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DUMPING AT SEA BILL

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A BILL

To

Control the disposal of substances and articles at sea and the dumping of substances and articles in the sea and under the sea-bed, and for connected purposes.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Dumping at Sea Ordinance.

(2) This Ordinance comes into operation on a day the Secretary for Planning, Environment and Lands appoints by notice in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires -
"authorized officer" () means a person appointed as an authorized officer under section 5;

"commander" (), in relation to an aircraft, means the member of the flight crew designated as commander of that aircraft by the operator, or, if no person is designated, the person who is the pilot in command of the aircraft;

"container" () includes a box, barrel, drum or other receptacle;

"Convention State" () means a state which is a party to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter concluded at London in December 1972;

"dumping" () means -

- (a) a deliberate disposal, including an emission or discharge, at sea of substances or articles from an aircraft, vessel or marine structure; and
- (b) a deliberate disposal at sea of an aircraft, vessel or marine structure,

but does not include dumping that is incidental to the operation of an aircraft, vessel or marine structure other than of substances or articles transported to or by an aircraft, vessel or marine structure for dumping or treatment prior to dumping;

"dumping operator" () means a person who dumps substances or articles, or scuttles a vessel, aircraft or marine structure, for another person;

"Hong Kong aircraft" () means an aircraft registered in Hong Kong;

"Hong Kong marine structure" () means a marine structure owned by or leased to an individual residing in Hong Kong or a body corporate incorporated under the law of Hong Kong;

"Hong Kong vessel" () means a vessel registered in Hong Kong under the Merchant Shipping (Registration) Ordinance

(Cap. 415) or required to be licensed under the Shipping and Port Control Ordinance (Cap. 313);

"incineration" () means the combustion of substances and articles for the purpose of their thermal destruction;

"marine pollution abatement notice" () means a marine pollution abatement notice given under section 12;

"marine structure" () means a platform or other man-made structure at sea other than a pipeline;

"master" (), in relation to a vessel, includes the person for the time being in charge of the vessel;

"permit" () means a permit issued under this Ordinance;

"sea" () includes an area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of a channel, creek, bay or river;

"technical memorandum" () includes an amendment to a technical memorandum;

"vessel" () includes -

(a) a ship, junk, boat, dynamically supported craft, seaplane, or other description of vessel used in navigation; and

(b) any other description of vessel in Hong Kong or in the waters of Hong Kong not used in navigation or not constructed or adapted for use in navigation;

"waste producer" means the person who undertakes an activity that produces a substance or article that he disposes of or proposes to dispose of by dumping.

3. Application to Government

(1) This ordinance binds the Government.

(2) If the Authority considers that a public officer, in carrying out his duties in the service of the Government, has done, or omitted to do, something that contravenes this Ordinance, the Authority shall, if the act or omission is not immediately terminated to his satisfaction, report the matter to the Chief Secretary.

(3) On receiving a report, the Chief Secretary shall enquire into the matter and, if his enquiry shows that a public officer is continuing to contravene this Ordinance or is likely to contravene the Ordinance again, the Chief Secretary shall ensure that the best practicable steps are taken to stop the contravention or avoid the recurrence.

PART II

ADMINISTRATION

4. Designation of Authority, etc.

(1) The Director of Environmental Protection is designated as the Authority under this Ordinance.

(2) The Secretary for Planning, Environment and Lands is designated as the Secretary for the purposes of this Ordinance.

(3) The Governor may by order published in the Gazette amend this section to designate another person as the Authority or the Secretary.

5. Authorized officers, etc.

(1) The Authority may appoint authorized officers to carry out his functions and powers under this Ordinance other than the power to appoint authorized officers under this section.

(2) The Authority may employ persons to assist him and authorized officers to carry out his functions under this Ordinance.

6. Records

(1) The Authority shall -

(a) compile a register containing the particulars of the permits he issues;

(b) make the register available for public inspection free of charge and at reasonable hours; and

(c) give a copy of an entry in the register for a permit to a person on payment of a prescribed fee.

(2) The Authority shall record in the register -

(a) the name of the permit holder;

(b) the period of validity of the permit;

(c) for a scuttling operation -

(i) the name of the owner of the vessel to be scuttled; and

(ii) a description of the vessel to be scuttled;

(d) for a dumping or incineration operation -

(i) the name, where known, of the producer of the substances or articles to be dumped or incinerated;

(ii) a description and quantity of the substances or articles to be dumped or incinerated;

- (iii) the country of origin of the substances or articles to be dumped or incinerated; and
- (iv) the nature of the container, if any, in which the substances or articles to be dumped or incinerated will be contained when they are dumped or incinerated;
- (e) the site at which the dumping, incineration or scuttling is to take place;
- (f) the place from which the substances, articles or vessel are to be taken to the site for dumping, incineration or scuttling.

