 6.7 years and six years to complete. The statutory limit of seven years is proposed based on the above references.

(Chapter 127)⁷. The combined effect of the above amendments is that, works for constructing any structure which do not involve forming land from the bed or shore of the sea and of any tidal water within Hong Kong below the line of high water mark, whether it will be protruded to the harbour or not, will not be “reclamation” as defined in the amended PHO and will not be caught by the amended PHO. We believe these amendments better reflect the original intention of the PHO to regulate reclamations in the Victoria Harbour. To illustrate, floating pontoons that do not involve reclamation in that they are not formed from the sea-bed or foreshore, or cantilever structure which merely puts its shadow on the harbour and does not constitute reclamation as defined in the PHO, will not be caught by the amended PHO. As regards works for repairing, maintaining and demolishing structures (e.g. pier), since they will not be “reclamation” as defined in the PHO if they are not for the purpose of forming land, they are not subject to the Presumption and do not require an exemption to be granted by FS.

11. To facilitate understanding of the proposed new mechanisms, a flowchart summarizing the key actions is set out at **Annex D**. To complement the operation of the Bill, we will issue a technical circular on an administrative basis setting out the detailed procedures for public officers and public bodies to follow when handling harbour reclamations.

12. In the unlikely event of non-compliance with certain conditions or requirements, FS may suspend or revoke the exemption; and FS may give an appropriate direction to the SO if an exemption is suspended, revoked or expired.

Harbour enhancement works that may benefit

13. The proposed amendments would provide greater flexibility in taking forward HERs. To illustrate the works that may benefit after the PHO is amended, we have provided a few examples of projects that may be taken forward at **Annex E**. There have been strong calls in the community for such works to be undertaken to enhance connectivity and vibrancy of the harbourfront area.

⁷ In the Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127), “foreshore and sea-bed” means the shore and bed of the sea and of any tidal water within Hong Kong, below the line of the high water mark.

OTHER OPTIONS

14. The proposed amendments have to be effected by legislative means. There is no alternative option.

THE BILL

15. The main provisions of the Bill are summarised as follows –

- (a) to provide that the purpose of the PHO is to protect and preserve the harbour as a special public asset and a natural heritage of the Hong Kong people by regulating harbour reclamations;
- (b) to add certain new definitions for the interpretation of the PHO as amended by the Bill;
- (c) to provide for the role of an SO in handling private projects and the delegation arrangement —
 - i. an SO for a harbour reclamation may act under the PHO in relation to the reclamation even though the reclamation may be proposed to be carried out by another person; and
 - ii. an SO for a harbour reclamation may authorize a public officer to exercise or perform any of the powers or duties conferred or imposed on the SO under the PHO;
- (d) to revise the application of the Presumption and to provide for the criteria for rebutting the Presumption. In gist, an SO of a harbour reclamation may not propose or carry out the reclamation unless —
 - i. CE-in-C determines that the Presumption is rebutted for the reclamation; or
 - ii. the reclamation is exempt from the Presumption under the PHO;
- (e) to add a new **Part 3** to introduce a mechanism for CE-in-C to determine whether the Presumption is rebutted for a harbour reclamation, including the preparation and submission of an

OPNA report;

- (f) to add a new **Part 4** to provide for exemptions of HER and NPR from the Presumption. In particular—
 - i. **Division 2** of the new Part 4 provides for the application for, and the grant of, an exemption of HER from the Presumption (“HER exemption”);
 - ii. **Division 3** of the new Part 4 provides for the application for, and the grant of, an exemption of NPR from the Presumption (“NPR exemption”), and also provides for certain requirements and procedures following the grant of an NPR exemption, such as the notification of the starting date of the NPR, the submission of progress reports of the NPR and the extension of the period within which the NPR may be carried out;
 - iii. **Division 4** of the new Part 4 provides for supplementary provisions for an HER exemption or an NPR exemption to deal with —
 - (A) the non-compliance with certain conditions or requirements;
 - (B) the effect of suspension of an HER exemption or an NPR exemption;
 - (C) the expiry of an NPR exemption; and
 - (D) the requirements following a suspension, revocation or expiry;
- (g) to add a new **Part 5** to provide for miscellaneous matters, such as delegation of powers or duties and amendment of new Schedule 2;
- (h) to provide for the transitional arrangement relating to the Bill; and
- (i) to add a new **Schedule 2** to set out the structures, features and devices for the new definition of harbour enhancement works.

The existing provisions being amended are at **Annex F**.

LEGISLATIVE TIMETABLE

16. The legislative timetable will be as follows –

Publication in the Gazette

6 December 2024

First Reading and commencement of the Second Reading Debate 11 December 2024

Resumption of Second Reading debate, committee stage and Third Reading To be notified

IMPLICATIONS OF THE PROPOSALS

17. The proposals will provide greater flexibility under the PHO regime in exploring potential options to resolve pain points in harbourfront connectivity and address the inadequacy in harbourfront facilities, which is critical for achieving a breakthrough in harbourfront development in the long term. For instance, with the concerted efforts of relevant bureaux and departments in recent years, most developable promenades have been opened or will be opened by 2028. However, there remain certain sections in the harbour which could hardly be connected, because the relevant waterfront areas are occupied by facilities or developed with private residential premises or commercial blocks. While we will continue to explore non-reclamation options to connect and enhance the various areas, should such options be proved not feasible in the end, the possibility of connecting promenade with small-scale reclamation (e.g. by construction of boardwalk) will be viable only after the stringent statutory requirement of the PHO is suitably amended.

18. The proposals will have financial and civil service, economic, environmental and sustainability implications, as detailed at **Annex G**.

19. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. They have no productivity, family or gender implications. Implementation of the proposals will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

20. The Development Bureau (“DEVB”) briefed the LegCo Panel on Development and the HC on the proposed framework of legislative amendments on 28 March 2023 and 31 March 2023 respectively. Thereafter, DEVB conducted a five-month public engagement exercise which ended in August 2023. During the public engagement period, various stakeholders, including professional bodies, water-based activities organisations, fishermen’s organisations, users with operations/activities in the harbour, DCs, local representatives and members of the general public were engaged. Views and suggestions were received via a series of public engagement activities (including six town hall sessions and onsite surveys at four designated harbourfront sites) and via an online views collection form, email, post or fax. Taking account of the comments received, DEVB briefed the LegCo Panel on Development and the HC on the fine-tuned legislative amendment proposals on 25 June 2024 and 26 June 2024 respectively.

21. The legislative amendment proposals received cross-party support from the LegCo and majority support from the HC, with some tendering suggestions on the details of the proposals. The public was also generally supportive of the proposed legislative framework. We have refined some of our proposals in the light of valid concerns, such as adjusting the statutory limit in duration for NPRs.

PUBLICITY

22. A press release will be issued and a spokesperson will be available to answer enquiries.

ENQUIRIES

23. Enquiries relating to this brief can be addressed to Commissioner for Harbourfront of DEVB, Ms Leonie LEE at 3468 4015.

BACKGROUND

24. Reclamations within Hong Kong waters may be authorized or directed under the Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127), Roads (Works, Use and Compensation) Ordinance (Chapter

370) and Railways Ordinance (Chapter 519). If the reclamation takes place within the Victoria Harbour, it will be subject to the additional controls under the PHO.

25. The PHO was enacted on 27 June 1997 on the passage of a Private Member's Bill submitted by the Hon Christine LOH, a LegCo member at the time. While the application of the PHO was initially limited to the central part of the harbour, further legislative amendments were made in December 1999 to expand its scope to cover the whole of the harbour. With only four sections, the implementation of the PHO over the past two decades had been mainly shaped by two court judgments in 2004 and 2008 respectively.

26. As one of the policy measures announced in the Chief Executive's 2021 Policy Address, the Government undertook to review the PHO. The intention of the legislative amendments is to improve harbourfront connectivity, enhance harbourfront areas for public enjoyment, and strengthen harbour functions, and not for reclamation to provide land for sale or housing, commercial or industrial developments, etc. We have committed to introducing the Bill to amend the PHO within 2024, delivering a policy measure under the 2023 and 2024 Policy Addresses.

Development Bureau
5 December 2024

Protection of the Harbour (Amendment) Bill 2024

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A BILL

To

Amend the Protection of the Harbour Ordinance to introduce a mechanism to regulate reclamations in the harbour; to introduce a mechanism to determine whether the presumption against reclamation in the harbour is rebutted; to introduce a mechanism to exempt harbour enhancement reclamations and harbour non-permanent reclamations from that presumption; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Protection of the Harbour (Amendment) Ordinance 2024.

