

**MERCHANT SHIPPING (PREVENTION AND CONTROL OF POLLUTION) ORDINANCE
- CHAPTER 413**

LONG TITLE

Long title VerDate:30/06/1997

An Ordinance to provide for the prevention and control of pollution from ships and for incidental or related matters.
(Enacted 1990)

[15 January 1991] L.N. 14 of 1991

(Originally 37 of 1990)

SECT 1

Short title VerDate:30/06/1997

PART I

PRELIMINARY

This Ordinance may be cited as the Merchant Shipping (Prevention and Control of Pollution) Ordinance.
(Enacted 1990)

SECT 2

Interpretation VerDate:02/01/2007

In this Ordinance, unless the context otherwise requires-

"control" includes contain and reduce;

"Director" means the Director of Marine;

"discharge" means any release, howsoever caused, from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying; but does not include-

(a) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter signed in London on 13 November 1972; or

(b) any release directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources; or

(c) any release for the purposes of legitimate scientific research into pollution abatement or control;

"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); (Replaced 43 of 1999 s. 91)

"master" in relation to-

(a) a Hong Kong ship referred to in paragraph (a) of the definition of "Hong Kong ship", means a person (except a pilot) having for the time being the charge or command of the ship;

(b) a Hong Kong ship referred to in paragraph (b) of the definition of "Hong Kong ship", means a coxswain within the meaning of the Merchant Shipping (Local Vessels) Ordinance (Cap 548); (Added 43 of 1999 s. 91)

"oil" means-

(a) petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of the Convention as defined in section 3(1)); and

(b) the substances listed in appendix I to Annex I of the Convention; (Replaced 16 of 1999 s. 2)

"ship" means a vessel of any type whatsoever operating in the marine environment and includes a hydrofoil, hovercraft, submersible or floating craft and a fixed or floating platform.
(Enacted 1990)

SECT 3

Regulations for the prevention and control of pollution VerDate:01/07/2007

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

PART II

REGULATIONS FOR THE PREVENTION AND CONTROL OF POLLUTION

(1) In this section-

"Convention" means the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes Attachment 1 to the Final Act of the International Conference on Marine Pollution signed in London on 2 November 1973, as modified by any international agreement referred to in subsection

(2)(b)(iii) ;

"Protocol" means the Protocol (including the annex thereto) relating to the Convention which constitutes Attachment 2 to the Final Act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17 February 1978, as modified by any international agreement referred to in subsection (2)(b)(iii);

"substance other than oil" includes sewage and garbage of any kind.

(2) The Secretary for Transport and Housing may make regulations-
(Amended 16 of 1999 s. 3; L.N. 106 of 2002; L.N. 130 of 2007)

(a) relating to the prevention or control of pollution of the sea or other waters by oil, or any substance other than oil, from ships; and

(b) for giving effect to-

(i) the Convention;

(ii) the Protocol; and

(iii) any other international agreement (whether made by resolution or otherwise) which relates to the prevention or control of pollution of the sea or other waters by oil, or any substance other than oil, from ships and which applies to Hong Kong, including any agreement which modifies any other such agreement.

(2A) The Chief Executive in Council may make regulations for the payment of fees (whether prescribed under this Ordinance, the Merchant Shipping Ordinance (Cap 281) or otherwise) in respect of any survey, inspection, certificate, service or other matter provided for by regulations made under this Ordinance.
(Added 16 of 1999 s. 3)

(3) Regulations made under this section may be expressed to apply-

(a) to Hong Kong ships, wherever they may be; and

(b) to other ships while they are within the waters of Hong Kong.

(4) Regulations made under this section may provide that the regulations, or any provisions thereof, shall come into force on a date specified in the regulations which is earlier than the date on which the international agreement to which the regulations relate comes into force.