PART III

MARINE DUMPING AREAS

7. Designation of marine dumping areas

(1) The Authority may designate an area within Hong Kong waters as a marine dumping area.

(2) In determining the suitability of an area for designation as a marine dumping area, the Authority shall have regard to -

- (a) the need to protect the marine environment, the living resources which it supports and human health;
- (b) the need to prevent interference with other legitimate uses of the sea; and
- (c) the proposed quantity and type of material to be dumped.

(3) The Authority shall publish notice in the Gazette of an area designated as a marine dumping area.

(4) The Authority shall not issue a permit for an operation in a marine dumping area until he has published notice of the area in the Gazette.

PART IV

PERMITS

8. Requirement to have permit for dumping at sea

(1) An operation described in this subsection requires a permit under this section -

- (a) dumping substances or articles within the waters of Hong Kong, either in the sea or under the sea-bed -
 - (i) from an aircraft, vehicle, vessel or marine structure;
 - (ii) from a container floating in the sea; or
 - (iii) from a structure on land constructed or adapted wholly or mainly for the purpose of dumping solids in the sea;
- (b) dumping substances or articles anywhere in the sea or under the sea-bed -
 - (i) from a Hong Kong aircraft, Hong Kong vessel or other Hong Kong marine structure; or
 - (ii) from a container floating in the sea, if the dumping is controlled from a Hong Kong aircraft, Hong Kong vessel or other Hong Kong marine structure;
- (c) scuttling a vessel, aircraft or marine structure -
 - (i) in the waters of Hong Kong; or

- (ii) anywhere at sea, if the scuttling is controlled from a Hong Kong aircraft, Hong Kong vessel or other Hong Kong marine structure;
 - (d) loading an aircraft, vessel, marine structure or floating container in Hong Kong or the waters of Hong Kong with substances or articles for dumping anywhere in the sea or under the sea-bed;
 - (e) loading a vehicle in Hong Kong with substances or articles for dumping from the vehicle anywhere in the waters of Hong Kong;
 - (f) towing or propelling from Hong Kong or the waters of Hong Kong a vessel for scuttling anywhere at sea.
- (2) A person who -
- (a) is a waste producer of a substance or article that is to be dumped at sea; or
 - (b) owns a vessel, aircraft or marine structure intended for scuttling,

shall hold a permit before authorizing or commencing -

- (i) a dumping operation under subsection (1)(a) or (b);
- (ii) a scuttling operation under subsection (1)(c);
- (iii) a loading operation under subsection (1)(d) or (e); or
- (iv) a towing or propelling operation under subsection (1)(f).

(3) A person who has possession of a substance, article, vessel, aircraft or marine structure that is to be dumped or scuttled at sea, shall satisfy himself that the waste producer or the owner of the vessel, aircraft or marine structure holds a permit

relating to the substance, article, vessel, aircraft or marine structure.

(4) A person shall apply for a permit in the form that the Authority directs specifying -

- (a) the name and address of the waste producer;
- (b) the name and address of the owner of the vessel, aircraft or marine structure to be scuttled;
- (c) the mode of transportation from the site of waste production to the point of final disposal at sea;
- (d) a description of the substance or article to be dumped;
- (e) the name of the dumping operator;
- (f) the loading point in Hong Kong;
- (g) the location of final disposal at sea; and
- (h) such other information as the Authority may reasonably require to determine whether or not to issue a permit.

(5) The requirements under this section are in addition to and do not lessen the requirements under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127).

9. Requirement of permit for incineration at sea

(1) An operation described in this subsection requires a permit under this section -

- (a) loading a vessel or marine structure in Hong Kong or Hong Kong waters with substances or articles for incineration anywhere at sea; or
- (b) incinerating substances or articles on a vessel or marine structure -

- (i) in the waters of Hong Kong; or
- (ii) anywhere at sea, if the incineration takes place on a Hong Kong vessel or other Hong Kong marine structure.

(2) A person who is a waste producer of a substance or article that is to be incinerated at sea shall hold a permit before authorizing or performing -

- (a) a loading operation under subsection (1)(a); or
- (b) an incineration operation under subsection (1)(b).

(3) A person shall apply for a permit in the form that the Authority directs specifying -

- (a) the name and address of the waste producer;
- (b) the mode of transportation from the site of waste production to the point of incineration at sea;
- (c) a description of the substance or article to be incinerated;
- (d) the name of the transport operators carrying the waste from the site of waste production to the point of incineration at sea;
- (e) the loading point in Hong Kong;
- (f) the location of incineration at sea;
- (g) the name of the operator of the incinerator; and
- (h) such other information as the Authority may reasonably require to determine whether or not to issue a permit.