2. Protection of the Harbour Ordinance amended

The Protection of the Harbour Ordinance (Cap. 531) is amended as set out in sections 3 to 11.

3. Long title amended

The long title—

Repeal

everything after “preserve the harbour”

Substitute

“as a special public asset and a natural heritage of the Hong Kong people by regulating reclamations in the harbour.”

4. Part 1 heading added

Before section 1—

Add

“Part 1

Preliminary”.

5. Section 2 amended (interpretation)

(1) Section 2—

Repeal

“, unless the context otherwise requires”.

(2) Section 2, definition of *reclamation*—

Repeal

“(填海)”

Substitute

“(填海工程)”.

(3) Section 2, English text, definition of *relevant Ordinance*, paragraph (g)—

Repeal

“for reclamation.”

Substitute

“for reclamation;”.

(4) Section 2—

Add in alphabetical order

“*application for an HER exemption* (改善海港填海豁免申請) means an application for an HER exemption made under section 3J(1);

application for an NPR exemption (非永久填海豁免申請) means an application for an NPR exemption made under section 3M(1);

Financial Secretary (財政司司長) means the Financial Secretary of the Hong Kong Special Administrative Region;

harbour enhancement reclamation (改善海港填海工程) means a harbour reclamation for harbour enhancement works;

harbour enhancement works (改善海港工程) means the construction (including addition and alteration) in the harbour of any of the structures, features and devices set out in Schedule 2;

harbour non-permanent reclamation (海港非永久填海工程) means any works carried out, or intended to be carried out, in the harbour for temporarily forming from the sea-bed or foreshore any land that is intended to be subsequently removed from the sea-bed or foreshore;

harbour reclamation (海港填海工程) means a reclamation in the harbour;

HER exemption (改善海港填海豁免), in relation to a harbour enhancement reclamation, means an exemption of the reclamation from the presumption against reclamation;

NPR exemption (非永久填海豁免), in relation to a harbour non-permanent reclamation, means an exemption of the reclamation from the presumption against reclamation;

OPNA report (評估報告) means a report made under section 3B(1);

presumption against reclamation (不准填海推定) means the presumption against harbour reclamation under section 3(1);

sea-bed or foreshore (海床或前濱) means the bed or shore of the sea and of any tidal water within Hong Kong, below the line of the high water mark;

specified officer (指明人員) means—

- (a) in relation to a reclamation that may be proposed under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) or a reclamation that may be authorized under section 16A of that Ordinance—the Director of Lands;
- (b) in relation to a reclamation that may be directed under section 17 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370)—the Secretary for Transport and Logistics;
- (c) in relation to a reclamation that may be authorized under section 22 of the Railways Ordinance (Cap. 519)—the Secretary for Transport and Logistics; or
- (d) in relation to a reclamation that may be directed or authorized under or otherwise provided for in any other Ordinance—a public officer who may propose or carry out the reclamation under that Ordinance.”.

6. Section 2A added

After section 2—

Add

“2A. Assumption and delegation by specified officers

- (1) A specified officer for a harbour reclamation may act under this Ordinance in relation to the reclamation even though the reclamation may be proposed by the specified officer to be carried out by—
 - (a) a person who is not a public officer; or

(b) a public officer on the specified officer's behalf, and this Ordinance applies to the reclamation.

- (2) A specified officer may in writing authorize a public officer either generally or in any particular case to exercise or perform any of the powers or duties conferred or imposed on the specified officer under this Ordinance.”.

7. Part 2 heading added

Before section 3—

Add

“Part 2

Presumption against Harbour Reclamation”.

8. Section 3 amended (presumption against reclamation in the harbour)

- (1) Section 3, heading—

Repeal

“reclamation in the harbour”

Substitute

“harbour reclamation”.

- (2) Section 3(1)—

Repeal

everything before “a presumption”

Substitute

- “(1) For protecting and preserving the harbour as a special public asset and a natural heritage of the Hong Kong people, there is”.

- (3) Section 3(1), English text—

Repeal

“reclamation in the harbour”

Substitute

“harbour reclamation”.

- (4) Section 3—

Repeal subsection (2)

Substitute

- “(2) All public officers and public bodies must have regard to the presumption against reclamation for guidance in the exercise of any powers conferred on them, unless—

- (a) the powers conferred on them are exercised in respect of a harbour reclamation, and the Chief Executive in Council has determined under section 3H that the presumption against reclamation is rebutted for the reclamation;
- (b) the powers conferred on them are exercised under Part 4 in respect of a harbour reclamation; or
- (c) the powers conferred on them are exercised in respect of a harbour reclamation that is exempt under Part 4 from the presumption against reclamation.

- (3) Unless subsection (4) applies—

- (a) a specified officer for a harbour reclamation—
- (i) may not prepare, or authorize another person to prepare, a plan for the reclamation under

- section 3 of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127);
- (ii) may not submit, or authorize another person to submit, the reclamation or any objection under section 8(1) of that Ordinance;
 - (iii) if the reclamation is authorized under section 7 or 8 of that Ordinance—may not execute or authorize another person to execute the reclamation; or
 - (iv) if the reclamation is authorized under section 16A of that Ordinance—may not execute or authorize another person to execute the works involving the reclamation;
- (b) a specified officer for a harbour reclamation may not propose, or authorize another person to propose, any of the following powers to be exercised in respect of the reclamation—
- (i) a power under section 17(1)(b) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
 - (ii) a power under section 22(1)(b) of the Railways Ordinance (Cap. 519);
 - (iii) a power under a provision, under which a reclamation may be directed or authorized or which provides for a reclamation, in any other Ordinance; and
- (c) a specified officer for a harbour reclamation may not carry out, or authorize another person to carry out, the reclamation that—

- (i) is directed under section 17 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
 - (ii) is authorized under section 22 of the Railways Ordinance (Cap. 519); or
 - (iii) is directed or authorized under or otherwise provided for in any other Ordinance.
- (4) For the purposes of subsection (3), this subsection applies if—
- (a) the Chief Executive in Council has determined under section 3H that the presumption against reclamation is rebutted for the harbour reclamation;
 - (b) the harbour reclamation is exempt under Part 4 from the presumption against reclamation; or
 - (c) the harbour reclamation is allowed to continue to be carried out under section 3Y(2)."

9. Provisions added

After section 3—

Add

"3A. Criteria for rebutting presumption against reclamation

The presumption against reclamation may only be rebutted for a harbour reclamation if—

- (a) there is an overriding public need for the reclamation and the need is compelling and present;
- (b) there is no reasonable alternative to the reclamation; and

- (c) the extent of the reclamation does not go beyond the minimum of that which is required by the overriding public need.

Part 3

Overriding Public Need Assessment

3B. OPNA report

- (1) A specified officer for a harbour reclamation may make a report that sets out an assessment as to whether the presumption against reclamation may be rebutted for the reclamation in accordance with section 3A.
- (2) An OPNA report—
 - (a) must be made in a form specified by the Secretary for Development; and
 - (b) must set out—
 - (i) the details of the reclamation; and
 - (ii) the assessment as to whether the presumption against reclamation may be rebutted for the reclamation in accordance with section 3A.

3C. Publication of OPNA report

- (1) As soon as practicable after an OPNA report is made by a specified officer, the specified officer must deposit and make available a copy of the report for inspection by the public free of charge at such offices of the Government as the specified officer may direct, during the hours when those offices are open to the public.
- (2) As soon as practicable after an amendment is made by a specified officer under section 3D, the specified officer

must deposit and make available a copy of the amended OPNA report (together with a statement containing a general description of the amendment) for inspection by the public free of charge at such offices of the Government as the specified officer may direct, during the hours when those offices are open to the public.

- (3) Within 21 days after the date on which a copy of an OPNA report or an amended OPNA report is deposited by a specified officer under subsection (1) or (2), the specified officer must publish a notice—
 - (a) in 2 issues of the Gazette in both the Chinese and English languages;
 - (b) on the website specified by the specified officer;
 - (c) in 2 issues of a Chinese language newspaper; and
 - (d) in 2 issues of an English language newspaper.
- (4) A notice under subsection (3) must contain—
 - (a) either—
 - (i) in the case of subsection (1)—a description of the general nature of the reclamation; or
 - (ii) in the case of subsection (2)—
 - (A) a general description of the amendment; and
 - (B) if the amendment involves a minor amendment under section 3D(2)—a statement identifying the minor amendment;
 - (b) a statement of where and when a copy of the OPNA report or the amended OPNA report (whichever is applicable) may be inspected; and

- (c) a statement that written comments may be given under section 3F.
- (5) Subsection (4)(c) does not apply to a notice under subsection (3) if the notice is published in relation to an amended OPNA report in which only minor amendments under section 3D(2) are made.

