

**MERCHANT SHIPPING (SEAFARERS)
ORDINANCE**

(Cap. 478)

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An Ordinance to consolidate and amend the law relating to seafarers; to introduce new provisions relating to seafarers and to certain persons carried on but not employed in ships; and to provide for matters incidental thereto or connected therewith.

[2 September 1996] *L.N. 342 of 1996*

(Enacting provision omitted—E.R. 2 of 2014)

PART I

PRELIMINARY

1. Short title

- (1) This Ordinance may be cited as the Merchant Shipping (Seafarers) Ordinance.
- (2) *(Omitted as spent—E.R. 2 of 2014)*

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
 - “A.B.” (高級水手) means an able-bodied seaman, for which purpose “seaman” (水手) shall include seafarer;
 - “Advisory Board” (諮詢委員會) means the Seafarers’ Advisory Board established by section 6(1);
 - “Appeals Board” (上訴委員會) means the Seafarers’ Appeals Board established by section 18(1);
 - “Authority” (監督) means the Seafarers’ Authority established by section 4(1);

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- “autopsy” (屍體剖驗) includes a post-mortem examination;
- “coastal-going ship” (沿岸船舶) means any ship employed exclusively in trading, or going, between any place or places situated within river trade limits;
- “company” (公司) means a company incorporated under the Companies Ordinance (Cap. 622), or a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622), or any non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622); (*Amended 28 of 2012 ss. 912 & 920*)
- “company roster” (公司候船名冊), in relation to a permitted company, means the list or lists kept in the company’s permitted crew department pursuant to section 64(1) or (2), as the case may be;
- “crew agreement” (船員協議) has the meaning assigned to it by section 80(2);
- “crew department record” (船員部紀錄), in relation to a permitted company, means the record kept in the company’s permitted crew department pursuant to section 61(1);
- “dangerous drug” (危險藥物) includes any drug which is a dangerous drug within the meaning of the Dangerous Drugs Ordinance (Cap. 134);
- “digital image” (數碼影像), in relation to a document, means an image of the document kept on a computer system or on an electronic medium; (*Added 8 of 2006 s. 47*)
- “direct trade entrant” (直接入職海員) means a seafarer whose seafaring avocation consists of an occupation approved by the Superintendent as an occupation the skills of which cannot normally be acquired by training on board a ship or at a pre-sea training establishment;

“disciplinary inquiry” (紀律研訊) means a disciplinary inquiry conducted pursuant to section 22;

“disciplinary offence” (違紀行為) means any misconduct by a seafarer on board a Hong Kong ship specified in regulations made under section 107(1) as a disciplinary offence;

“employer” (僱主), in relation to—

(a) a registered seafarer, means the person who has—

(i) supplied that seafarer for employment; or

(ii) employed that seafarer,

in a ship, irrespective of whether that person—

(A) owns, charters or manages; or

(B) acts as an agent for another person who owns, charters or manages,

that ship; and

(b) any other seafarer, means the person who is, in accordance with the crew agreement or other agreement for employment entered into by the seafarer for employment as a seafarer, specified, either by name or by necessary implication, as the employer of that seafarer;

“employment registration book” (僱用登記簿) means a registered seafarer’s employment registration book issued or deemed to be issued under regulations made under section 17;

“fishery research vessel” (漁業研究船) means a vessel primarily used for research into sea fishing and fish stocks;

“fishing vessel” (漁船) means any vessel used for catching, otherwise than for sport, fish, whales, seals, walruses, or other living resources of the sea, and includes a fishery research vessel;

“function” (職能) includes a duty;

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- “Hong Kong ship” (香港船舶) means a ship registered in Hong Kong;
- “identity card” (身分證) means an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177);
- “inquest” (死因研訊) includes an inquiry into a death;
- “junk” (中式帆船) includes lorcha and any vessel of Chinese or other Asiatic build, construction or rig whether such vessel is of a sea-going type or not and howsoever propelled;
- “legal officer” (律政人員) has the meaning assigned to it by section 2 of the Legal Officers Ordinance (Cap. 87);
- “licence” (執照) means a licence issued or deemed to be issued under regulations made under section 73;
- “lorcha” (西式中國帆船) includes any vessel—
- (a) of European build and construction, but of Chinese or other Asiatic rig; or
 - (b) of Chinese or other Asiatic build and construction, but of European rig;
- “Marine Register Book of Births and Deaths” (海上生死登記簿) means the Marine Register of Births and Deaths kept by the Registrar immediately before the commencement* of the Births, Deaths and Marriages (Digital Image) Ordinance (8 of 2006); (*Added 8 of 2006 s. 47*)
- “Marine Register of Births and Deaths” (海上生死登記冊) means the register maintained by the Registrar under section 121A(1); (*Added 8 of 2006 s. 47*)
- “master” (船長) includes every person (except a pilot) having command or charge of any ship;
- “Office” (海管處) means the Mercantile Marine Office established by section 5(1)(a);
- “officer” (高級船員) means the holder of—

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- (a) a certificate of competency or of service issued or deemed to be issued under regulations made under section 73 or a licence; or
- (b) a certificate of competency or of service recognized under those regulations as equivalent to a certificate referred to in paragraph (a);

“panel” (委員團) means a panel appointed under section 18(2);

“passenger” (乘客) means any person carried in a ship except—

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a person on board the ship pursuant to the obligation laid upon the master of the ship to carry shipwrecked, distressed or other persons, or by reason of any circumstances that neither the master nor the owner of the ship could have prevented or forestalled; or
- (c) a child under 1 year of age;

“permanent identity card” (永久性居民身分證) means a permanent identity card within the meaning of the Registration of Persons Ordinance (Cap. 177);

“permit” (許可證) means a permit granted under section 52(1) to a company to maintain a company roster;

“permitted company” (核准公司) means any company holding a valid permit;

“permitted crew department” (核准船員部) means the crew department maintained by a permitted company;

“pleasure vessel” (遊樂船隻) means any launch, yacht, inflatable vessel, junk, lorcha or other vessel howsoever propelled that—

- (a) is possessed or used exclusively for pleasure purposes; and

(b) is not let for hire or reward other than under the terms of a charter agreement or hire-purchase agreement, but does not include any launch, yacht, inflatable vessel, junk, lorcha or other vessel that has never been launched;

“port clearance” (出港證) means port clearance under regulation 27 of the Shipping and Port Control Regulations (Cap. 313 sub. leg. A);

“prescribed fee” (訂明費用), in relation to any matter, means the fee prescribed in regulations made under section 133 in relation to that matter;

“register” (註冊紀錄冊) means the register kept pursuant to section 7;

“register computer” (登記電腦) means a computer forming the system of storing the particulars under sections 121A and 121B; (*Added 8 of 2006 s. 47*)

“registered address” (註冊地址), in relation to a registered seafarer, means the address of the seafarer recorded pursuant to section 13(2)(a) in the register;

“registered seafarer” (註冊海員) means a person whose name is entered in the register;

“Registrar” (登記官) means the Registrar within the meaning of section 2 of the Births and Deaths Registration Ordinance (Cap. 174);

“relief and maintenance” (濟助及生活費) includes the provision of surgical or medical treatment and such dental and optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency;