10. Issue of permits

(1) The Authority may issue a permit required under this Ordinance.

- (2) In determining whether to issue a permit the Authority -
- (a) shall have regard to the need -
 - (i) to protect the marine environment, the living resources which it supports and human health; and
 - (ii) to prevent interference with other legitimate uses of the sea; and
 - (b) may have regard to such other matters as the Authority considers relevant including (but not limiting the matters the Authority may take into account) -
 - (i) the validity period of the permit;
 - (ii) the source and nature of the substances or articles to be dumped;
 - (iii) the places to be used for loading and dumping substances and articles;
 - (iv) the rate of dumping proposed;
 - (v) the proposed methods of packaging, dumping and containment;
 - (vi) the need for inspection and testing;
 - (vii) the need for environmental monitoring;
 - (viii) the proposed control of floatable materials;
 - (ix) proposed specific water pollution avoidance measures;
 - (x) the proposed methods of record keeping and reporting;
 - (xi) the dumping operator and equipment proposed to be employed; and
 - (xii) other conditions the Authority thinks necessary to protect the marine environment.

(3) Without limiting the general nature of the matters set out in subsection (2), where it appears to the Authority that an applicant for a permit has applied for the permit with a view to the disposal of the substances or articles to which it would relate, the Authority, in determining whether to issue a permit, shall have regard to the practical availability and environmental consequences of alternative methods of dealing with them.

(4) The Authority -

(a) shall include such conditions in a permit as the Authority thinks fit -

(i) to protect the marine environment, the living resources which it supports and human health; and

(ii) to prevent interference with other legitimate uses of the sea; and

(b) may include in a permit such other provisions as the Authority considers appropriate.

(5) Without limiting the general nature of the matters set out in subsection (4), the Authority, in a permit, may -

(a) require the permit holder -

(i) not to carry out an operation authorized by the permit until the Authority has given further approval of the operation; and

(ii) to use automatic equipment to record such information about the dumping, scuttling, environmental monitoring or incineration as the Authority specifies; and

(b) require the operation to take place at a specified site, whether in the waters of Hong Kong or not.

(6) The Authority may require an applicant to supply information and allow examinations and tests to be carried out to enable the Authority to decide whether a permit should be issued to the applicant and the conditions which a permit that is issued to him ought to include.

(7) Where a permit holder uses automatic recording equipment required under a permit, a record produced by the equipment is admissible as evidence of the matters appearing in the record.

(8) An applicant on applying for a permit shall pay the prescribed fee.

(9) The Authority may require an applicant for a permit to pay the prescribed fee for -

(a) examinations and tests which the Authority requires to decide -

(i) whether to issue a permit to the applicant;
and

(ii) the conditions which a permit issued to him ought to include;

(b) the costs of the development and maintenance of a marine dumping area including the cost of employing a manager to manage the marine dumping area; ;

(c) checking the manner in which operations for which a permit is needed have been or are being conducted; and

(d) monitoring the effect of the operations.

(10) The Authority may vary, suspend or revoke a permit if it appears to the Authority that there has been a breach of the permit.

(11) The Authority may vary, suspend or revoke a permit if it appears to the Authority that the permit ought to be varied, suspended or revoked -

- (a) due to a change in the marine environment, the living resources which it supports or human health;
- (b) because of increased scientific knowledge relating to those matters; or
- (c) for any other reason that appears to the Authority to be relevant.

(12) The Authority may revoke a suspension of a permit if he is satisfied that -

- (a) the permit holder has not breached a permit provision;
- (b) the permit holder has rectified a breach of a permit provision; or
- (c) the circumstances that gave rise to the suspension no longer exist.

(13) The Authority may revoke all permits held by a permit holder if he is convicted of any offence under this Ordinance.

11. Exemptions

- (1) The Secretary may order that specified operations -
 - (a) do not need a permit; or
 - (b) do not need a permit if they satisfy conditions specified in the order.

(2) Without limiting the power of the Secretary under subsection (1)(b) to specify other conditions, the Secretary may specify conditions requiring a person to obtain the Authority's approval before the person does anything for which a permit would otherwise be needed.

(3) The Authority may approve an operation under subsection (2) with or without conditions and may withdraw his approval if the person carrying out the exempted operation fails to comply with a condition imposed under this section.

PART V

MARINE POLLUTION CONTROL

12. Marine pollution abatement notice

(1) Where the Authority is satisfied that -

- (a) marine construction work;
- (b) dredging;
- (c) marine borrowing;
- (d) land reclamation; or
- (e) stock piling on the sea-bed,

is causing or contributing to marine pollution which exists or which is imminent, the Authority may serve a marine pollution abatement notice on -

- (i) the master of a vessel or commander of an aircraft;
- (ii) the person in charge of a vehicle or marine structure; or
- (iii) the person,

carrying out the activity or responsible for the activity.