(5) Without limiting the generality of subsections (2) and (2A), regulations made under this section may include provisions- (Amended 16 of 1999 s. 3)

(a) for the approval of documents, the appointment of surveyors, the carrying out of surveys and inspections and the rendering of other services for the purposes of the regulations, whether in Hong Kong or elsewhere, and for the issue, duration, effect and recognition of certificates for those purposes;

(b) for the keeping, carriage and inspection of record books and other records of operations involving oil, or any substance other than oil, on board ships;

(ba) for the boarding of any ships within the waters of Hong Kong to carry out inspections for the purposes of the regulations; (Added 16 of 1999 s. 3)

(c) for the prohibition, regulation and control of the loading and carriage on board ships, and the unloading or discharge from ships, of oil or any substance other than oil and for procedures relating thereto;

(d) for the design and construction of, and the equipment and fittings on board, ships carrying oil or any substance other than oil;

(e) for the compulsory reporting of incidents involving pollution or the threat of pollution for the purpose of giving effect to Protocol I (provisions concerning reports on incidents involving harmful substances) to the Convention;

(f) (Repealed 16 of 1999 s. 3)

(g) that contraventions of the regulations shall be offences punishable by penalties not exceeding-

(i) on conviction upon indictment, a fine of \$5000000 and, in the case of an individual, imprisonment for 2 years;

(ii) on summary conviction, a fine of \$500000;

(h) that in the case of any such contravention an offence is committed by-

(i) the master and the owner of the ship concerned; and

(ii) where the contravention is due to the act or omission of another person, that person;

(i) for denying entry of any ship to the waters of Hong Kong in respect of which any such contravention is believed to have occurred;

(j) for detaining any ship in respect of which any such contravention is believed to have occurred and for notifying the relevant consular officer (if any) of the detention and of any proceedings against the ship; and

(k) for the admission of prescribed or specified documents and certified copies of documents as evidence in legal proceedings,

and the regulations may-

(i) make different provisions for different circumstances or in relation to different classes or descriptions of ships;

(ii) provide for exemptions from any provisions of the regulations in respect of different classes or descriptions of ships;

(iii) provide for the granting by the Director, on such terms (if any) as he may specify, of exemptions from any provisions of the regulations in respect of any ship, or class or description of ships, and for the alteration or cancellation of any such exemption;

(iv) provide for the approval by the Director of equivalent fittings, equipment or procedures as alternatives to those prescribed;

(v) provide for the delegation of powers exercisable and functions performable by virtue of the regulations;

(vi) provide for the application of the regulations to the State;
and (Amended 64 of 1999 s. 3)

(vii) include such incidental, supplemental and transitional provisions as appear to the Secretary for Transport and Housing or Chief Executive in Council (as the case may be) to be expedient for the purposes of the regulations. (Amended 16 of 1999 s. 3; L.N. 106 of 2002; L.N. 130 of 2007)

(6) Any fees prescribed under this Ordinance-

(a) may be fixed at levels which provide for the recovery of expenditure incurred or likely to be incurred by the Government or other authority in relation generally to the administration, regulation and control of Hong Kong ships and of ports, ships and navigation in the waters of Hong Kong, and shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the provision of any particular service, facility or matter; and

(b) may, without prejudice to the generality of paragraph (a), be fixed at different amounts in relation to different sizes of ship, whether measured by tonnage, length or otherwise, or in relation to different classes, types or descriptions of service, facility or ship.
(Enacted 1990)

SECT 3A

Supplementary regulation-making power in relation to international agreements applicable to Hong Kong
VerDate:21/05/1999

For the purpose of giving effect (whether in whole or in part) to any provisions of any international agreements applicable to Hong Kong (including the Convention and the Protocol as defined in section 3(1))-

(a) as in force from time to time; and

(b) so far as the agreement relates to any matter for or in relation to which provision may be made by regulations made under this Ordinance,
any such regulations may-

(i) set out or refer to those provisions (whether in a schedule or otherwise); and

(ii) specify (whether in a schedule or otherwise) amendments, modifications or adaptations subject to which those provisions shall have effect.
(Added 16 of 1999 s. 4)

SECT 4

Penalty for taking detained ship to sea VerDate:30/06/1997

(1) Where a ship is authorized or ordered to be detained under regulations made under this Part, and after such detention or after service on the master of any notice of or order for such detention, the ship proceeds or attempts to proceed to sea before having been released by a competent authority, the master of the ship commits an offence and is liable to a fine of \$500000 and to imprisonment for 2 years; and if the owner or agent or any person who sends the ship to sea is party or privy to the offence he also commits an offence and is liable to the same punishment.