“river trade limits” (內河航限) means—

(a) the waters within the vicinity of Hong Kong within the following boundaries—

- (i) to the east, meridian 114° 30' east;
- (ii) to the south, parallel 22° 09' north; and
- (iii) to the west, meridian 113° 31' east; and

(b) all inland waterways in the Guangdong Province and Guangxi Zhuang Autonomous Region to which access can be obtained by inland waterways from the area defined in paragraph (a); (*Amended L.N. 80 of 2012*)

“sea-going ship” (遠洋船舶) includes any sea-going ship, irrespective of where it is registered and whether the ship enters the waters of Hong Kong, but does not include any coastal-going ship; (*Amended 23 of 1998 s. 2*)

“ship” (船、船舶) means every description of vessel used in navigation in water not propelled by oars, and includes any ship, boat or craft used wholly or partly for navigation in water and any craft so used the weight of which is partially supported by forces other than hydrostatic forces, but excludes any junk or lorcha howsoever propelled;

“ship’s boat” (船舶的小艇) includes a liferaft; (*Amended L.N. 586 of 1995*)

“Superintendent” (總監) means the Superintendent of the Office specified in section 5(1)(b);

“surveyor of ships” (驗船師) means—

- (a) a person appointed under section 5(1) of the Merchant Shipping (Safety) Ordinance (Cap. 369) to be a Government surveyor; or
- (b) a person appointed in writing by the Authority to be a surveyor of ships for the purposes of this Ordinance;

“working day” (工作日) means any day other than a public holiday or a gale warning day within the meaning of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62).

(Amended 16 of 2013 s. 3)

- (2) Any reference in this Ordinance to the doing of anything, or to anything not being done, in the presence of the Superintendent or to the production of anything to the Superintendent includes a reference to the doing of that thing, or to its not being done, or to the production of that thing to any person acting on behalf of the Superintendent.
- (3) References in this Ordinance to going to sea include references to going to sea from any place outside Hong Kong.
- (4) References in this Ordinance to a death occurring in a ship (howsoever expressed) include—
 - (a) death due to drowning after falling overboard;
 - (b) the death of a sick or injured person whilst being transported from the ship to a place outside the ship;
 - (c) death in a ship's boat;
 - (d) being lost from a ship or ship's boat; and
 - (e) any other death occurring outside the ship which is reported to the master of the ship before the completion of the voyage.
- (5) References in this Ordinance to a person missing from a ship (howsoever expressed) mean a person missing from the ship where there are reasonable grounds for believing that he has died.

Editorial Note:

*Commencement date: 27 August 2007.

2A. Who is a seafarer

- (1) In this Ordinance—

seafarer (海員) means a person who works on board a ship in any capacity on the business of the ship, but does not include a person specified in Schedule 1A.

- (2) The Secretary for Transport and Housing may, after consultation with the Advisory Board, by notice published in the Gazette, amend Schedule 1A.

(Added 16 of 2013 s. 4)

3. Application

- (1) This Ordinance shall not apply to—
- (a) any ship of war of the Chinese People's Liberation Army, any other ship of war or any ship belonging to the Central People's Government; *(Replaced 2 of 2012 s. 3)*
 - (b) any vessel required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) except a pleasure vessel carrying fare-paying guests or passengers outside the waters of Hong Kong. *(Amended 43 of 1999 s. 91)*
- (2) *(Repealed 43 of 1999 s. 91)*
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PART II

ESTABLISHMENT OF SEAFARERS' AUTHORITY, MERCANTILE MARINE OFFICE AND SEAFARERS' ADVISORY BOARD

4. Establishment of Seafarers' Authority

- (1) For the purposes of this Ordinance, there is hereby established an authority to be known as the Seafarers' Authority.
- (2) The Director of Marine shall be the Authority.

5. Establishment of Mercantile Marine Office

(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.)

- (1) For the purposes of this Ordinance, there—
 - (a) is hereby established an office to be known as the Mercantile Marine Office; and
 - (b) shall be a Superintendent of the Office.
- (2) The Secretary for Transport and Housing may appoint a place to be the Office. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (3) The Authority may appoint any public officer to be the Superintendent.
- (4) Subject to subsection (5), the Superintendent shall be responsible for the administration of the Office.
- (5) Where, under this Ordinance, a power is conferred on the Authority to give directions to the Superintendent in relation to the exercise or performance of a particular power or function conferred or imposed under this Ordinance on the

Superintendent, and the Authority, pursuant to that power, gives such a direction, the Superintendent shall comply with that direction accordingly.

- (6) The Authority shall not give any directions to the Superintendent in relation to the exercise or performance of a particular power or function conferred or imposed under this Ordinance on the Superintendent unless there is a power expressly conferred under this Ordinance on the Authority so to do.

6. Establishment of Seafarers' Advisory Board

(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.)

- (1) For the purposes of this Ordinance, there is hereby established a board to be known as the Seafarers' Advisory Board.
- (2) The function of the Advisory Board is to advise the Authority on all matters with respect to which it is consulted by the Authority relevant to this Ordinance.
- (3) The Advisory Board shall consist of—
 - (a) the Authority, who shall be the chairman;
 - (b) the Commissioner for Labour, the Deputy Commissioner for Labour, an Assistant Commissioner for Labour or the Chief Labour Officer;
 - (c) the Superintendent; and
 - (d) not more than 6 other members representative of seafarers' and employers' organizations.
- (4) The Secretary for Transport and Housing may appoint any person who is not a public officer to be a member referred to in subsection (3)(d) of the Advisory Board. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

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- (5) Subject to subsection (6), any person appointed under subsection (4) to be a member of the Advisory Board shall hold office for 3 years or for such lesser period as the Secretary for Transport and Housing specifies in his appointment. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (6) Any person appointed under subsection (4) to be a member of the Advisory Board may at any time resign his appointment by notice in writing signed by him and delivered to the Secretary for Transport and Housing. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (7) The quorum at any meeting of the Advisory Board shall be the chairman and not less than half of its total membership at any one time except that any quorum shall have—
 - (a) not less than 1 member representative of seafarers' organizations;
 - (b) not less than 1 member representative of employers' organizations; and
 - (c) the same number of members representative of seafarers' organizations as the number of members representative of employers' organizations.
- (8) Subject to this Ordinance, the proceedings at any meeting of the Advisory Board shall be conducted in such manner as it thinks fit.
- (9) The Advisory Board may, for the purpose of assisting it to advise the Authority in respect of any matter with respect to which it is consulted by the Authority, appoint a committee to investigate any such matter in accordance with any terms of reference specified by the Advisory Board and to report back to the Advisory Board its findings at the conclusion of that investigation.
- (10) The number of members of a committee of the Advisory Board and their term of office shall be fixed by the Advisory

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Board and such members may include persons who are not members of the Advisory Board.