(2) The Authority may require a person served with a marine pollution abatement notice -

- (a) to cease dumping marine pollutants;
- (b) to cease the dumping activity;
- (c) to take other steps to abate the dumping of marine pollutants from the activity;

- (d) to undertake the activity so that it does not cause the quality of the water in the vicinity of the activity to exceed the levels set out in the abatement notice;
- (e) to provide, operate and maintain a facility to measure characteristics and constituents of sea water and the discharge.

(3) The Authority may, in serving a marine pollution abatement notice, either -

- (a) require that the notice be complied with immediately;
- or
- (b) state a time by which the person served with the notice shall comply with the notice.

(4) A person served with a marine pollution abatement notice shall notify the Authority when the person has complied with the notice.

(5) If the Authority considers that a person should be given further directions relating to marine pollution, the Authority may -

- (a) serve an additional marine pollution abatement notice;
- (b) withdraw an existing marine pollution abatement notice and serve a new marine pollution abatement notice.

13. Technical memorandum

(1) The Authority may issue a technical memorandum setting out principles, procedures, guide-lines, standards and limits -

- (a) used to predict, measure, assess or determine whether marine pollution is caused by, or contributed to by,

or may be imminent by reason of, a process referred to in section 12(1);

(b) for the issue of marine pollution abatement notices for the pollution;

(c) used to determine whether or not a marine pollution abatement notice is being complied with.

(2) When the Authority issues a technical memorandum, he shall make available a copy of the technical memorandum for free inspection during business hours by the public at such offices of the Government as the Secretary directs.

14. Tabling technical memorandum and commencement

(1) The Secretary shall publish a technical memorandum issued under this Ordinance in the Gazette and lay it on the table of the Legislative Council at the next sitting after publication.

(2) Where the Secretary has laid a technical memorandum on the table of the Legislative Council, the Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiration of a period of 28 days after the sitting at which it was so laid, provide that the technical memorandum be amended in a manner consistent with the power to issue the technical memorandum.

(3) If the period for passing a resolution would, but for this subsection, expire -

(a) after the end of a session of the Legislative Council or after a dissolution of the Legislative Council; but

(b) on or before the day of the second sitting of the Legislative Council in the next following session of the Legislative Council,

the period extends to and expires on the day after the second sitting.

(4) Before the period for passing a resolution, or that period as extended, expires, the Legislative Council may, for a particular technical memorandum, extend, by resolution, the period or the period as previously extended for a further period not exceeding 21 days.

(5) A resolution passed by the Legislative Council under this section is to be published in the Gazette not later than 14 days after the resolution is passed or within such further period as the Governor allows in a particular case.

(6) A technical memorandum published under subsection (1) is not subsidiary legislation.

(7) A technical memorandum takes effect -

- (a) if the Legislative Council does not pass a resolution amending the technical memorandum, upon the expiry of the period or the period as extended, as the case may be, for passing an amending resolution; and
- (b) if the Legislative Council passes a resolution amending the technical memorandum, at the beginning of the day of the publication in the Gazette of the resolution.

PART VI

POWERS OF AUTHORIZED OFFICERS

15. Powers of authorized officers

(1) The Authority may limit the powers of an authorized officer in the instrument appointing the authorized officer.

- (2) An authorized officer may enter -
- (a) land and vehicles in Hong Kong;
 - (b) foreign aircraft, foreign vessels and other foreign marine structures in Hong Kong or the waters of Hong Kong;
 - (c) Hong Kong aircraft, Hong Kong vessels and other Hong Kong marine structures, wherever they are,

if he -

- (i) has reason to believe that substances or articles to be dumped in the sea or under the sea-bed or incinerated on a vessel or marine structure at sea are or have been present there; or
- (ii) is giving or enforcing a marine pollution abatement notice.

- (3) An authorized officer may board -

- (a) a vessel within the waters of Hong Kong; and
- (b) a Hong Kong vessel wherever it is,

if he has reason to believe that the vessel is to be scuttled.

- (4) An authorized officer may require a person -

- (a) to give details of substances or articles on board an aircraft, vessel or marine structure; and
- (b) to give information concerning substances or articles lost or dumped from an aircraft, vessel or marine structure.