(2) Where a ship proceeds to sea in contravention of subsection (1) whilst having on board a public officer who is acting in the execution of his duty, the master and owner of the ship-

(a) in addition to any punishment to which they may be liable under subsection (1), both commit an offence against this subsection and are each liable to imprisonment for 6 months and to a fine of \$20000 and an additional fine of \$1000 for each day during the period from the date on which the ship proceeded to sea until the date on which the officer returns to Hong Kong or, if he does not return directly to Hong Kong, would have returned if he had travelled by the quickest practicable route; and

(b) are jointly and severally liable to pay to the Government all expenses incidental to the taking of the officer to sea and to securing his return to Hong Kong.

(3) Expenses referred to in subsection (2)(b) may be recovered as if they were a fine imposed by a magistrate.
(Enacted 1990)

SECT 5

Application of Part III VerDate:21/05/1999

PART III

SHIPPING CASUALTIES INVOLVING A RISK OF POLLUTION

(1) Subject to subsections (2) and (3), this Part shall apply in relation to all ships whether within or outside the waters of Hong Kong.

(2) As respects a ship which-

(a) is not a Hong Kong ship; and

(b) is for the time being outside the waters of Hong Kong,

the power conferred on the Director by section 6(2) to give directions may only be exercised in relation to- (Amended 16 of 1999 s. 5)

(i) an individual who is a permanent resident of the Hong Kong Special Administrative Region; or
(Amended 28 of 1998 s. 2)

(ii) a body corporate which is established under the laws of Hong Kong, and section 8(2) shall apply to such an individual or body corporate only.

(3) No direction under section 6(2) shall apply to any vessel of Her Majesty's navy or to any ship not forming part of Her Majesty's navy which belongs to Her Majesty or is held by any person on behalf of or for the benefit of the Crown in right of Her Majesty's Government in the United Kingdom or Her Majesty's Government in Hong Kong, and no action shall be taken under section 6(4) or (5) as respects any such vessel or ship.
(Enacted 1990)

SECT 6

Shipping casualties VerDate:30/06/1997

- (1) The powers conferred by this section may be exercised where-
 - (a) an accident has occurred to or in a ship; and
 - (b) in the opinion of the Director- (Amended 4 of 1995 s. 5)
 - (i) oil, or any substance other than oil, from the ship will or may cause pollution on a large scale in Hong Kong or in the waters of Hong Kong;
 - (ii) if the ship is one referred to in section 5(2), the danger of pollution is grave and imminent; and
 - (iii) the exercise of the powers conferred by this section is urgently needed.
- (2) For the purpose of preventing or reducing pollution, or the risk of pollution, the Director may give directions as respects the ship or its cargo- (Amended 4 of 1995 s. 5)
 - (a) to the owner of the ship, or to any person in possession or control of the ship; or
 - (b) to the master of the ship; or
 - (c) to any salvor in possession of the ship, or to any person who is the servant or agent of any such salvor, and who is in charge of the relevant salvage operation.
- (3) Directions under subsection (2) may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without limiting the generality of the foregoing the directions may require-
 - (a) that the ship is to be, or is not to be, moved-
 - (i) to or from a specified place, area or locality;
 - (ii) over a specified route; or
 - (b) that any oil or other cargo is to be, or is not to be, unloaded or discharged; or
 - (c) that specified salvage measures are to be, or are not to be, taken.
- (4) If in the opinion of the Director the powers conferred by subsection (2) are, or have proved to be, inadequate for the purpose, the Director may, for the purpose of preventing or reducing pollution, or the risk of pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without limiting the generality of the foregoing the Director may- (Amended 4 of 1995 s. 5)
 - (a) do anything he has power to require to be done by a direction under subsection (2);
 - (b) cause operations to be undertaken for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he may give such a direction;
 - (c) cause operations to be undertaken which involve taking over control of the ship.

(5) The powers of the Director under subsection (4) may also be exercised by such persons as may be authorized in that behalf by the Director. (Amended 4 of 1995 s. 5)

(6) A person concerned in complying with directions given, or in action taken, under this section shall use his best endeavours to avoid risk to human life.

(7) Nothing in this section shall derogate from or affect any right or power of the Government existing apart from this section whether under international law or otherwise.