- (11) Subject to any directions given by the Advisory Board, the quorum, proceedings and place of meeting of a committee of the Advisory Board shall be as the committee thinks fit.
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PART III

REGISTRATION OF SEAFARERS

7. Register of seafarers

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) The Superintendent shall establish and maintain a register of seafarers who either—
 - (a) are employed in sea-going ships or coastal-going ships; or (*Amended 23 of 1998 s. 2*)
 - (b) desire to be employed in sea-going ships or coastal-going ships and in respect of whom the Superintendent is of the opinion that they will obtain their principal means of livelihood from employment in such ships. (*Amended 23 of 1998 s. 2*)
- (2) The register shall be kept in the Office.
- (3) Subject to subsection (4), the register shall be kept in such form and manner as the Superintendent thinks fit.
- (4) The register shall be kept in 2 parts, being—
 - (a) Part I, containing the names of all seafarers who either—
 - (i) are employed in sea-going ships; or (*Amended 23 of 1998 s. 2*)
 - (ii) desire to be employed in sea-going ships and in respect of whom the Superintendent has the opinion referred to in subsection (1)(b); and (*Amended 23 of 1998 s. 2*)
 - (b) Part II, containing the names of all seafarers who either—

- (i) are employed in coastal-going ships; or
 - (ii) desire to be employed in coastal-going ships and in respect of whom the Superintendent has the opinion referred to in subsection (1)(b).
- (5) *(Repealed 16 of 2013 s. 7)*

8. Part I of register

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) Subject to section 12 and subsections (3) and (5), Part I of the register shall contain only the names of those persons who are qualified under subsection (2) to have their names entered therein and, in the case of persons who desire to be employed in sea-going ships, in respect of whom the Superintendent has the opinion referred to in section 7(1)(b).
- (2) A person is qualified to have his name entered in Part I of the register where—
- (a) he holds a permanent identity card;
 - (b) he has attained the age of 17 years but has not attained the age of—
 - (i) in the case of a seafarer who is a direct trade entrant, 60 years; and
 - (ii) in any other case, 35 years;
 - (c) he has passed such medical examination as to his fitness for employment in sea-going ships as the Authority specifies;
 - (d) he—
 - (i) has satisfactorily completed a course of training at a pre-sea training school, or other school or institution, approved by the Authority for the purposes of this Ordinance, or possesses such experience as the Superintendent considers

- sufficient for the purposes of employment in sea-going ships;
- (ii) possesses such experience of the operation and maintenance of machinery as the Superintendent considers sufficient for the purposes of employment in sea-going ships; or
 - (iii) possesses such experience in the catering industry as the Superintendent considers sufficient for the purposes of employment in sea-going ships; and
- (e) he has not been convicted of an offence which, if he were registered, would be grounds for the removal or suspension of his name from the register unless the Authority, after consultation with the Advisory Board, otherwise approves.
- (3) Where at any time it appears to the Superintendent that the number of seafarers whose names appear in Part I of the register and who are suitable and available for employment in any particular seafaring post in a sea-going ship is not, or may not be, sufficient to meet the demand for seafarers for employment in that post, he may, subject to subsection (4), cause to be entered in that part the name of any seafarer—
- (a) whose name appears in Part II of the register and who is suitably qualified, by virtue of experience or otherwise, for employment in that post; and
 - (b) who has passed to the satisfaction of the Superintendent such medical examination as to his fitness for employment in sea-going ships as the Authority specifies.
- (4) The Superintendent shall, in exercising the power conferred on him by subsection (3), give preference, so far as is practicable, to seafarers whose names appear in Part II of

the register according to the date on which their names were entered in the register.

- (5) The Authority may, after consultation with the Advisory Board, direct the Superintendent to enter in Part I of the register the names of such seafarers as the Authority thinks fit.

(Amended 23 of 1998 s. 2)

9. Part II of register

- (1) Subject to section 12, Part II of the register shall contain only the names of those persons who are qualified under subsection (2) to have their names entered therein and, in the case of persons who desire to be employed in coastal-going ships, in respect of whom the Superintendent has the opinion referred to in section 7(1)(b).
- (2) A person is qualified to have his name entered in Part II of the register where—
 - (a) he holds a permanent identity card;
 - (b) he has attained the age of 17 years but has not attained the age of—
 - (i) in the case of a seafarer who is a direct trade entrant, 60 years; and
 - (ii) in any other case, 35 years;
 - (c) he has passed such medical examination as to his fitness for employment in coastal-going ships as the Authority specifies;
 - (d) he—
 - (i) has satisfactorily completed a course of training at a pre-sea training school, or other school or institution, approved by the Authority for the purposes of this Ordinance, or possesses such

- experience as the Superintendent considers sufficient for the purposes of employment in coastal-going ships;
- (ii) possesses such experience of the operation and maintenance of machinery as the Superintendent considers sufficient for the purposes of employment in coastal-going ships; or
 - (iii) possesses such experience in the catering industry as the Superintendent considers sufficient for the purposes of employment in coastal-going ships; and
- (e) he has not been convicted of an offence which, if he were registered, would be grounds for the removal or suspension of his name from the register unless the Authority, after consultation with the Advisory Board, otherwise approves.

10. Seafarers required to be registered and renewal of registration

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) A person who holds an identity card and whose name is not entered in Part I of the register shall not be employed in sea-going ships as a seafarer. (*Amended 23 of 1998 s. 2*)
- (2) A person who holds an identity card and whose name is not entered in Part I or Part II of the register shall not be employed in coastal-going ships as a seafarer.
- (3) A registered seafarer shall, in any continuous 3 year period of registration, be employed as a seafarer for an aggregate of not less than 18 months.
- (4) Notwithstanding any other provision of this Ordinance, the registration of a seafarer shall expire at the expiration of one month after he is first in Hong Kong on or after the expiration

of each continuous 3 year period of registration except where—

- (a) before the expiration of that month, he submits to the Superintendent his employment registration book; and
- (b) the Superintendent—
 - (i) being satisfied that the seafarer has complied with subsection (3); or
 - (ii) not being satisfied that the seafarer has complied with subsection (3) but being of the opinion, after consultation with the Authority, that there is some good reason why the seafarer has not complied with that subsection,

renews his registration by inserting a note to that effect in that book, in which case that renewal of registration shall be deemed to have taken effect immediately after the expiration of that 3 year period and this subsection shall next apply accordingly.

- (5) Any person who, without reasonable excuse, employs a person as a seafarer in contravention of subsection (1) or (2) commits an offence and is liable on conviction—
 - (a) in the case of an individual, to a fine at level 4 and to imprisonment for 2 years; and
 - (b) in the case of a body corporate, to a fine at level 5.

11. *(Repealed 16 of 2013 s. 10)*

12. Disqualification for entry of seafarer's name in register

Subject to section 15 and except where—

- (a) the name of a seafarer is restored to the register pursuant to an application referred to in section 28(5);

- (b) the name of a seafarer is restored to the register pursuant to section 32(1)(a);
- (c) the name of a seafarer is restored to the register pursuant to section 36(2) or (3);
- (d) an appeal under section 38 by a seafarer is allowed and by reason thereof the name of the seafarer is restored to the register; or
- (e) the name of a seafarer is restored to the register pursuant to the directions of a judge on an appeal under section 38,

a seafarer shall not be entitled to have his name entered in the register again where his name has previously been removed therefrom under section 28(1) or (2).