- (5) An authorized officer may require -

- (a) an aircraft, vessel or marine structure -
 - (i) to stop or land; or
 - (ii) to move to a place as the authorized officer directs for further inspection; and

- (b) the attendance as the authorized officer directs -
- (i) of the master of a vessel or the commander of an aircraft;
 - (ii) of the person in charge of a marine structure; and
 - (iii) of any other person who is on board an aircraft, vessel or marine structure,

and may require a person on board to assist the authorized officer to carry out his functions.

(6) An authorized officer may detain an aircraft, vessel or marine structure in Hong Kong if he has reason to believe that the aircraft, vessel or marine structure is to be used to dump, or to assist in dumping, substances or articles in the sea or under the sea-bed without a permit [for so long as it is necessary to discover

- (a) the intention of the commander, master or person in charge;
- (b) whether an offence has been committed; and
- (c) to prevent a dumping, scuttling or incineration operation with out a permit.].

(7) An authorized officer who enters a place or enters, stops or detains an aircraft, vessel or vehicle may require a person found there to give his name and address and to produce evidence of his identity.

16. Magistrate's warrant required to enter dwelling

(1) An authorized officer shall not enter, for the purpose of enforcing this Ordinance, premises used only as a dwelling except under the authority of a warrant issued by a magistrate.

(2) A magistrate may only issue a warrant if, on an application made by an authorized officer, he is satisfied -

- (a) that an authorized officer has reasonable grounds to believe that evidence relating to an offence under this Ordinance is present in the dwelling; and
- (b) that -
 - (i) it is not practicable to communicate with a person entitled to grant entry to the dwelling;
 - (ii) a person entitled to grant entry to the dwelling has unreasonably refused an authorized officer entry;
 - (iii) entry to the dwelling is unlikely to be granted unless a warrant is produced; or
 - (iv) the purpose of entry could be prejudiced unless an authorized officer arriving at the dwelling can secure immediate entry to it.

17. Persons assisting an authorized officer

(1) An authorized officer may take with him, to assist him in performing his functions -

- (a) another person; and
- (b) equipment or materials.

(2) A person who assists an authorized officer may perform the authorized officer's functions, but only under the authorized officer's supervision.

18. Power of authorized officer under the Ordinance

(1) Without limiting the powers of an authorized officer, an authorized officer may -

- (a) open a container;
- (b) carry out searches, inspections, measurements and tests;
- (c) take samples;
- (d) require the production of documents, books and records; and
- (e) photograph or copy anything,

in performing his duties under this Ordinance.

(2) An authorized officer shall do everything reasonably necessary to determine whether a marine pollution abatement notice is to be given.

19. Evidence of authorized officers' authority

(1) The Authority shall issue an authorized officer with a certificate of his authorization.

(2) When an authorized officer performs a function under this Ordinance, he shall, if requested -

- (a) produce the certificate;
- (b) state -
 - (i) his name;
 - (ii) the function that he proposes to perform; and
 - (iii) the grounds for proposing to perform it.

20. Time of performance of functions

An authorized officer shall perform his functions under this Ordinance at a reasonable hour unless he believes that the purpose of their performance could be frustrated if he performs them at a reasonable hour.

21. Power of authorized officer to use reasonable force

An authorized officer may use reasonable force, if necessary, in the performance of his functions.

22. Protection of authorized officers

(1) An authorized officer is not liable in civil or criminal proceedings for anything he does, or omits to do, in the purported performance of his functions under this Ordinance if the court is satisfied that it was done, or omitted, in good faith.

(2) The protection conferred on public officers by subsection (1) for an act or omission does not affect any liability of the Government for the act or omission.

PART VII

ENFORCEMENT

23. Power to take remedial action

(1) Where the Authority is satisfied that dumping or incineration at sea has been done otherwise than under and in accordance with a permit, the Authority may do anything reasonably necessary to protect the marine environment, the living resources which it supports and human health, and to prevent interference with other legitimate uses of the sea.

(2) If the Authority acts under subsection (1), he is entitled to recover the expenses reasonably incurred by him in carrying out his actions from a person who has been convicted of an offence in consequence of the act or omission which made it appear to the Authority to be necessary or expedient to carry out the operation.

24. Power to test, etc.

(1) The Authority may -

- (a) test to ascertain the probable effect of a substance, article, vessel, aircraft or marine structure that is permitted to be dumped, scuttled or incinerated, on the marine environment and the living resources which it supports;
- (b) analyse or have tested and analysed a substance, article, vessel, aircraft or marine structure that is permitted to be dumped, scuttled or incinerated; and
- (c) require a person who applies for or holds a permit or on whom a marine pollution abatement notice is given to test and analyse relevant substances, articles, vessels, aircraft and marine structures.

(2) If, at the request of a person, the Authority carries out a test under subsection (1)(a), he is entitled to recover any expenses reasonably incurred from the person who requested the test.