3D. Amendments to OPNA report

- (1) After an OPNA report is deposited by a specified officer under section 3C, the specified officer may at any time amend the report.
- (2) For the purposes of this Part, an amendment is a minor amendment if—
 - (a) it is intended to correct a clerical, typographical or calculation error, or an error of a similar nature, in the OPNA report; and
 - (b) it does not, in the specified officer's opinion, materially affect the assessment set out in the OPNA report.
- (3) An OPNA report may be amended under this section more than once.

3E. Withdrawal of OPNA report

- (1) Before a determination is made under section 3H(1) in respect of a harbour reclamation, a specified officer for the reclamation may, by a notice published in the manner set out in section 3C(3), withdraw an OPNA report or (if the report is amended) an amended OPNA report made by the specified officer.
- (2) Also, if—

- (a) a determination is made under section 3H(1) in respect of a harbour reclamation; and
- (b) subsequently, a specified officer for the reclamation makes an amendment under section 3D to the OPNA report in respect of the reclamation (*subsequent amendment*),
before another determination is made under section 3H(1) in respect of the reclamation, the specified officer may, by a notice published in the manner set out in section 3C(3), withdraw the amended OPNA report that contains the subsequent amendment.
- (3) On the publication of a notice under subsection (1) or (2)—
 - (a) the powers or rights set out in sections 3D, 3F, 3G and 3H are no longer exercisable in relation to the OPNA report or the amended OPNA report; and
 - (b) the duties set out in sections 3C and 3G are no longer required to be performed in relation to the OPNA report or the amended OPNA report.

3F. Public comments on OPNA report

- (1) If a notice is published under section 3C(3) in relation to an OPNA report, a person may, within 60 days after the first publication of the notice in the Gazette, give written comments on the report to the specified officer who makes the report.
- (2) If a notice is published under section 3C(3) in relation to an amended OPNA report, a person may, within 60 days after the first publication of the notice in the Gazette, give written comments on matters arising from the amendment made in the amended report to the specified officer who makes the amendment.

- (3) Despite subsection (2), a person may not give written comments on matters arising from a minor amendment made to an OPNA report under section 3D.
- (4) Written comments may only be given under subsection (1) or (2) to a specified officer for a harbour reclamation by—
 - (a) delivering it to a public officer who is authorized by the specified officer to receive it on the specified officer's behalf;
 - (b) sending it by ordinary or registered post to an address specified by the specified officer;
 - (c) sending it by electronic mail transmission to an electronic mail address specified by the specified officer; or
 - (d) sending it by fax transmission to a fax number specified by the specified officer.

3G. Submission of OPNA report to Chief Executive in Council

- (1) If a specified officer for a harbour reclamation makes an OPNA report, the specified officer must, within the period determined in accordance with subsections (2) and (3) (*submission period*), submit to the Chief Executive in Council—
 - (a) the report or (if the report is amended) the latest version of the amended OPNA report; and
 - (b) either—
 - (i) if the report is not amended under section 3D—a copy of all the written comments on the report given under section 3F(1) (if any); or
 - (ii) if the report is amended under section 3D—

- (A) a copy of all the written comments on the report given under section 3F(1) (if any); and
 - (B) a copy of all the written comments on matters arising from the amendments made in every version of the amended report given under section 3F(2) (if any).
- (2) Subject to subsection (3), the submission period is 5 months after the expiry of—
 - (a) if the OPNA report is not amended under section 3D—60 days after the first publication in the Gazette of a notice under section 3C(3)(a) in relation to the report; or
 - (b) if the OPNA report is amended under section 3D—60 days after the first publication in the Gazette of a notice under section 3C(3)(a) in relation to the latest version of the amended OPNA report.
- (3) On an application by a specified officer for a harbour reclamation—
 - (a) the Financial Secretary may extend the submission period for 2 months if the Financial Secretary considers it appropriate to do so in a particular case; and
 - (b) the Financial Secretary may further extend the period on not more than 2 occasions and for 2 months for each extension if the Financial Secretary is satisfied that exceptional circumstances exist in a particular case.

3H. Determination of Chief Executive in Council

- (1) On receipt of an OPNA report or (if the report is amended) the latest version of the amended OPNA report, and a copy of the written comments (if any), under section 3G, the Chief Executive in Council may determine whether the presumption against reclamation is rebutted for the harbour reclamation in accordance with section 3A.
- (2) As soon as practicable after a determination is made under subsection (1), a notice must be published in the manner set out in section 3C(3).
- (3) A notice under subsection (2) must state the determination made under subsection (1).
- (4) Subsection (5) applies if—
 - (a) a determination in respect of a harbour reclamation is made under subsection (1) (*original determination*); and
 - (b) subsequently, on receipt of an amended OPNA report, and a copy of the written comments (if any), in respect of the reclamation under section 3G, the Chief Executive in Council makes another determination under subsection (1) in respect of the reclamation (*new determination*).
- (5) The new determination—
 - (a) takes effect on the date on which a notice under subsection (2) is first published in the Gazette in respect of the new determination;
 - (b) substitutes the original determination on that date; and
 - (c) does not affect anything done in respect of the harbour reclamation pursuant to the original determination before that date.

(6) If—

- (a) a specified officer for a harbour reclamation fails to comply with a requirement in this Part (*non-compliance*); and
- (b) the Chief Executive in Council does not have notice of the non-compliance at the time a determination in respect of the reclamation is made under this section,

the validity of the determination is not affected by the non-compliance.

Part 4**Exemptions from Presumption against Harbour Reclamation****Division 1—Interpretation (Part 4)****3I. Interpretation (Part 4)**

In this Part—

intended starting date (擬開始日期)—see section 3P(2);

permitted construction period (准許施工期), in relation to an NPR exemption, means—

- (a) subject to paragraph (b), the period specified in a notice under section 3O(4)(b)(i) for the exemption; or
- (b) if the period mentioned in paragraph (a) is extended or is taken to be extended under this Part—the period so extended;

specified area (指明面積)—

- (a) in relation to a structure, feature or device—means the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the structure, feature or device; or
- (b) in relation to a harbour enhancement reclamation or a harbour non-permanent reclamation—means the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the land formed in the harbour by the reclamation.

Division 2—Harbour Enhancement Reclamations

3J. HER exemption—application

- (1) A specified officer for a harbour enhancement reclamation may apply to the Financial Secretary for an HER exemption in respect of the reclamation.
- (2) An application for an HER exemption may only be made in a form specified by the Secretary for Development.
- (3) A form specified for the purposes of subsection (2) may require information that is necessary to enable the Financial Secretary to make a decision under section 3L in respect of the reclamation, including—
 - (a) a plan delineating and describing—
 - (i) the specified area of the structure, feature or device set out in Schedule 2 to be constructed under the harbour enhancement works for which the reclamation is intended to be carried out; and
 - (ii) the specified area of the reclamation;

- (b) the intended public benefit to be brought by the harbour enhancement works;
 - (c) the relationship of the reclamation with any other reclamation in respect of which an HER exemption has previously been granted; and
 - (d) the impacts (including the anticipated impacts) of those reclamations on the harbour.
- (4) If a specified officer for a harbour enhancement reclamation applies for an HER exemption in respect of the reclamation, the Financial Secretary may, by written notice, require the specified officer to provide, within a period specified in the notice, additional information that is necessary to enable the Financial Secretary to make a decision under section 3L in respect of the reclamation.
 - (5) If a requirement made under subsection (4) is not complied with, the Financial Secretary may reject the application for an HER exemption by a notice published—
 - (a) in 2 issues of the Gazette in both the Chinese and English languages;
 - (b) on the website specified by the Financial Secretary;
 - (c) in 2 issues of a Chinese language newspaper; and
 - (d) in 2 issues of an English language newspaper.
 - (6) A notice under subsection (5) must state that the application for an HER exemption is rejected on the ground that a requirement made under subsection (4) is not complied with.

3K. Withdrawal of application for HER exemption

- (1) Before a decision is made under section 3L for an application for an HER exemption in respect of a harbour

enhancement reclamation, a specified officer for the reclamation may, by written notice to the Financial Secretary, withdraw the application.

- (2) On the giving of a notice under subsection (1), the powers set out in sections 3J(4) and (5) and 3L(1) are no longer exercisable in relation to the application for an HER exemption.