(8) Any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action taken under a direction given under subsection (2), or under subsection (4) or (5)-

(a) does not constitute contempt of court; and

(b) shall not constitute a ground or cause of action in legal proceedings instituted against the Government.

(9) In this section-
"accident" includes the loss, stranding, abandonment of or damage to a ship;

"any substance other than oil" means-

(a) any substance specified in an order made under subsection (10);
and

(b) any other substance which is liable to create a hazard to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;

"specified", in relation to a direction under subsection (2), means specified in the direction.

(10) The Director may, by order published in the Gazette, specify any substance for the purposes of the definition of "any substance other than oil" in subsection (9). (Amended 4 of 1995 s. 5)
(Enacted 1990)

SECT 7

Directions; right to recover in respect of unreasonable loss or damage VerDate:30/06/1997

(1) If any action taken under a direction under section 6(2), or under section 6(4) or (5)-

(a) was not reasonably necessary to prevent or reduce pollution or, as may be appropriate, the risk of pollution; or

(b) was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action,
a person incurring expense or suffering damage as a result of the action, or of himself having taken the action, shall be entitled to claim and recover compensation from the Government.

- (2) In determining whether subsection (1) applies in a particular case, account shall be taken of-
- (a) the extent and risk of pollution if the action had not been taken;
 - (b) the likelihood of the action being effective; and
 - (c) the extent of the damage which has been caused by the action.
- (3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.
(Enacted 1990)

SECT 8

Offences in relation to section 6 VerDate:21/05/1999

- (1) A person to whom a direction is given under section 6(2) who fails to comply with any requirement of the direction, commits an offence.
- (2) A person who wilfully obstructs any person who is-
- (a) acting on behalf of the Director in connection with the giving or service of a direction under section 6(2); (Amended 16 of 1999 s. 6)
 - (b) acting in compliance with such a direction; or
 - (c) acting under subsection (4) or (5) of that section,
- commits an offence.
- (3) In proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that-
- (a) he used all due diligence to secure compliance with the direction; or
 - (b) he had reasonable cause for believing that such compliance would have involved a serious risk to human life.
- (4) A person who commits an offence under this section is liable-
- (a) on conviction upon indictment, to a fine of \$5000000;
 - (b) on summary conviction, to a fine of \$500000.
- (Enacted 1990)

SECT 9

Service of directions under section 6 VerDate:21/05/1999

(1) If the Director is satisfied that a company or other body corporate is not one to which section 338 or 356 of the Companies Ordinance (Cap 32) applies so as to authorize the service of a direction on that body under either of those sections, he may give a direction under section 6(2)-

(a) to that body, as the owner of, or the person in possession or control of, a ship, by serving the direction on the master of the ship; or

(b) to that body, as a salvor, by serving the direction on the person in charge of the salvage operations.

(2) For the purpose of giving or serving a direction under section 6(2) to or on any person on a ship, a person acting on behalf of the Director shall have the right to go on board the ship.

(Enacted 1990. Amended 16 of 1999 s. 7)

SECT 10

Enforcement of fines VerDate:30/06/1997

Where a fine imposed in proceedings against the owner or master of a ship for an offence under this Part is not paid at the time ordered by the court or magistrate, the court or magistrate, as the case may be, shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress and sale of the ship and its equipment.

(Enacted 1990)

SECT 11

Saving of rights of action, etc. VerDate:30/06/1997

Subject to section 83 of the Interpretation and General Clauses Ordinance (Cap 1), nothing in this Part shall affect any restriction imposed by or under any other Ordinance or shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Ordinance.

(Enacted 1990)

SECT 12

Savings, amendments and repeals VerDate:21/05/1999

PART IV

SAVINGS, AMENDMENTS AND REPEALS

(1) The regulations specified in column 2 of Part I of the Schedule as amended, in the provisions set out in column 3 of that Part, to the extent and in the manner set out in column 4 of that Part-

(a) shall, notwithstanding the repeals under subsection (3), continue in operation; and

(b) shall be deemed for all purposes to have been made by the Secretary for Economic Services under section 3. (Amended 16 of 1999 s. 8)

(2)-(3) (Omitted)

SCHEDULE(Omitted) VerDate:30/06/1997

(Omitted)