(3) A certificate of analysis of a sample of a substance or article or other material obtained from any place, premises, aircraft, vehicle, vessel or marine structure may be tendered in evidence in proceedings and is evidence of the facts stated in the certificate if this section has been complied with, or substantially complied with.

(4) An authorized officer who has a sample of a substance or article for analysis, or a person required to test or analyse a substance or article under subsection (1)(c), shall -

- (a) divide it into 3 approximately equal parts;
- (b) place each part in a separate container and suitably mark or label each container;
- (c) ensure that the person in charge of the place, premises, aircraft, vehicle, vessel or marine structure from which the sample is obtained, or his employee or agent -

- (i) is handed one of the parts as that person or his employee or agent may select or, if that is not reasonably practicable, is handed or sent by post one of the parts as the authorized officer may select; and

- (ii) is informed that one of the other 2 parts is intended to be submitted to an analyst for analysis; and

- (d) submit one of the other 2 parts to an analyst for analysis and retain the remaining part.

(5) As soon as the analyst completes an analysis under subsection (4)(d) he shall give the Authority and the person in charge of the place, premises, aircraft, vehicle, vessel or marine structure from which the sample was obtained, or his employee or agent, a certificate of the results of the analysis.

(6) The analyst may sign a certificate under subsection (5) even if a person acting under his directions makes the analysis.

(7) A certificate purporting to be signed by the analyst is presumed, in the absence of contrary evidence, to have been signed by him.

(8) If there is a dispute over the results of an analysis conducted on a sample, a court or magistrate may order the Authority to have the third part of the sample analyzed as the court or magistrate sees fit.

(9) A court or magistrate may authorize the Authority to dispose of a sample for which the Authority has no reason to keep.

(10) The Governor may, by notice published in the Gazette, appoint a person to be an analyst for the purposes of this section.

25. Offences

(1) A person who -

- (a) except under and in accordance with a permit, does anything for which a permit is needed; or
- (b) except under and in accordance with a permit, causes or allows another person to do anything for which a permit is needed,

commits an offence and is liable on conviction -

- (i) on a first conviction to a fine of \$200,000 and to imprisonment for 6 months;
- (ii) on a second or subsequent conviction to a fine of \$500,000 and to imprisonment for 2 years; and
- (iii) in both paragraphs (i) and (ii), to a further fine of \$10,000 for each day that the court is satisfied that the operation has continued.

(2) A person who, to procure the issue of a permit -

(a) makes a statement which he knows to be false in a material particular;

(b) recklessly makes a statement which is false in a material particular; or

(c) intentionally fails to disclose a material particular, commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

(3) A person who, in purporting to carry out a duty imposed on him under a permit -

(a) makes a statement which he knows to be false in a material particular;

(b) recklessly makes a statement which is false in a material particular; or

(c) intentionally fails to disclose a material particular, commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

(4) A person charged with an offence under subsection (1) has a defence if he proves -

(a) that the operation was reasonably carried out to secure the safety of an aircraft, vessel or marine structure or to save life;

(b) that the necessity for the operation was not due to his fault; and

(c) that he took steps within a reasonable time to inform the Authority -

(i) of the operation;

(ii) of the locality and circumstances in which it took place; and

(iii) of the substances or articles concerned.

(5) A person charged with an offence under subsection (1) for an operation which was carried out outside the waters of Hong Kong has a defence if he proves that -

(a) for an operation falling within section 8(1)(b), the aircraft, vessel, marine structure or container (as the case may be) was loaded in a Convention State or in the national or territorial waters of a Convention State with the substances or articles dumped;

(b) for an operation falling within section 8(1)(c)(ii), the vessel scuttled was towed or propelled from a Convention State or from the national or territorial waters of a Convention State to the place where the scuttling was carried out; or

(c) for an operation falling within section 9(1)(b)(ii), the vessel or marine structure on which the incineration took place was loaded in a Convention State or in the national or territorial waters of a Convention State with the substances or articles incinerated, and

the operation took place under a permit or licence issued by the responsible authority in a Convention State and in accordance with the permit.

(6) A person who fails to comply with a marine pollution abatement notice served on him under section 12 commits an offence and is liable on conviction -

- (a) if he fails to cease the operation as specified in the marine pollution abatement notice, to a fine of \$200,000 and to imprisonment for 6 months and a further fine of \$10,000 for each day that the court is satisfied that the failure to cease the operation has continued; and
 - (b) in any other case, to a fine of \$200,000 and to imprisonment for 6 months.
- (7) A person who -
- (a) intentionally obstructs the Authority or an authorized officer in the performance of his functions under this Ordinance;
 - (b) fails without reasonable excuse to comply with a requirement made or direction given by the Authority or an authorized officer in the performance of his functions under this Ordinance; or
 - (c) in purporting to give information required by the Authority or an authorized officer for the performance of his functions under this Ordinance -
 - (i) makes a statement which the person knows to be false in a material particular;
 - (ii) recklessly makes a statement which is false in a material particular; or
 - (iii) intentionally fails to disclose a material particular,
- commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

(8) Where a body corporate commits an offence and the offence was committed with the consent of, or is attributable to the neglect of, an officer of the body corporate or a person concerned in the management of the body corporate, the officer or other person as well as the body corporate commits the offence and is liable on conviction to the penalty provided.