3L. HER exemption—decision

- (1) The Financial Secretary may, on an application for an HER exemption in respect of a harbour enhancement reclamation, decide whether to grant the HER exemption or refuse to grant it.
- (2) The Financial Secretary may not grant an HER exemption in respect of a harbour enhancement reclamation under subsection (1) unless the Financial Secretary is satisfied that—
 - (a) the specified area of the structure, feature or device set out in Schedule 2 to be constructed under the harbour enhancement works for which the reclamation is intended to be carried out does not exceed 0.8 hectare; and
 - (b) it is in the public interest to carry out the reclamation, having regard to all relevant matters including—
 - (i) the intended public benefit to be brought by the harbour enhancement works;
 - (ii) the relationship of the reclamation with any other reclamation in respect of which an HER exemption has previously been granted; and

- (iii) the impacts (including the anticipated impacts) of those reclamations on the harbour.

- (3) As soon as practicable after a decision is made under subsection (1), the Financial Secretary must publish a notice in the manner set out in section 3J(5).
- (4) A notice under subsection (3) must state—
 - (a) the Financial Secretary's decision; and
 - (b) if the Financial Secretary refuses to grant an HER exemption—the reasons for the decision.
- (5) The Financial Secretary may grant an HER exemption subject to any condition that the Financial Secretary considers appropriate.
- (6) If an HER exemption granted by the Financial Secretary is subject to any condition imposed under subsection (5), the Financial Secretary must specify that condition in the notice published under subsection (3) in relation to the exemption.

Division 3—Harbour Non-permanent Reclamations

3M. NPR exemption—application

- (1) A specified officer for a harbour non-permanent reclamation may apply to the Financial Secretary for an NPR exemption in respect of the reclamation.
- (2) An application for an NPR exemption may only be made in a form specified by the Secretary for Development.
- (3) A form specified for the purposes of subsection (2) may require information that is necessary to enable the Financial Secretary to make a decision under section 3O in respect of the reclamation, including—

- (a) a plan delineating and describing the specified area of the reclamation;
 - (b) if the area mentioned in paragraph (a) exceeds 3 hectares—a description of how the area does not exceed 3 hectares at any time during the reclamation;
 - (c) the expected date to start to carry out the reclamation;
 - (d) the expected duration of the reclamation beginning on the date mentioned in paragraph (c) and ending on the expected completion date of the works to reinstate the harbour affected by the reclamation;
 - (e) the intended public benefit to be brought by the reclamation; and
 - (f) the adverse impact on the harbour caused by the reclamation and the proposed mitigation measures to minimize the impact.
- (4) If a specified officer for a harbour non-permanent reclamation applies for an NPR exemption in respect of the reclamation, the Financial Secretary may, by written notice, require the specified officer to provide, within a period specified in the notice, additional information that is necessary to enable the Financial Secretary to make a decision under section 3O in respect of the reclamation.
- (5) If a requirement made under subsection (4) is not complied with, the Financial Secretary may, by a notice published in the manner set out in section 3J(5), reject the application for an NPR exemption.
- (6) A notice under subsection (5) must state that the application for an NPR exemption is rejected on the

ground that a requirement made under subsection (4) is not complied with.

3N. Withdrawal of application for NPR exemption

- (1) Before a decision is made under section 3O for an application for an NPR exemption in respect of a harbour non-permanent reclamation, a specified officer for the reclamation may, by written notice to the Financial Secretary, withdraw the application.
- (2) On the giving of a notice under subsection (1), the powers set out in sections 3M(4) and (5) and 3O(1) are no longer exercisable in relation to the application for an NPR exemption.

3O. NPR exemption—decision

- (1) The Financial Secretary may, on an application for an NPR exemption in respect of a harbour non-permanent reclamation, decide whether to grant the NPR exemption or refuse to grant it.
- (2) The Financial Secretary may not grant an NPR exemption in respect of a harbour non-permanent reclamation under subsection (1) unless the Financial Secretary is satisfied that—
 - (a) the specified area of the reclamation does not exceed 3 hectares at any time during the reclamation;
 - (b) the expected duration of the reclamation does not exceed 7 years; and
 - (c) it is in the public interest to carry out the reclamation, having regard to all relevant matters including—
 - (i) the intended public benefit to be brought by the reclamation; and

- (ii) the adverse impact on the harbour caused by the reclamation.
- (3) As soon as practicable after a decision is made under subsection (1), the Financial Secretary must publish a notice in the manner set out in section 3J(5).
- (4) A notice under subsection (3)—
 - (a) must state the Financial Secretary's decision; and
 - (b) must—
 - (i) if the Financial Secretary grants an NPR exemption—specify a period not exceeding 7 years beginning on the intended starting date of the harbour non-permanent reclamation concerned; or
 - (ii) if the Financial Secretary refuses to grant an NPR exemption—state the reasons for the decision.
- (5) The Financial Secretary may grant an NPR exemption subject to any condition that the Financial Secretary considers appropriate.
- (6) If an NPR exemption granted by the Financial Secretary is subject to any condition imposed under subsection (5), the Financial Secretary must specify that condition in the notice published under subsection (3) in relation to the exemption.

3P. Notification of intended starting date

- (1) This section applies if the Financial Secretary grants an NPR exemption under section 3O(1) in respect of a harbour non-permanent reclamation.
- (2) The specified officer for the harbour non-permanent reclamation must, no earlier than 6 months and no later

than 1 month before the date on which the specified officer intends to start to carry out the reclamation (*intended starting date*)—

- (a) give a written notice to the Financial Secretary; and
- (b) publish a copy of the written notice in the manner set out in section 3J(5).
- (3) A notice under subsection (2)(a) must specify the intended starting date.
- (4) The harbour non-permanent reclamation must not be carried out before the intended starting date.

3Q. Progress report of harbour non-permanent reclamation

- (1) This section applies if the Financial Secretary grants an NPR exemption under section 3O(1) in respect of a harbour non-permanent reclamation.
- (2) The specified officer for the harbour non-permanent reclamation must submit a report of the reclamation to the Financial Secretary—
 - (a) on each anniversary of the intended starting date of the reclamation that occurs before the completion date of the works to reinstate the harbour affected by the reclamation (*completion date*); and
 - (b) on a date no later than 3 months after the completion date.
- (3) A report under subsection (2)—
 - (a) must be made in a form specified by the Secretary for Development; and
 - (b) must set out the progress of the harbour non-permanent reclamation up to—

- (i) in the case of subsection (2)(a)—a date not earlier than 3 months before the anniversary; or
 - (ii) in the case of subsection (2)(b)—the completion date.
- (4) The Financial Secretary may, by written notice, require the specified officer for the harbour non-permanent reclamation to provide, within a period specified in the notice, additional information that is necessary to enable the Financial Secretary to monitor the progress of the reclamation.

3R. Extension of permitted construction period—application

- (1) A specified officer for a harbour non-permanent reclamation in respect of which an NPR exemption is granted under section 3O(1) may apply to the Financial Secretary for extending the permitted construction period of the exemption (*extension application*).
- (2) An extension application may only be made—
 - (a) no earlier than the date on which the harbour non-permanent reclamation starts to be carried out; and
 - (b) no later than 6 months before the date following the end of the permitted construction period of the NPR exemption.
- (3) An extension application must specify—
 - (a) the proposed period of extension of the permitted construction period of the NPR exemption; and
 - (b) the justifications for the extension.
- (4) If a specified officer for a harbour non-permanent reclamation makes an extension application, the Financial Secretary may, by written notice, require the specified

- officer to provide, within a period specified in the notice, additional information that is necessary to enable the Financial Secretary to make a decision under section 3S in respect of the extension application.
- (5) If a requirement made under subsection (4) is not complied with, the Financial Secretary may, by a notice published in the manner set out in section 3J(5), reject the extension application.
- (6) A notice under subsection (5) must state that the extension application is rejected on the ground that a requirement made under subsection (4) is not complied with.

3S. Extension of permitted construction period—decision

- (1) The Financial Secretary may, on an application made under section 3R(1), decide whether to grant an extension of a permitted construction period of an NPR exemption for a period that the Financial Secretary considers appropriate, or refuse to grant it.
- (2) The Financial Secretary may not grant an extension under subsection (1) unless the Financial Secretary is satisfied that—
 - (a) it is reasonable to grant the extension; and
 - (b) the aggregate duration of the following in respect of the NPR exemption does not exceed 8 years—
 - (i) the permitted construction period; and
 - (ii) the extension.
- (3) As soon as practicable after a decision is made under subsection (1), the Financial Secretary must publish a notice in the manner set out in section 3J(5).
- (4) A notice under subsection (3)—
 - (a) must state the Financial Secretary's decision; and

- (b) must—
 - (i) if the Financial Secretary grants an extension—specify the period of the extension; or
 - (ii) if the Financial Secretary refuses to grant an extension—state the reasons for the decision.
- (5) A permitted construction period of an NPR exemption may be extended under this section more than once.