13. Particulars to be entered in register

- (1) Subject to this section, the register shall, depending on the part of the register in which the name of a seafarer appears, contain in relation to that seafarer such particulars as the Superintendent thinks fit.
- (2) Where a seafarer's name appears in the register, there shall be recorded against his name—
 - (a) the address for the time being supplied by the seafarer to the Superintendent as the address to which any notice or other document required or permitted by this Ordinance to be served on the seafarer may be sent by post or to which any other notice or document sent to the seafarer for the purposes of this Ordinance may be addressed;
 - (b) the telephone number, if any, for the time being supplied by the seafarer to the Superintendent as the telephone number in Hong Kong at which he may be contacted when in Hong Kong;

- (c) the rating, if any, of the seafarer;
- (d) any qualifications, endorsements or special training the seafarer has obtained or received which relate to his occupation as a seafarer;
- (e) particulars of any removal of his name from the register, or suspension under this Ordinance of the registration of the seafarer, and particulars of any disciplinary action taken under this Ordinance against the seafarer; and
- (f) particulars of his employment as a seafarer contained in his employment registration book and, if his registration has been renewed under section 10(4), the date on which that registration as renewed was deemed to take effect under that section.

14. Change of seafarer's rating

- (1) Where it comes to the notice of the Superintendent that a seafarer whose name appears in the register has been promoted to a rating higher than that recorded in relation to him in the register, the Superintendent shall cause the new rating to be recorded in the register instead of the seafarer's former rating unless, after such inquiry as he thinks fit, the Superintendent is of the opinion that the seafarer was promoted without sufficient cause.
- (2) Where it comes to the notice of the Superintendent that the rating recorded in the register in relation to a seafarer has been reduced, the Superintendent shall cause the new rating to be recorded in the register instead of the seafarer's former rating unless, after such inquiry as he thinks fit, the Superintendent is of the opinion that the seafarer's rating was reduced without sufficient cause.
- (3) Where it comes to the notice of the Superintendent that a seafarer whose name appears in the register has fulfilled such

requirements as the Authority may, after consultation with the Advisory Board, specify for the purpose, alter the seafarer's rating to a higher rating in the same grade or to a rating in a different grade.

15. Power of Authority to direct that name of seafarer be restored to register

- (1) At any time after the expiration of 5 years after the day on which—
 - (a) the name of a seafarer is removed under this Ordinance from the register; or
 - (b) the Appeals Board confirms under section 36(1) the removal of that name from the register,whichever is the later, the seafarer may make an application to the Authority for a direction that his name be restored to the register.
- (2) Subject to subsection (3), where the Authority receives an application under subsection (1) from a seafarer for his name to be restored to the register, the Authority may, after consultation with the Advisory Board—
 - (a) direct the Superintendent to restore the name of the seafarer to the register; or
 - (b) refuse the application.
- (3) Where—
 - (a) a seafarer has had his name removed from the register on a ground referred to in section 28(1)(b), (c) or (h);
 - (b) the seafarer has made an application under subsection (1) for his name to be restored to the register; and
 - (c) pursuant to that application, the Authority has under subsection (2)(a) directed the Superintendent to restore the name of the seafarer to the register,

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the Superintendent shall not restore the name of the seafarer to the register unless and until the Superintendent has received from the seafarer a signed letter of undertaking that the seafarer will be of good behaviour in the future.

PART IV

EMPLOYMENT REGISTRATION BOOKS

16. Seafarer's employment registration book

Each registered seafarer shall hold an employment registration book.

17. Regulations in relation to employment registration books

(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.)

The Secretary for Transport and Housing may make regulations for all or any of the following matters— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

- (a) the issue of employment registration books in such form and containing such particulars with respect to the holders thereof and such other particulars, if any, as are specified in the regulations, and requiring seafarers to apply for employment registration books;
 - (b) requiring the holders of employment registration books to produce them to such persons and in such circumstances as are specified in the regulations; and
 - (c) the surrender of employment registration books in such circumstances as are specified in the regulations.
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PART V

ESTABLISHMENT OF SEAFARERS' APPEALS BOARD AND REMOVAL OR SUSPENSION OF SEAFARERS FROM REGISTER

18. Establishment of Seafarers' Appeals Board

(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.)

- (1) For the purposes of this Ordinance, there is hereby established a board to be known as the Seafarers' Appeals Board.
- (2) The Chief Executive may appoint—
 - (a) such persons representative of seafarers' organizations as he thinks fit to be members of a panel; and
 - (b) such persons representative of employers' organizations as he thinks fit to be members of a panel,

which persons may be appointed under section 19(1)(c) to be members of the Appeals Board.

- (3) Any person appointed under subsection (2) to be a member of a panel may at any time resign his appointment by notice in writing signed by him and delivered to the Secretary for Transport and Housing, and the Chief Executive may at any time and for any reason terminate the appointment of any person as a member of a panel. (*Amended L.N. 362 of 1997; L.N. 125 of 2004; L.N. 130 of 2007*)

(Amended 64 of 1999 s. 3)

19. Members of Seafarers' Appeals Board

(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.)

- (1) The Appeals Board shall consist of—
 - (a) the Authority, the Deputy Director of Marine or an Assistant Director of Marine appointed by the Authority, who shall be the chairman;
 - (b) a legal officer appointed by the Secretary for Justice; and
 - (c) 4 other members appointed by the Secretary for Transport and Housing, of which— (*Amended L.N. 125 of 2004; L.N. 130 of 2007*)
 - (i) 2 shall be drawn from the members of the panel referred to in section 18(2)(a); and
 - (ii) 2 shall be drawn from the members of the panel referred to in section 18(2)(b). (*Amended L.N. 362 of 1997*)
- (2) The Superintendent shall not be a member of the Appeals Board.
- (3) The quorum at any meeting of the Appeals Board shall be the chairman and 2 other members except that any quorum shall have—
 - (a) not less than 1 member representative of seafarers' organizations;
 - (b) not less than 1 member representative of employers' organizations; and
 - (c) the same number of members representative of seafarers' organizations as the number of members representative of employers' organizations.

20. Complaint against seafarer

- (1) The employer of a registered seafarer or the master of the ship in which the seafarer is employed may, by notice in

writing, lodge with the Superintendent a complaint against the seafarer, which notice shall, where the Superintendent so requests, be accompanied by a statutory declaration verifying the complaint.

- (2) The Superintendent shall consider a complaint lodged under subsection (1) as soon as practicable.