(9) Where the affairs of a body corporate are managed by its members, subsection (8) applies to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(10) Where a firm commits an offence and the offence was committed with the consent of, or is attributable to the neglect of a partner in the firm or a person concerned in the management of the firm, the partner or the person, as well as the firm, commits the offence and is liable to the penalty provided.

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26. Defence of due diligence, etc.

(1) A person charged with an offence under this Ordinance has a defence if he proves that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) Without limiting the general nature of subsection (1), a person establishes the defence under the subsection if he proves -

- (a) he acted under instructions from his employer; or
- (b) he relied on information supplied by another person without reason to believe that the information was false or misleading,

and in either case that he took all steps reasonably open to him to ensure that an offence would not be committed.

(3) If a person wishes to rely on a defence involving an allegation -

- (a) that the commission of the offence was due to an act by or omission of another person (other than acting on the instructions of his employer); or
- (b) that he relied on information supplied by another person,

he is not entitled, without leave of the court, to rely on the defence unless 7 clear days before the hearing, he has served on the prosecutor a notice giving all information he then had that identifies or assists in identifying the other person.

PART VIII

APPEALS

27. When appeal is to be brought

(1) A person who is aggrieved by a decision or direction of the Authority, an authorized officer or a public officer under the following provisions may appeal to the Appeal Board -

- (a) section 7 (designation of a marine dumping area);
- (b) section 10 (issue of a permit);
- (c) section 12 (issue of a marine pollution abatement notice);
- (d) section 23 (taking remedial action).

(2) If an aggrieved person wishes to appeal under subsection (1), he shall do so within 21 days after he receives the notice or the decision.

(3) Where a person appeals under subsection (1)(c) or (d), the notice or decision appealed from is suspended from the day on which notice of appeal is given and until the appeal is disposed of, withdrawn or abandoned, unless -

- (a) the Authority considers the notice or decision essential as the continuation of the activities would cause a danger to public health or be seriously detrimental to the amenities of the area affected by the activities; and
- (b) the notice or decision contains a statement to that effect.

28. Constitution of Appeal Board panel

(1) The Governor may appoint a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336) and who is not a public officer as Chairman to sit on all Appeal Boards.

(2) The term of appointment for the Chairman is not more than 3 years and he may be reappointed.

(3) The Governor may appoint a panel of persons whom he considers suitable as members of an Appeal Board.

(4) The term of appointment for a member of the panel is not more than 3 years and he may be reappointed.

(5) Appointments under this section are to be published in the Gazette.

29. Exercise of Appeal Board's jurisdiction

(1) The Chairman shall appoint a number of persons from the panel as he considers reasonable for an appeal or group of appeals

to constitute an Appeal Board for the appeal or group of appeals.

(2) The majority of persons constituting an Appeal Board shall not be public officers.

(3) An Appeal Board may determine an appeal.

(4) On an appeal an Appeal Board may confirm, reverse or vary the decision or direction appealed from.

(5) An Appeal Board determines a question before it by the opinion of the majority of the Chairman and the members hearing the appeal except a question of law which the Chairman determines.

(6) If there is an equality of votes the Chairman has a casting vote.

(7) An Appeal Board is not at any time to have a majority of members who are public officers.

(8) An Appeal Board may -

(a) receive evidence on oath;

(b) take into account a statement, document, information or matter whether or not it would be admissible as evidence in a court of law; and

(c) by notice in writing, summon a person to appear before it to produce a document or to give evidence.

(9) The Chairman may determine a matter of practice in so far as provision is not made in this Ordinance.

30. Supplementary provisions as to Appeal Board

(1) If the Chairman is unable to exercise his functions the Governor may appoint another person qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336) to act as Chairman.

(2) An acting Chairman may exercise and perform the powers, functions and duties of the Chairman during the period of his appointment.

(3) If a member appointed by the Chairman to hear an appeal is unable to exercise his functions, the Chairman may appoint another person from the panel to act in his place.

(4) The Chairman or a member may resign his office by notice in writing to the Governor.

(5) An Appeal Board may continue the hearing of an appeal or group of appeals even though the membership of the Appeal Board has changed as if the change had not occurred.