3T. Extension of permitted construction period under exceptional circumstances

- (1) The Financial Secretary may, on his or her own initiative, grant an extension of a permitted construction period of an NPR exemption for a period that the Financial Secretary considers appropriate.
- (2) The Financial Secretary may not grant an extension under subsection (1) unless the Financial Secretary is satisfied that there are exceptional circumstances preventing the harbour non-permanent reclamation in respect of which the NPR exemption is granted from being carried out (whether in whole or in part).
- (3) As soon as practicable after an extension is granted under subsection (1), the Financial Secretary must publish a notice in the manner set out in section 3J(5).
- (4) A notice under subsection (3)—
 - (a) must state that an extension is granted under subsection (1);
 - (b) must state the reasons for granting the extension; and
 - (c) must specify the period of the extension.

- (5) Even though a permitted construction period of an NPR exemption is extended under subsection (1), the length of that permitted construction period for the purposes of section 3S(2)(b) does not include the period of time so extended.
- (6) A permitted construction period of an NPR exemption may be extended under this section more than once.

Division 4—Supplementary Provisions

3U. Non-compliance with conditions imposed in respect of HER exemption or NPR exemption or with section 3Q

- (1) If the Financial Secretary is satisfied that there is a failure (*non-compliance*) to comply with—
 - (a) a condition imposed under section 3L(5) in respect of an HER exemption;
 - (b) a condition imposed under section 3O(5) in respect of an NPR exemption; or
 - (c) a requirement under section 3Q for a harbour non-permanent reclamation in respect of which an NPR exemption is granted,
 the Financial Secretary may suspend or revoke the HER exemption or the NPR exemption.
- (2) If the Financial Secretary decides to suspend or revoke an HER exemption or an NPR exemption under subsection (1), the Financial Secretary must publish a notice in the manner set out in section 3J(5).
- (3) A notice under subsection (2) must state—
 - (a) the Financial Secretary's decision; and
 - (b) the reasons for the decision.

- (4) A decision made under subsection (1) takes effect on—
 - (a) the date on which a notice under subsection (2) is first published in the Gazette; or
 - (b) if a later date is specified in the notice, the later date.
- (5) After an HER exemption or an NPR exemption is suspended under subsection (1), the Financial Secretary may lift the suspension if the non-compliance has been rectified to the satisfaction of the Financial Secretary.
- (6) If the Financial Secretary decides to lift a suspension under subsection (5), the Financial Secretary must publish a notice in the manner set out in section 3J(5).
- (7) A notice under subsection (6) must state—
 - (a) the Financial Secretary's decision; and
 - (b) the reasons for the decision.
- (8) A decision made under subsection (5) takes effect on—
 - (a) the date on which a notice under subsection (6) is first published in the Gazette; or
 - (b) if a later date is specified in the notice, the later date.

3V. Effect of suspension

- (1) If an HER exemption or an NPR exemption is suspended under section 3U(1), the HER exemption or the NPR exemption ceases to be in force during the suspension period.
- (2) If a suspension of an NPR exemption is lifted under section 3U(5), the permitted construction period of the exemption continues to run as if it had been extended by a period of time that is of the same length as the suspension period.

- (3) However, even though the permitted construction period of the NPR exemption continues to run under subsection (2) as if it had been extended, the length of that permitted construction period for the purposes of section 3S(2)(b) does not include the period of time so extended.
- (4) In this section—
suspension period (暫時撤銷期), in relation to an HER exemption or an NPR exemption, means the period during which the HER exemption or the NPR exemption is suspended under section 3U(1).

3W. Non-compliance with section 3P

- (1) If the Financial Secretary is satisfied that there is a failure to comply with a requirement under section 3P for a harbour non-permanent reclamation, the Financial Secretary may revoke the NPR exemption granted under section 3O(1) in respect of the reclamation.
- (2) If the Financial Secretary decides to revoke an NPR exemption under subsection (1), the Financial Secretary must publish a notice in the manner set out in section 3J(5).
- (3) A notice under subsection (2) must state—
 - (a) the Financial Secretary's decision; and
 - (b) the reasons for the decision.
- (4) A decision made under subsection (1) takes effect on—
 - (a) the date on which a notice under subsection (2) is first published in the Gazette; or
 - (b) if a later date is specified in the notice, the later date.

3X. Expiry of NPR exemption

Subject to sections 3U, 3V and 3W, an NPR exemption expires at the end of the permitted construction period of the exemption.

3Y. Requirements following suspension, revocation or expiry

- (1) This section applies if—
 - (a) an HER exemption is suspended or revoked under section 3U(1); or
 - (b) an NPR exemption is suspended or revoked, or expires, under this Division.
- (2) Despite the suspension, revocation or expiry under subsection (1), the reclamation in respect of which the HER exemption or the NPR exemption is granted may continue to be carried out to the extent that it is necessary for avoiding safety or environmental hazards, or other similar hazards, that would arise if the reclamation ceases to be carried out.
- (3) The Financial Secretary may give any of the following directions to the specified officer for the reclamation in respect of which the HER exemption or the NPR exemption is granted—
 - (a) a direction to reinstate the harbour affected by the reclamation;
 - (b) any other directions that the Financial Secretary considers appropriate.
- (4) If the Financial Secretary gives under subsection (3) a direction the compliance with which requires a new harbour non-permanent reclamation to be carried out—

- (a) the new harbour non-permanent reclamation is exempt from the presumption against reclamation; and
 - (b) the NPR exemption under paragraph (a) is in force until the direction is complied with, unless the Financial Secretary directs otherwise.
- (5) To avoid doubt, sections 3P, 3Q, 3R, 3S, 3T, 3U, 3V, 3W and 3X do not apply in relation to an NPR exemption under subsection (4)(a).

Part 5**Miscellaneous Provisions****3Z. Absence of plan under Town Planning Ordinance not prevent certain matters**

The fact that no draft plan, approved plan or partly approved plan within the meaning of the Town Planning Ordinance (Cap. 131) has been prepared under that Ordinance in relation to any part of the harbour does not prevent any of the following from being done in respect of a reclamation in such part of the harbour—

- (a) the making of an OPNA report;
- (b) the making of an application for an HER exemption or an application for an NPR exemption;
- (c) the determination under section 3H;
- (d) the decision in respect of an HER exemption under section 3L;
- (e) the decision in respect of an NPR exemption under section 3O.

3ZA. Delegation of powers

- (1) The Secretary for Development may in writing delegate any of the powers or duties of the Secretary for Development under this Ordinance to a public officer.
- (2) However, the Secretary for Development may not delegate—
 - (a) the power to delegate under subsection (1); or
 - (b) the power to amend Schedule 2 under section 3ZB.

3ZB. Amendment of Schedule 2

- (1) The Secretary for Development may, by notice published in the Gazette, amend Schedule 2.
- (2) An amendment made under subsection (1) does not affect an HER exemption granted by the Financial Secretary under section 3L(1) before the amendment comes into operation.”.

10. Section 4 amended (transitional)

- (1) Section 4(2), English text—

Repeal

“(the *Amendment Ordinance*)”

Substitute

“(Amendment Ordinance 1999)”.

- (2) Section 4(2), English text, after “Amendment Ordinance”—

Add

“1999”.

- (3) After section 4(2)—

Add

- “(3) The Protection of the Harbour (Amendment) Ordinance 2024 (of 2024) (*Amendment Ordinance 2024*) does not apply to any reclamation authorized under or otherwise provided for in an Ordinance before the commencement of the Amendment Ordinance 2024.”.

11. Schedule 2 added

At the end of the Ordinance—

Add**“Schedule 2**

[ss. 2, 3J, 3L, 3ZA & 3ZB]

Harbour Enhancement Works

1. Promenade and boardwalk
2. Cycle track
3. Harbour pool
4. Viewing deck
5. Ramp
6. Mooring
7. Breakwater
8. Seawall

9. Hanger, crane and hardstand for ship repair
 10. Wave absorption structure
 11. Facility for the operation of typhoon shelter or sheltered anchorage
 12. Water supplies, bunkering or battery charging facility for supporting marine operations
 13. Device for mitigating extreme climate risks
 14. An item specified in the Schedule to the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)".
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Explanatory Memorandum

This Bill amends the Protection of the Harbour Ordinance (Cap. 531) (*principal Ordinance*) for the purposes set out in the long title of the Bill.