21. Suspension of registration of seafarer prior to disciplinary inquiry

- (1) The Superintendent shall forthwith suspend a seafarer's registration where the Superintendent has reasonable grounds for believing, whether on a complaint under section 20(1) or otherwise (including any information provided to the Superintendent by any public officer or court), that the seafarer has and, in the case of any of paragraphs (a), (b), (c), (d), (g), (h) and (i), whether in Hong Kong or elsewhere—
- (a) been convicted of any offence involving the import, export, sale or other dealing in or with, or possession of, any dangerous drug;
 - (b) deserted his ship;
 - (c) neglected, or refused without reasonable cause, to join his ship or to proceed to sea in his ship;
 - (d) been addicted to any dangerous drug or refused treatment for such addiction;
 - (e) been convicted—
 - (i) of an offence against section 71(2); or
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201) in respect of any matter or transaction, actual or proposed, in which the Office was concerned;

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- (f) after having signed off a ship whilst the ship was outside Hong Kong, refused or failed to accept repatriation to Hong Kong;
 - (g) been convicted of any offence of such a nature as to render it desirable that he be suspended temporarily from employment in ships or should cease to be employed in ships;
 - (h) whilst in employment in ships, been guilty of misconduct of such a serious nature as to render it desirable that he be suspended temporarily from employment in, or should cease to be employed in, ships, whether or not such misconduct constituted an offence, and, if the misconduct did constitute an offence, whether or not the seafarer has been convicted of that offence;
 - (i) without reasonable excuse, failed to comply with any order, direction, requirement or request made, given or issued under or for the purposes of this Ordinance by the Superintendent or any other public officer; or
 - (j) after having signed off a ship, refused or failed, without reasonable excuse, to report to the Office within 30 days after—
 - (i) where the ship was in Hong Kong at the time of signing off, such discharge; and
 - (ii) in any other case, his first return to Hong Kong after such discharge.
- (2) Where a seafarer's registration is suspended under subsection (1), the Superintendent shall, as soon as it is practicable to do so, by notice in writing served on the seafarer, inform him—
- (a) of the ground on which his registration is so suspended;

- (b) of the date (being a date not later than 2 months after the service of the notice), time and place at which the seafarer may appear before the Superintendent at the disciplinary inquiry to be held for the purpose of inquiring into the matter for which the seafarer's registration was so suspended; and
 - (c) that if the Superintendent fails to take action under section 28(1) or 29(1) or (3) within 30 days after holding the disciplinary inquiry referred to in paragraph (b) of this subsection, the suspension of the seafarer's registration shall be withdrawn by the Superintendent.
- (3) Where the Superintendent has suspended under subsection (1) a seafarer's registration, the Superintendent shall—
 - (a) forthwith give notice in writing of that suspension to the seafarer's employer; and
 - (b) if he fails to take action under section 28(1) or 29(1) or (3) within 30 days after holding the disciplinary inquiry referred to in subsection (2)(b), forthwith—
 - (i) withdraw that suspension; and
 - (ii) give notice in writing of that withdrawal of suspension to the seafarer's employer.
- (4) Subject to subsection (3)(b), a suspension under subsection (1) of a seafarer's registration shall continue in effect until the Superintendent exercises in relation to that seafarer any of the powers conferred under section 28(1) or 29(1) or (3) upon the Superintendent.

22. Disciplinary inquiry to be held

Where a seafarer's registration has been suspended under section 21(1), the Superintendent shall not take action under section 28(1) or 29(1) or (3) in respect of that seafarer unless he has held a

disciplinary inquiry into the matter for which that registration was so suspended.

23. Conduct of disciplinary inquiry

- (1) Subject to this section and sections 24, 25 and 26, the procedure at a disciplinary inquiry shall be determined by the Superintendent.
- (2) In conducting a disciplinary inquiry, the Superintendent shall not be bound by the rules relating to admission of evidence in courts of law.
- (3) The seafarer who is the subject of the disciplinary inquiry may—
 - (a) cross-examine any witness who gives evidence against him;
 - (b) call a witness to give evidence for him; and
 - (c) give evidence and address the Superintendent on his own behalf.

24. Summons

- (1) The Superintendent may, in relation to a disciplinary inquiry, by notice in writing served on a person, require—
 - (a) the attendance of the person before the Superintendent; or
 - (b) the production to the Superintendent of documents—
 - (i) specified in the notice which are in the possession or under the control of the person; and
 - (ii) which the Superintendent reasonably believes or suspects contains, or is likely to contain, information relevant to the inquiry.

- (2) Any person who contravenes a notice served under subsection (1) on him commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

25. Representation

- (1) The seafarer who is the subject of a disciplinary inquiry may be represented at the inquiry by—
- (a) a counsel or solicitor; or
 - (b) an agent, including an official of any union of which the seafarer is a member by virtue of being a seafarer.
- (2) A counsel, solicitor or agent appearing before the Superintendent at a disciplinary inquiry shall have the same liabilities, protection and immunity as a legal practitioner has in appearing for a party in proceedings before the District Court.

26. Evidence

- (1) A person appearing before the Superintendent to give evidence at a disciplinary inquiry shall, where required by the Superintendent to give sworn evidence, take an oath.
- (2) The Superintendent may—
- (a) administer an oath to a person appearing before him to give evidence at a disciplinary inquiry; and
 - (b) require a person appearing before him to give evidence at a disciplinary inquiry to answer any question.
- (3) Subject to subsection (4), any person who contravenes subsection (1) or (2)(b) commits an offence and is liable on conviction to a fine at level 2.
- (4) A witness appearing at a disciplinary inquiry shall have the same liabilities, protection and immunity as a witness has in proceedings before the District Court.

27. Abandonment of disciplinary inquiry

- (1) Where at the date, time and place set down for holding a disciplinary inquiry the seafarer the subject of the inquiry does not appear before the Superintendent, the Superintendent may refuse to hold the inquiry and proceed to take action under section 28(1) or 29(1) or (3) against the seafarer as if, for the purposes of those sections and sections 22 and 29(2), the inquiry had been held on that date:

Provided that, if the Superintendent fails to take any such action within 30 days after that date, section 21(3)(b) shall apply accordingly.

- (2) Where at any stage of the proceedings of a disciplinary inquiry the Superintendent is of the opinion that—
- (a) the evidence brought forward at the inquiry is insufficient, or that there is no evidence; or
 - (b) a person's contravention of a notice served under section 24(1) on him means that there will be insufficient evidence, or no evidence, to justify him to proceed to take action under section 28(1) or 29(1) or (3) against the seafarer the subject of the inquiry,

the Superintendent may refuse to continue the inquiry and, if so, shall forthwith withdraw the suspension under section 21(1) of the seafarer's registration.

28. Removal of seafarer's name from register

- (1) The Superintendent may, not later than 30 days after holding a disciplinary inquiry in respect of a seafarer whose registration has been suspended under section 21(1), remove the name of the seafarer from the register where the Superintendent is satisfied that the seafarer has and, in the case of any of

paragraphs (a), (b), (c), (d), (f), (g) and (h), whether in Hong Kong or elsewhere—

- (a) been convicted of any offence involving the import, export, sale or other dealing in or with, or possession of, any dangerous drug;
 - (b) deserted his ship;
 - (c) neglected, or refused without reasonable cause, to join his ship or to proceed to sea in his ship;
 - (d) been addicted to any dangerous drug or refused treatment for such addiction;
 - (e) been convicted—
 - (i) of an offence against section 71(2);
 - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201) in respect of any matter or transaction, actual or proposed, in which the Office was concerned;
 - (f) after having signed off a ship whilst the ship was outside Hong Kong, refused or failed, without reasonable excuse, to accept repatriation to Hong Kong;
 - (g) been convicted of any offence of such a nature as to render it desirable that he should cease to be employed in ships; or
 - (h) whilst in employment in ships, been guilty of misconduct of such a serious nature as to render it desirable that he should cease to be employed in ships, whether or not such misconduct constituted an offence, and, if the misconduct did constitute an offence, whether or not the seafarer has been convicted of that offence.
- (2) The Superintendent may remove from the register the name of a seafarer who has contravened section 10(3) and shall