(6) The Chairman shall not appoint, without the consent of the parties, a person as a member of an Appeal Board before which the hearing of an appeal has commenced.

31. Case stated

(1) The Chairman may, before an appeal is determined, refer a question of law to the Court of Appeal by way of case stated.

(2) In addition to the other powers of the Court of Appeal in hearing a case stated the Court of Appeal may amend the case or order it to be sent back to the Chairman of the Appeal Board for amendment.

PART IX

REGULATION, REPEAL AND SAVINGS

32. Regulation

The Authority may prescribe by regulation matters that are required to be prescribed under this Ordinance.

33. Repeal and savings

(1) The Dumping at Sea Act 1974 (Overseas Territories) Order 1975 (S.I. 1975 no. 1831, App. III, p. DK1) is amended in Schedule 2 by repealing the entry relating to "Hong Kong".

(2) A licence issued under the Order repealed by subsection (1) shall continue in force as if it were a permit issued under section 10.

(3) The Determination of Licence Fees (L.N. 283 of 1994) shall continue in force as if the Authority had made it under section 10(9).

(4) The Order of Designation of Public Officers (L.N. 134 of 1986) is repealed.

(5) Sections 23 to 25 of the Interpretation and General Clauses Ordinance (Cap. 1) apply to repeals made by this section as if the provisions repealed were part of an Ordinance.

Consequential Amendments

Water Pollution Control Ordinance

34. Prohibited discharges into waters of Hong Kong and inland waters.

Section 8(3)(d) of the Water Pollution Control Ordinance (Cap. 358) is amended by repealing "to be licensed under paragraph 1 of Schedule 1 to the Dumping at Sea Act 1974 (Overseas Territories) Order 1975 (SI 1975/1831 U.K.)" and substituting "a permit under the Dumping at Sea Ordinance (of 1994)".

Explanatory Memorandum

This Bill sets up the control of dumping waste materials at sea for Hong Kong in a local Ordinance. The Bill repeals and replaces the Dumping at Sea Act 1974 (Overseas Territories) Order 1975 in its application to Hong Kong.

2. Part I is the preliminary part of the Bill. Clause 1 deals with the short title and commencement. Clause 2 defines terms for the purposes of the Ordinance. Clause 3 sets out what is to happen if a public officer does something in contravention of the Ordinance.
3. Part II provides in clause 4 for the designation of the Director of Environmental Protection as the Authority and the Secretary for Planning, Environment and Lands as the Secretary for the administration of the Ordinance. Authorized officers are appointed under clause 5 and clause 6 deals with keeping of records.
4. Part III allows for the establishment of Marine Dumping Areas within Hong Kong waters.
5. Certain operations (dumping waste, scuttling vessels, aircraft and marine structures and incineration, at sea) require a permit under clauses 8(1) and 9(1). Waste producers and the owners of vessels, aircraft and marine structures to be scuttled are required to obtain a permit before they allow the substances, articles, vessels, aircraft or marine structures to be loaded onto a vessel so that they can be dumped, scuttled or incinerated. Dumping operators are required to satisfy themselves that a permit exists before loading, or dumping, scuttling or incinerating, any substance or material or a vessel, aircraft or marine vessel.
6. Clauses 10 and 11 provide for the issue of permits and exemptions.

7. Part V provides for control of marine pollution caused by marine construction work, dredging, marine borrowing, land reclamation or stock piling on the sea-bed. Clause 12 allows the Authority to issue a marine pollution abatement notice requiring polluters to cease or modify activities. Clause 13 enables the Authority to issue a technical memorandum to set the principles, procedures, guide-lines, standards and limits used to predict, measure, assess and determine the relationship between a process and marine pollution.

8. Part VI sets out the powers of authorized officers in relation to enforcing the Ordinance. An authorized officer is empowered to enter premises and detain aircraft, vessels and marine structures where he has reason to believe that the relevant place or thing is connected to unlawful actions under the Ordinance. A magistrate's warrant is needed to enter a dwelling. An authorized officer may also open containers and take samples for testing.

9. Part VII gives further powers to assist in enforcing the Ordinance including power to take remedial action (clause 23) and power to test (clause 24). Clause 25 deals with offences under the Ordinance. Clause 26 provides a defence of due diligence to offences under the Ordinance.

10. A person aggrieved of a decision taken under the Ordinance generally have a right of appeal. Clause 27 sets out the sections where decisions taken give rise to an appeal. An appeal panel is established under clause 28.

11. Part IX deals with regulation, repeal of the U.K. legislation and saving of certain licences under the repealed order. Clause 34 makes a consequential amendment to the Water Pollution Ordinance.