2. Clause 1 sets out the short title.
3. Clause 3 amends the long title of the principal Ordinance to provide that the purpose of the principal Ordinance is to protect and preserve the harbour as a special public asset and a natural heritage of the Hong Kong people by regulating reclamations in the harbour (*harbour reclamation*).
4. Clauses 4 and 7 add new Part headings to the principal Ordinance to reorganize the structure of the principal Ordinance in view of the other amendments made to the principal Ordinance by the Bill.
5. Clause 5 amends section 2 of the principal Ordinance to add certain new definitions for the interpretation of the principal Ordinance as amended by the Bill.
6. Clause 6 adds a new section 2A to the principal Ordinance to provide that—
 - (a) a specified officer for a harbour reclamation may act under the principal Ordinance in relation to the reclamation even though the reclamation may be proposed to be carried out by another person; and
 - (b) a specified officer may in writing authorize a public officer to exercise or perform any of the powers or duties conferred or imposed on the specified officer under the principal Ordinance.
7. Clause 8 amends section 3 of the principal Ordinance to provide for the presumption against harbour reclamation for protecting and

preserving the harbour as a special public asset and a natural heritage of the Hong Kong people (*presumption against reclamation*). Moreover, a specified officer for a harbour reclamation may not propose or carry out the reclamation unless—

- (a) the Chief Executive in Council determines that the presumption is rebutted for the reclamation;
 - (b) the reclamation is exempt from the presumption under the principal Ordinance; or
 - (c) the reclamation is allowed to continue to be carried out under new section 3Y(2) (added by clause 9).
8. Clause 9 adds certain new provisions to the principal Ordinance. New section 3A sets out the criteria for rebutting the presumption against reclamation.
9. New Part 3 (new sections 3B to 3H) introduces a mechanism for the Chief Executive in Council to determine whether the presumption against reclamation is rebutted for a harbour reclamation. In particular—
 - (a) a specified officer for a harbour reclamation may make a report setting out an assessment as to whether the presumption may be rebutted for the reclamation (new section 3B);
 - (b) a copy of the report is to be made available for public inspection in certain manners (new section 3C);
 - (c) the public may give written comments on the report to the specified officer (new section 3F);
 - (d) the report and a copy of the written comments (if any) are to be submitted to the Chief Executive in Council (new section 3G); and

- (e) the Chief Executive in Council may determine whether the presumption is rebutted for the reclamation (new section 3H).
10. New Part 4 is divided into 4 Divisions. Division 1 of that Part (new section 3I) provides for certain definitions for the interpretation of that Part.
11. Division 2 of the new Part 4 (new sections 3J to 3L) provides for the application for, and the grant of, an exemption of harbour enhancement reclamation from the presumption against reclamation (*HER exemption*).
12. Division 3 of the new Part 4 (new sections 3M to 3T) provides for the application for, and the grant of, an exemption of non-permanent reclamation in the harbour from the presumption against reclamation (*NPR exemption*). That Division also provides for certain requirements and procedures following the grant of an NPR exemption, such as the notification of the intended starting date of the non-permanent reclamation, the submission of progress reports of the non-permanent reclamation and the extension of the period within which the non-permanent reclamation may be carried out.
13. Division 4 of the new Part 4 (new sections 3U to 3Y) provides for supplementary provisions for an HER exemption or an NPR exemption to deal with—
 - (a) the non-compliance with certain conditions or requirements (new sections 3U and 3W);
 - (b) the effect of suspension of an HER exemption or an NPR exemption (new section 3V);
 - (c) the expiry of an NPR exemption (new section 3X); and
 - (d) the requirements following a suspension, revocation or expiry (new section 3Y).

14. New sections 3Z, 3ZA and 3ZB provide for miscellaneous matters, such as the delegation of powers or duties and the amendment of new Schedule 2 (added by clause 11).
15. Clause 10 amends section 4 of the principal Ordinance to provide for the transitional arrangement relating to the Bill.
16. Clause 11 adds a new Schedule 2 to the principal Ordinance to set out the structures, features and devices for the new definition of *harbour enhancement works* (added by clause 5(4)).

An Ordinance to protect and preserve the harbour by establishing a presumption against reclamation in the harbour.

(Replaced 9 of 1998 s. 2. Amended 75 of 1999 s. 2)

[30 June 1997]

(Format changes—E.R. 5 of 2018)

1. Short title

This Ordinance may be cited as the Protection of the Harbour Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

reclamation (填海) means any works carried out or intended to be carried out for the purpose of forming land from the sea-bed or foreshore; *(Replaced 9 of 1998 s. 3)*

relevant Ordinance (有關條例) means—

- (a) the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127);
- (b) the Cross-Harbour Tunnel Ordinance (Cap. 203);*
- (c) the Eastern Harbour Crossing Ordinance (Cap. 215);[^]
- (d) the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
- (e) the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
- (f) the Western Harbour Crossing Ordinance (Cap. 436); or
- (g) any other Ordinance under which reclamation is authorized or which otherwise provides for reclamation.

(Amended 9 of 1998 s. 3; 75 of 1999 s. 3)

Editorial Note:

* Repealed — see 44 of 1999 s. 45.

[^] Repealed — see 7 of 2016 s. 19.

3. Presumption against reclamation in the harbour

(Amended 9 of 1998 s. 4)

- (1) The harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people, and for that purpose there shall be a presumption against reclamation in the harbour. *(Amended 75 of 1999 s. 4)*
- (2) All public officers and public bodies shall have regard to the principle stated in subsection (1) for guidance in the exercise of any powers vested in them.

4. Transitional

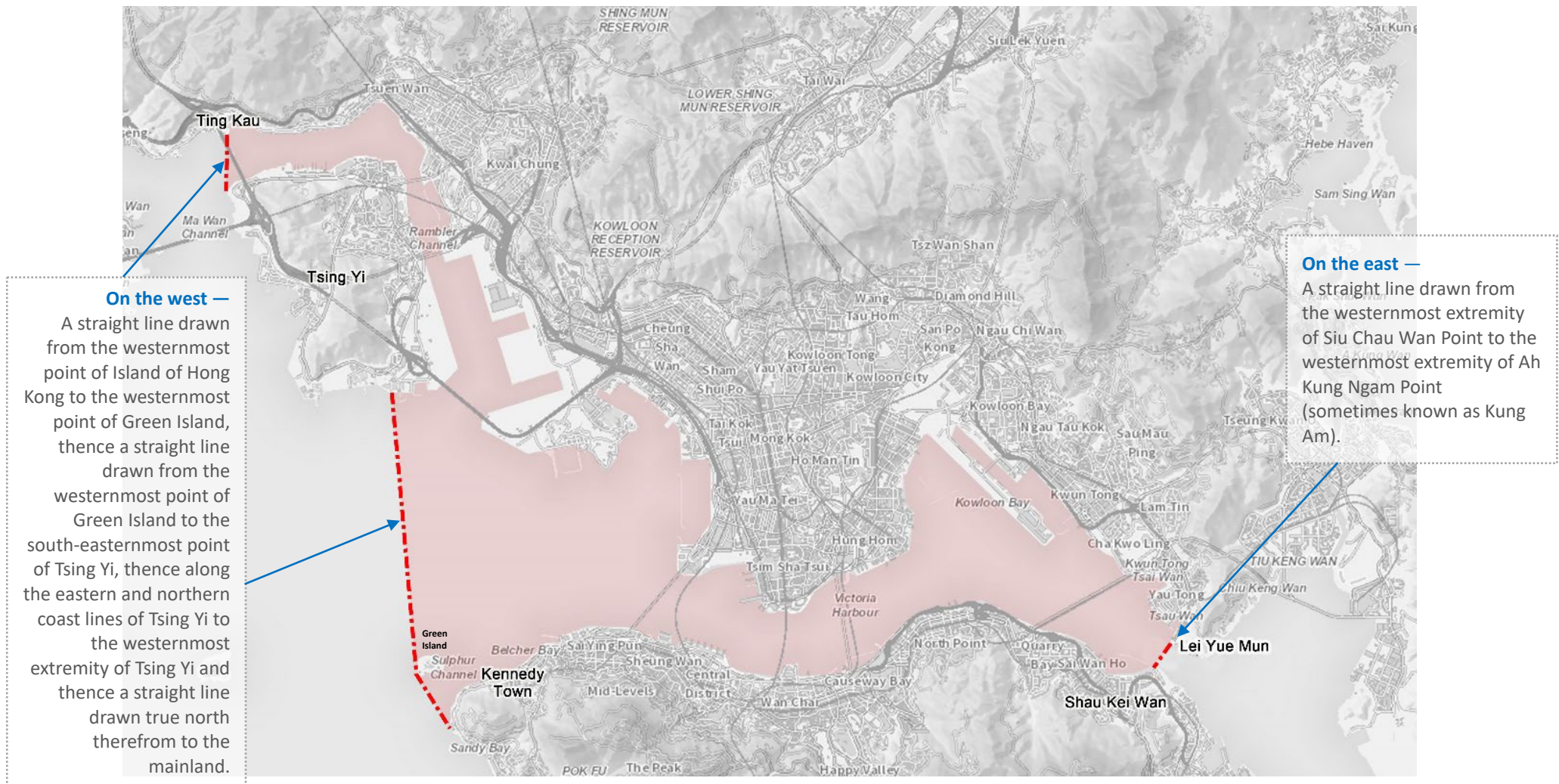
- (1) This Ordinance does not apply to any reclamation authorized under a relevant Ordinance before the commencement of this Ordinance. *(Amended 75 of 1999 s. 5)*