- remove from the register the name of a seafarer whose registration has expired under section 10(4).
- (3) The Superintendent shall remove from the register the name of a seafarer who—
- (a) dies; or
 - (b) requests the removal of his name from the register.
- (4) Where, under subsection (1), (2) or (3)(b), a seafarer's name has been removed from the register, the Superintendent shall forthwith serve on—
- (a) the seafarer, a notice in writing that his name has been so removed from the register, together with a statement of the ground on which it was so removed; and
 - (b) the seafarer's employer, if any, a notice in writing that the seafarer's name has been so removed from the register.
- (5) Where a seafarer has had his name removed from the register under subsection (2), he may, not later than 1 month after notice of the Superintendent's decision to so remove him from the register was served under subsection (4)(a) on him, or within such further period, if any, as the Superintendent may allow in any particular case, make an application under Part III to again be registered as a seafarer.
- (6) Where a seafarer who has had his name removed from the register under subsection (2) makes an application referred to in subsection (5) to again be registered as a seafarer, he shall not make an appeal under section 31 in respect of the Superintendent's decision to so remove him from the register and, if any such appeal is made, whether before or after that application, it shall be of no effect and shall, for all intents and purposes, be deemed to have never been made.

- (7) Where a seafarer has had his name removed from the register under subsection (3)(b), he may, not earlier than 6 months after notice of his removal was served under subsection (4)(a) on him, make an application under Part III to again be registered as a seafarer, and the provisions of this Ordinance shall apply accordingly.

29. Suspension of registration of seafarer after disciplinary inquiry

- (1) Where, after holding a disciplinary inquiry in respect of a seafarer whose registration has been suspended under section 21(1), it appears to the Superintendent that the seafarer has and, in the case of any of paragraphs (a), (b) and (c), whether in Hong Kong or elsewhere—
- (a) been convicted of any offence of such a nature as to render it desirable that he be suspended temporarily from employment in ships;
 - (b) whilst in employment in ships, been guilty of misconduct of such a serious nature as to render it desirable that he be suspended temporarily from employment in ships, whether or not such misconduct constituted an offence, and, if the misconduct did constitute an offence, whether or not the seafarer has been convicted of that offence;
 - (c) without reasonable excuse, failed to comply with any order, direction, requirement or request made, given or issued under or for the purposes of this Ordinance by the Superintendent or any other public officer; or
 - (d) after having signed off a ship, refused or failed to report to the Office within 30 days after—
 - (i) where the ship was in Hong Kong at the time of signing off, such discharge; and
 - (ii) in any other case, his first return to Hong Kong after such discharge,

the Superintendent may, not later than 30 days after that disciplinary inquiry was so held, suspend the seafarer's registration for any period not exceeding 36 months.

- (2) The period during which a seafarer's registration is suspended under subsection (1) shall begin to run from and including the day on which the disciplinary inquiry in respect of that seafarer was first held.
- (3) Notwithstanding subsection (1), the Superintendent may, not later than 30 days after a disciplinary inquiry referred to in that subsection has been held in respect of a seafarer, instead of exercising the power conferred on him by that subsection, issue the seafarer with a caution in writing to be of good behaviour in the future.
- (4) Where, under subsection (1), a seafarer's registration has been suspended, the Superintendent shall forthwith serve on—
 - (a) the seafarer, a notice in writing that his registration has been suspended and of the period for which it is suspended, together with a statement of the ground on which it is so suspended; and
 - (b) the seafarer's employer, if any, a notice in writing that the seafarer's registration has been suspended and of the period for which it is so suspended.

30. Suspension on medical grounds

- (1) The Superintendent may require any seafarer whose name appears on the register, and whose registration is not for the time being suspended for any other reason, to undergo, within a specified period, such medical examinations (including medical examinations as to mental health) as to his fitness for employment in ships as the Authority may, after consultation with the Advisory Board, specify in general directions to the Superintendent.

- (2) The Superintendent may suspend the registration of any seafarer who, having been required under subsection (1) to undergo a medical examination, fails to pass such examination within the period specified.
- (3) The Superintendent shall, where he has suspended under subsection (2) the registration of a seafarer whose name appears in the register, forthwith give notice in writing thereof to the seafarer's employer, if any.
- (4) The suspension under subsection (2) of a seafarer's registration shall continue in effect until he produces to the Superintendent the certificate of a medical practitioner stating that he is fit for employment in ships.
- (5) Where a seafarer whose registration is suspended under this section produces to the Superintendent a certificate referred to in subsection (4), the Superintendent shall forthwith give notice in writing thereof to the employer to whom he gave the notice under subsection (3) in respect of that seafarer.

31. Appeals

- (1) Subject to section 28(6), a seafarer—
 - (a) whose name has been removed under section 28(1) or (2) from the register; or
 - (b) whose registration has been suspended under section 29(1),may appeal to the Authority on the grounds specified in subsection (2).
- (2) The grounds upon which a seafarer may appeal under this section are—
 - (a) in the case of the removal of the name of the seafarer from the register, that he disputes the ground on which his name was so removed; and

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- (b) in the case of the suspension of the seafarer's registration—
- (i) that he disputes the ground on which his registration was so suspended;
 - (ii) that the period for which his registration was so suspended is excessive; or
 - (iii) both of such grounds.
- (3) A seafarer may make an appeal under this section by delivering to the Authority, not later than 30 days after notice of the Superintendent's decision was served under section 28(4)(a) or 29(4)(a) on him, or within such further period, if any, as the Authority may allow in any particular case, a notice in writing setting forth the ground or grounds of appeal.
- (4) The Authority shall refer every appeal made under this section to the Appeals Board and shall serve on the seafarer by whom the appeal is made a notice stating the date, time and place at which the appeal will be heard.

32. Provision where hearing of appeal not commenced within prescribed period

- (1) Subject to subsection (2), where the hearing of an appeal made under section 31 by a seafarer is not commenced within 3 months after the notice of appeal was delivered in accordance with that section to the Authority and—
- (a) the appeal is in respect of the removal of the seafarer's name from the register, the Superintendent shall, unless the Authority has previously directed otherwise, forthwith restore the seafarer's name to the register;
 - (b) the appeal is in respect of the suspension of the seafarer's registration and the period of suspension has not then expired, the Superintendent shall, unless the

Authority has previously directed otherwise, forthwith withdraw the suspension of the seafarer's registration.

- (2) Where the hearing of an appeal made under section 31 is not commenced within the period specified in subsection (1) and the Authority is satisfied that the failure to commence the hearing within that period was—
- (a) caused by failure to serve notice under section 31(4) on the seafarer by whom the appeal is made, despite reasonable attempts to do so; or
 - (b) the result of an adjournment or postponement of the hearing at the request of or due in any way to the seafarer by whom the appeal is made,

the Authority may extend, and may further extend, the period within which the hearing shall be commenced for such period as he thinks fit.

33. Hearing of appeal in absence of appellant

Where at the date, time and place set down for the hearing of an appeal made under section 31 the seafarer by whom the appeal is made does not appear before the Appeals Board, the Appeals Board may proceed with the hearing where it is satisfied that —

- (a) the notice required under section 31(4) has been served on the seafarer; and
- (b) the seafarer, or counsel or a solicitor or agent representing the seafarer at the hearing, has provided no good reason for the seafarer's absence,

but, where the Appeals Board is not so satisfied, it may adjourn, or re-adjourn, the hearing of the appeal.