- (2) The Protection of the Harbour (Amendment) Ordinance 1999 (75 of 1999) (*the Amendment Ordinance*) does not apply to any reclamation authorized under a relevant Ordinance before the commencement of the Amendment Ordinance. (*Added 75 of 1999 s. 5*)

Schedule 1

(Repealed 75 of 1999 s. 6)

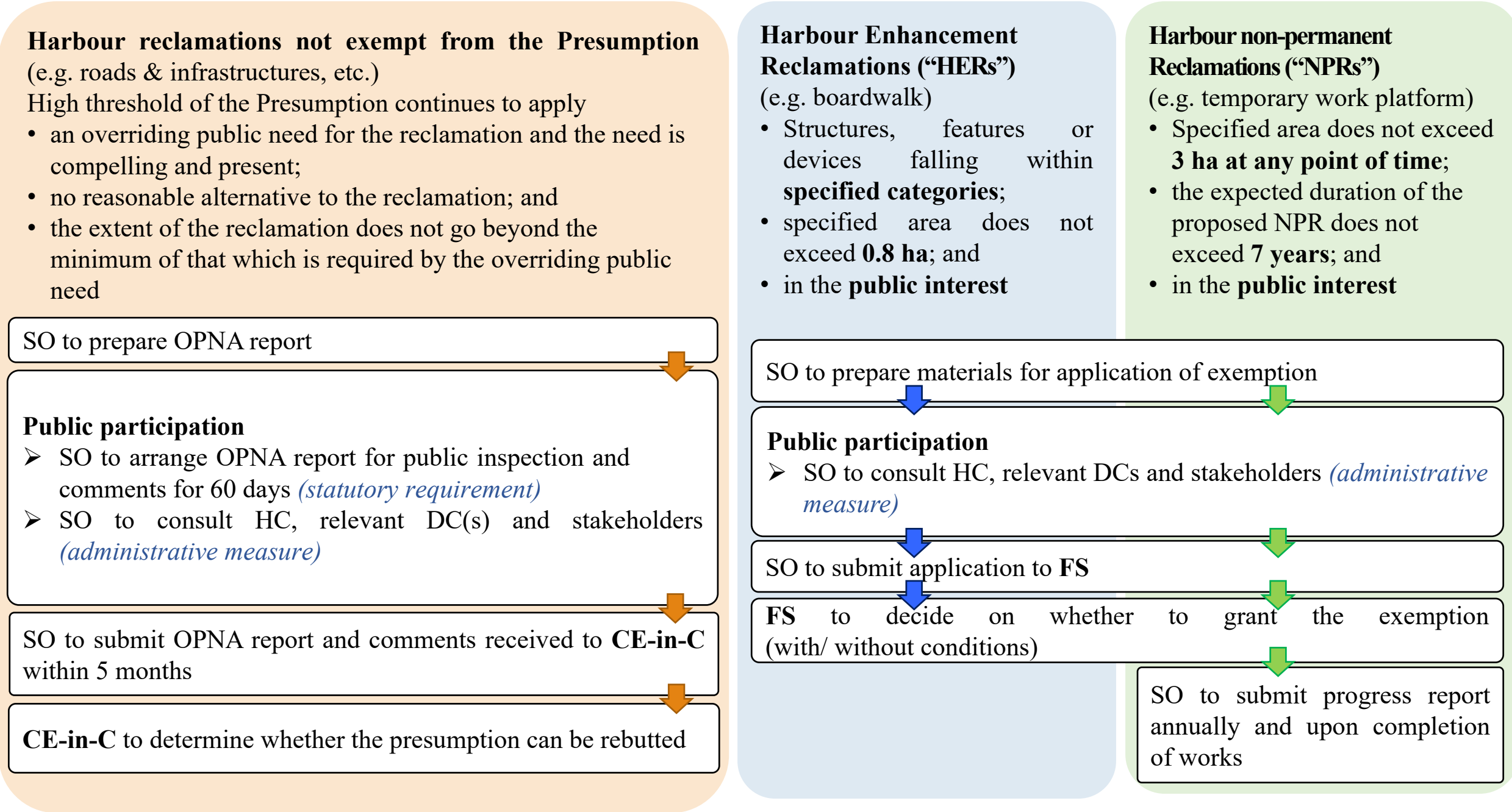
Map showing the boundaries of the Victoria Harbour subject to the PHO



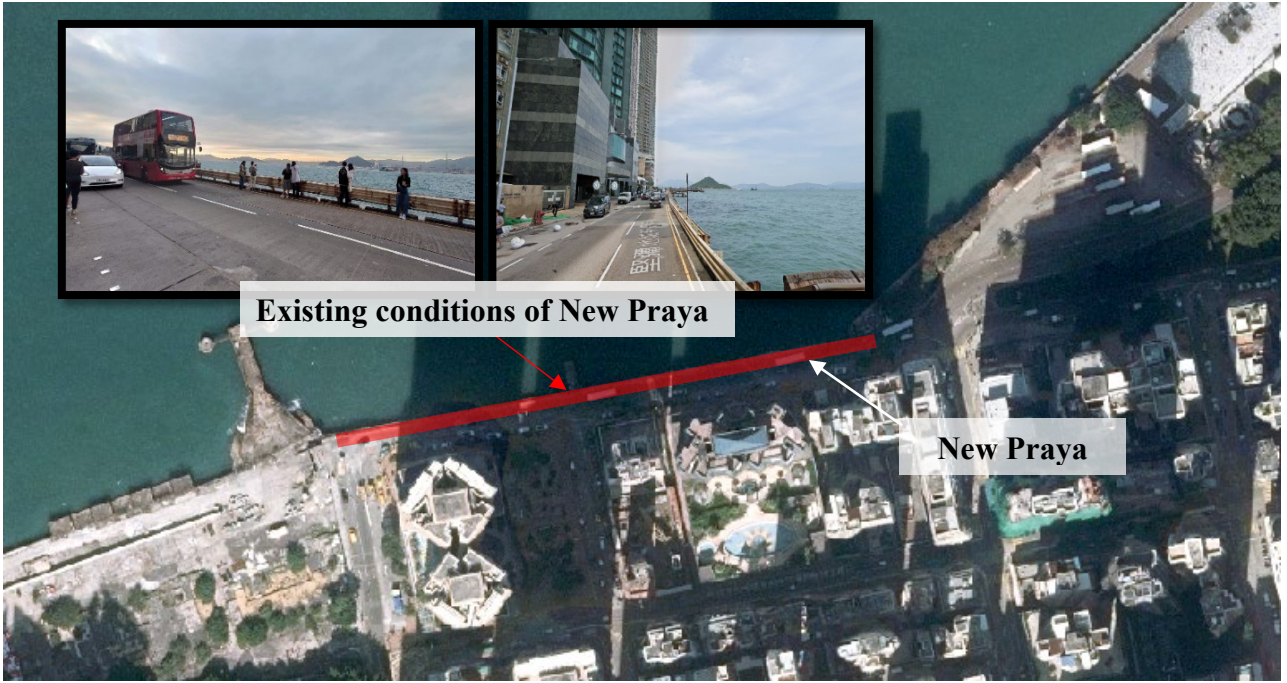
**Works projects involving harbour reclamation
since the 2004 judgment**