34. Practice and procedure upon hearing of appeal

- (1) Subject to section 35 and this section, the practice and

procedure on the hearing by the Appeals Board of an appeal made under section 31 by a seafarer on the ground that the period for which his registration was suspended is excessive shall be such as the Appeals Board thinks fit.

- (2) The practice and procedure on the hearing by the Appeals Board of an appeal made under section 31 by a seafarer on the ground that he disputes the ground on which his name was removed from the register or his registration was suspended shall, subject to sections 33 and 35 and this section, be such as the Appeals Board thinks fit and that—
- (a) the burden of proof shall be on the Superintendent;
 - (b) the Superintendent may address the Appeals Board and adduce evidence in support of his case;
 - (c) the seafarer shall be entitled to put questions to any witness called by the Superintendent;
 - (d) where all the evidence that the Superintendent wishes to adduce has been adduced, the seafarer may give evidence himself and adduce other evidence in support of his case and may then address the Appeals Board;
 - (e) the Superintendent shall be entitled to put questions to the seafarer if he gives evidence and to any witness called by the seafarer; and
 - (f) the Appeals Board may call any witness whom it considers necessary, but the Superintendent and the seafarer shall be entitled to put questions to any such witness and, where any such witness is called after the seafarer has addressed the Appeals Board pursuant to paragraph (d) the seafarer shall be entitled to address the Appeals Board again on any matter arising from the evidence given by such witness.
- (3) On the hearing of an appeal made under section 31 by a seafarer, the seafarer may be represented by a counsel or

- solicitor or an agent (including an official of any union of which the seafarer is a member by virtue of being a seafarer) and the Superintendent may be represented by a legal officer.
- (4) Any deposition made on oath by any person before a magistrate or other person authorized by law to take such deposition, or before any accredited consular officer, shall be admissible in evidence in any proceedings before the Appeals Board—
- (a) if, at the time, the person by whom the deposition was made is not, or cannot be found, in Hong Kong; and
 - (b) if the deposition is authenticated by the signature of the magistrate or other person, or of the accredited consular officer, before whom it was made.
- (5) Any deposition purporting to be signed by the magistrate or accredited consular officer or like person before whom it was made shall be deemed to have been so signed in the absence of evidence to the contrary.
- (6) Any entry in the official log book of any ship or in any similar document, and any document purporting to be a copy of any such entry and to be certified as a true copy by any person specified in subsection (7), shall be admissible in evidence and, in the absence of evidence to the contrary, be evidence of the matters stated therein in proceedings before the Appeals Board if the entry was made and signed by the master and some other member of the crew of the ship, within 24 hours after the occurrence to which it relates or within such other time as may be allowed under the maritime law applicable to the ship concerned.
- (7) For the purposes of subsection (6), a copy of an entry in the official log book of any ship or in any similar document may be certified by—
- (a) the Superintendent;

- (b) an accredited consular officer;
- (c) a port authority;
- (d) a notary public; or
- (e) a commissioner for oaths,

or by any person who has functions similar to those of any person referred to in paragraph (a), (b), (c), (d) or (e) and recognized for the purposes of this Ordinance by the Superintendent.

- (8) Any entry in the official log book of any ship, or in any similar document, purporting to be signed by the master and another member of the crew of the ship shall be presumed to have been so signed in the absence of evidence to the contrary, and any date and time purporting to be the date on and time at which any such entry was made and signed shall be presumed to be the date on and time at which the same was made and signed in the absence of evidence to the contrary.
- (9) A copy of any entry in the official log book of any ship or in any similar document purporting to be certified by any person specified in subsection (8) shall be presumed to have been so certified in the absence of evidence to the contrary.
- (10) Subject to this section, the Appeals Board may receive and consider such evidence as it thinks fit, notwithstanding that the evidence would not be admissible under rules relating to admission of evidence in courts of law.
- (11) A counsel, solicitor, agent or legal practitioner appearing before the Appeals Board at the hearing of an appeal made under section 31 shall have the same liabilities, protection and immunity as a legal practitioner has in appearing for a party in proceedings before the District Court.

- (12) A witness appearing at the hearing of an appeal made under section 31 shall have the same liabilities, protection and immunity as a witness has in proceedings before the District Court.

35. Majority decision

The decision of the Appeals Board on an appeal made under section 31 shall be that of the majority of the members except that, in the event of an equality of votes, the chairman of the Appeals Board shall have a casting as well as a deliberative vote.

36. Determination of appeal

- (1) Subject to subsection (3), where, on hearing of an appeal made under section 31, the Appeals Board by majority vote affirms the Superintendent's decision the subject of the appeal, the Appeals Board shall dismiss that appeal.
- (2) Where, on the hearing of an appeal made under section 31, the Appeals Board by majority vote does not affirm the decision of the Superintendent the subject of the appeal, the Appeals Board shall direct the Superintendent to—
- (a) restore to the register the name of the seafarer by whom the appeal is made; or
 - (b) withdraw the suspension of the registration of the seafarer by whom the appeal is made,
- as the case requires.
- (3) The Appeals Board may, by majority vote, instead of affirming the decision of the Superintendent the subject of an appeal made under section 31 by a seafarer—
- (a) direct that the seafarer's name be restored to the register but that his registration be suspended for a period not exceeding 36 months;

- (b) direct that the seafarer's registration be suspended for such shorter period, or for such longer period, not exceeding 36 months, as it thinks fit; or
- (c) direct the Superintendent to restore the name of the seafarer to the register, or withdraw the suspension of the seafarer's registration, and serve the seafarer with a caution in writing to be of good behaviour in the future.

37. Seafarer, etc. to be given notice of decision of Appeals Board

- (1) The Authority shall, as soon as practicable after a decision has been made under section 36 in respect of an appeal made under section 31, notify in writing the seafarer by whom the appeal was made of—
 - (a) that decision; and
 - (b) the findings of facts, and evidence in support thereof, by the Appeals Board in coming to that decision.
- (2) Where pursuant to a direction given under section 36(2) the Superintendent restores the name of a seafarer to the register or withdraws the suspension of registration of a seafarer, he shall forthwith give notice in writing thereof to the seafarer's employer, if any.
- (3) Where under section 36(3) the Appeals Board directs that a seafarer's registration be suspended for a shorter period, the Superintendent shall give notice in writing of that decision to the seafarer's employer, if any.

38. Appeal to judge of District Court on point of law

- (1) Where a seafarer whose appeal is referred under section 31(4) to the Appeals Board is dissatisfied in point of law with a decision of the Appeals Board on the appeal, he may, not later than 30 days after the notification under section 37(1) is served on him, appeal to a judge of the District Court.

- (2) A judge of the District Court hearing an appeal under subsection (1) may, where he is of the opinion that the decision of the Appeals Board to which that appeal relates was erroneous in point of law—
 - (a) allow the appeal and give such directions in the matter as he thinks fit; or
 - (b) remit the matter to the Appeals Board for determination in accordance with the judge’s decision on the point of law.
- (3) The Chief Justice may make rules providing for the practice and procedure on any appeal under subsection (1).
- (4) Subject to any rules made under subsection (3), the practice and procedure on an appeal under subsection (1) shall be such as the judge hearing it determines.