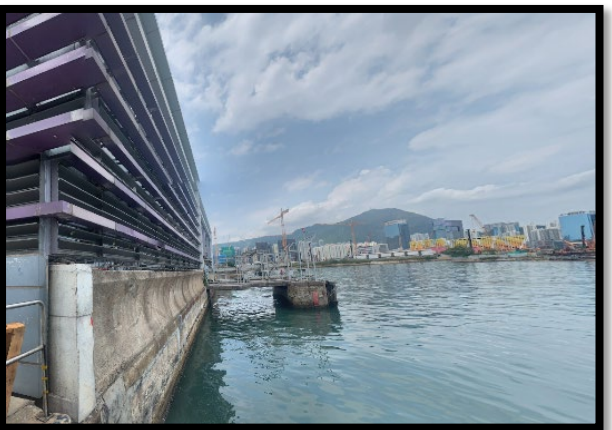

1. The **Central Reclamation Phase 3 (“CRIII”)**, which involved **permanent reclamation** to provide land for essential transport infrastructure and a waterfront promenade on the northern shore of Hong Kong Island.
2. The **Wanchai Development Phase 2 (“WDII”)**, which involved **permanent reclamation** to provide land for constructing a Trunk Road and other key transport infrastructure, as well as developing a waterfront promenade; and involved **temporary reclamation** to facilitate the construction of the Trunk Road tunnel (under the Central-Wanchai Bypass and Island Eastern Corridor Link project) beneath the seabed of ex-Public Cargo Working Area and Causeway Bay Typhoon Shelter.
3. The **Shatin to Central Link (“SCL”)**, which involved **temporary reclamation** for constructing a section of the railway tunnel in the vicinity of the seashore in the Causeway Bay Typhoon Shelter.
4. The **Central Kowloon Route (“CKR”)**, which involved **temporary reclamation** for constructing a section of the tunnel between the Kowloon City Ferry Pier to the Kai Tak Development Area through the seabed of Kowloon Bay.
5. The **Boardwalk underneath the Island Eastern Corridor (“IEC Boardwalk”)**, which involved **permanent reclamation** for erecting new piles in the seabed and construction of a new boardwalk above the piles.


New mechanism under the amended PHO (Chapter 531)





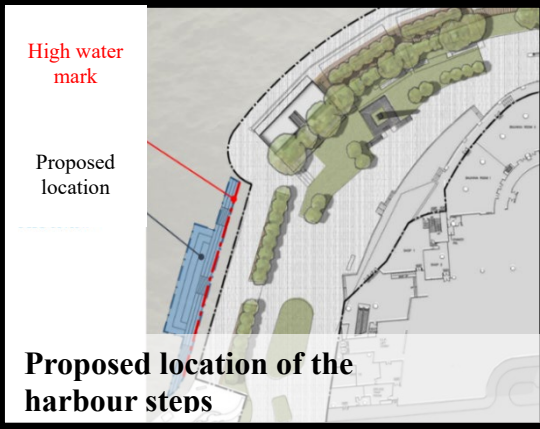

Harbour enhancement works that may be taken forward and may benefit from the proposed legislative amendments

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos
Constructing a boardwalk	New Praya, Kennedy Town	 <p>The aerial photograph shows the New Praya area in Kennedy Town, Hong Kong. A red line is drawn across the water and land area, indicating the proposed boardwalk. Two inset photographs are included: the left one shows a red double-decker bus and a white car on a road next to a waterfront promenade; the right one shows a view of the sea from a road. Labels 'Existing conditions of New Praya' and 'New Praya' are present on the aerial image.</p>

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos	
Constructing a boardwalk or adding landing steps, if proposals involving reclamations are required for improving the connectivity in the harbourfront in the vicinity of Hung Hom and To Kwa Wan	(1) Waterfront gas facility site off Grand Waterfront in To Kwa Wan		 <p data-bbox="1590 719 2045 791">Existing conditions of waterfront gas facility site</p>
	(2) Waterfront area in the vicinity of the Green Island Cement Pier in Hung Hom		 <p data-bbox="1579 1294 2101 1366">Existing conditions of waterfront area near Green Island Cement Pier</p>

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos
<p>Allowing for more options (including those involving reclamation) when exploring ways to revitalise pier facilities to increase vibrancy of the harbourfront</p>	<p>Kowloon City Vehicular Ferry Pier</p>	 <p>The aerial photograph shows the dense urban landscape of Kowloon City, Hong Kong, with the Victoria Harbour to the west. A red circle and arrow highlight the location of the Vehicular Ferry Pier on the waterfront. An inset photograph provides a closer view of the pier structure.</p> <p>Existing conditions of Kowloon City Vehicular Ferry Pier</p>

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos	
Extending the existing harbour steps to the water body	Water Sports and Recreation Precinct (“WSP”) in Wan Chai and the Revitalised Typhoon Shelter Precinct (“RTSP”) in Causeway Bay	 <div data-bbox="857 738 1422 1074">  </div> <div data-bbox="1518 738 2078 1074">  </div> <div data-bbox="880 1090 1406 1121">Existing conditions at WSP, Wan Chai</div> <div data-bbox="1496 1090 2101 1121">Existing conditions at RTSP, Causeway Bay</div>	

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos	
Providing new harbour steps	Celebration Precinct outside the Hong Kong Convention and Exhibition Centre (“HKCEC”)	<div data-bbox="835 296 1373 667">  <p>Existing conditions at Celebration Precinct</p> </div> <div data-bbox="835 691 1373 1121">  <p>High water mark</p> <p>Proposed location</p> <p>Proposed location of the harbour steps</p> </div>	
		 <p>HKCEC</p>	

An Ordinance to protect and preserve the harbour by establishing a presumption against reclamation in the harbour.

(Replaced 9 of 1998 s. 2. Amended 75 of 1999 s. 2)

[30 June 1997]

(Format changes—E.R. 5 of 2018)

2. Interpretation

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reclamation (填海) means any works carried out or intended to be carried out for the purpose of forming land from the sea-bed or foreshore; *(Replaced 9 of 1998 s. 3)*

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- (g) any other Ordinance under which reclamation is authorized or which otherwise provides for reclamation.

(Amended 9 of 1998 s. 3; 75 of 1999 s. 3)

Editorial Note:

* Repealed — see 44 of 1999 s. 45.

[△] Repealed — see 7 of 2016 s. 19.

3. Presumption against reclamation in the harbour

(Amended 9 of 1998 s. 4)

- (1) The harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people, and for that purpose there shall be a presumption against reclamation in the harbour. *(Amended 75 of 1999 s. 4)*

- (2) All public officers and public bodies shall have regard to the principle stated in subsection (1) for guidance in the exercise of any powers vested in them.

4. **Transitional**

- (1) This Ordinance does not apply to any reclamation authorized under a relevant Ordinance before the commencement of this Ordinance. (*Amended 75 of 1999 s. 5*)
- (2) The Protection of the Harbour (Amendment) Ordinance 1999 (75 of 1999) (***the Amendment Ordinance***) does not apply to any reclamation authorized under a relevant Ordinance before the commencement of the Amendment Ordinance. (*Added 75 of 1999 s. 5*)

Implications of the proposals

Financial and Civil Service Implications

The proposals will reduce the relevant workload of relevant bureaux/ departments as the certainty and transparency on the application of the PHO is enhanced. While these may open up the call for more HER from the community, all reclamation projects proposed to proceed under the public works programme are subject to resource allocation and public funding affordability. This applies not only to the capital cost, but also applies to any additional recurrent resources required by the relevant development for regular management and maintenance of the harbourfront. While DEVB and the relevant bureaux and departments will absorb the workload and recurrent costs arising from the said projects, if approved, with existing resources as far as possible, we will keep the situation under review and, where necessary, additional manpower and resources may be sought with justifications in accordance with the established mechanism.

Economic Implications

2. The proposed mechanism will help enhance the certainty and transparency on the application of the PHO, and provide a more solid ground to manage the risk of potential legal challenge for taking forward the reclamations in the harbour.
3. The new exemption mechanisms will facilitate HERs and NPRs as the time and costs incurred for meeting the requirements under the PHO will be reduced. This will in turn allow for the possibility of increasing some development projects' benefits through the incorporation of harbour enhancement features.

Environmental and Sustainability Implications

4. The proposals help strike a balance between the social needs for more harbourfront facilities and the environmental impacts of the reclamations to the harbour.