39. Notice to employer of result of appeal

Where—

- (a) by reason of a successful appeal under section 38; or
- (b) pursuant to the directions of a judge on an appeal under section 38,

the Superintendent—

- (i) restores the name of a seafarer to the register; or
- (ii) withdraws the suspension of the registration of a seafarer,

the Superintendent shall, as soon as practicable after taking that action, give notice in writing thereof to the seafarer’s employer, if any.

PART VI

CONTROL OF THE SUPPLY, SELECTION, EMPLOYMENT AND DISCHARGE OF REGISTERED SEAFARERS

40. Control of listing, supply and employment of registered seafarers

- (1) Except as provided by section 46 or 48(1), or subsection (6), or with the permission of the Superintendent, no person shall—
 - (a) list for prospective employment in a ship any registered seafarer; or
 - (b) supply for employment in a ship any registered seafarer other than a registered seafarer supplied in accordance with this Ordinance by a permitted company,
except at or through the Office and upon payment of the prescribed fees.
- (2) Except as provided by section 63(3), or subsection (6), or with the permission of the Superintendent, no person, other than a permitted company and upon payment of the prescribed fee, shall supply for employment in a ship any registered seafarer.
- (3) No person shall accept or receive for employment in a ship any registered seafarer who has been listed for prospective employment, supplied for employment or employed, in contravention of this section.
- (4) The master of a ship shall not leave the waters of Hong Kong with any registered seafarer who has been listed

for prospective employment, supplied for employment or employed, in contravention of this section.

- (5) Without prejudice to subsection (4), the master of a ship shall not, except with the permission of the Superintendent, leave the waters of Hong Kong with any registered seafarer who, having joined the ship, has been supplied for employment or employed otherwise than at or through the Office, other than—
- (a) a registered seafarer who has been supplied for employment or employed pursuant to and in accordance with subsection (6);
 - (b) a registered seafarer who has been re-employed under and in accordance with section 48; or
 - (c) a registered seafarer who has been supplied for employment in accordance with this Ordinance by a permitted company.
- (6) Where there is an emergency, a registered seafarer whose registration is not for the time being suspended under this Ordinance may be supplied for employment or accepted for employment or employed in a ship otherwise than at or through the Office where—
- (a) no suitable, registered seafarer listed with the crew department of a permitted company is available for employment and no registered seafarer can be supplied by the Office for employment as provided in subsection (1);
 - (b) the Office is closed at the time the registered seafarer comes to be supplied for employment or accepted for employment or employed; or
 - (c) the ship would be delayed if the supply for employment or acceptance for employment or employment of the registered seafarer were postponed until the time

when registered seafarers could next be supplied for employment or employed at or through the Office.

- (7) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction—
 - (a) in the case of an individual, to a fine at level 4 and to imprisonment for 2 years; and
 - (b) in the case of a body corporate, to a fine at level 5.
- (8) Where there is a contravention of subsection (4) or (5), the employer of the registered seafarer concerned and the master of the ship concerned each commits an offence and is liable on conviction—
 - (a) in the case of an individual, to a fine at level 4 and to imprisonment for 2 years; and
 - (b) in the case of a body corporate, to a fine at level 5.
- (9) Where, in proceedings for an offence under this section, the defendant alleges that the case falls within subsection (6), it shall be on the defendant to prove the facts that bring the case within that subsection.
- (10) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), a complaint or information in respect of an offence under this section may be made or laid at any time within 2 years after the date of the offence.

41. Procedures for mustering and supply of registered seafarers

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) A seafarer shall not be supplied by the Office for selection for employment in a ship unless—
 - (a) he is a registered seafarer—
 - (i) whose registration is not for the time being suspended under this Ordinance; and

- (ii) who has given notice to the Superintendent that he seeks such employment; and
 - (b) where the ship is a sea-going ship, his name is entered in Part I of the register. (*Amended 23 of 1998 s. 2*)
- (2) The method used in the Office for mustering registered seafarers to be supplied for selection for employment in ships shall be such as the Authority determines after consultation with the Advisory Board.

42. Procedures for the selection of registered seafarers for listing by permitted companies

- (1) Where a vacancy for a seafaring post occurs in a permitted company and no suitable, available registered seafarer is listed with the crew department of that company to fill that vacancy, then, subject to section 40(6), if that company intends to employ a registered seafarer, it may make known that vacancy in such manner as it thinks fit.
- (2) Where a permitted company that has, under subsection (1), made known a vacancy for a seafaring post finds a registered seafarer suitable to be listed for employment in a ship, it shall supply the prescribed form duly completed to the seafarer, and the seafarer shall forthwith present the form to the Office.
- (3) Where a registered seafarer presents the prescribed form to the Office in accordance with subsection (2), the Superintendent shall —
 - (a) cause the seafarer's name to be entered in the list maintained in respect of the permitted company that completed that form;
 - (b) cause to be recorded in the seafarer's employment registration book the fact that the seafarer is so listed; and

- (c) if the seafarer's name is entered in the list maintained in respect of any other permitted company, forthwith delete that name from that list.
- (4) Where the Superintendent has recorded in accordance with subsection (3) in the employment registration book of a registered seafarer the fact that the seafarer is listed with the permitted company concerned, the seafarer shall forthwith return to that company and thereupon that company shall verify that he is so listed and then enter his name in its crew department record.

43. Restrictions on listing of registered seafarers

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) A seafarer shall not be listed with a permitted company for subsequent employment in a ship unless—
 - (a) he is a registered seafarer whose registration is not for the time being suspended under this Ordinance; and
 - (b) where the ship concerned is a sea-going ship, his name is entered in Part I of the register. (*Amended 23 of 1998 s. 2*)
- (2) A registered seafarer shall not be listed in accordance with subsection (1) with more than one permitted company except with the permission of the Superintendent.

44. Procedures for employment of registered seafarers by permitted companies

- (1) Where a registered seafarer who is listed in accordance with section 43(1) in the crew department record of a permitted company is supplied by the company for employment in a ship, the company shall cause to be completed in respect of that seafarer an employment card in the prescribed form.

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- (2) Where a registered seafarer supplied under subsection (1) for employment in a ship signs the crew agreement for employment in that ship or enters into any other agreement for employment therein there shall, at the time he so signs, be produced to the Superintendent or the consular officer, as the case may be—
 - (a) the employment card completed in respect of the seafarer pursuant to subsection (1); and
 - (b) the seafarer's employment registration book.
- (3) Subject to section 48, a permitted company—
 - (a) shall pay, in respect of every registered seafarer supplied by it for employment in a ship and employed in the ship, the prescribed fee; and
 - (b) may require the registered seafarer in respect of whom that fee is to be paid or was paid, as the case may be, to contribute not more than one-half of that fee.
- (4) Where all the registered seafarers supplied by a permitted company for employment in a ship have been employed in such ship, that company shall, not later than 7 working days after the last day of the month during which that employment took place, pay in respect of each such seafarer the prescribed fee referred to in subsection (3)(a).
- (5) Where a registered seafarer who is supplied under subsection (1) for employment in a ship signs the articles of agreement for employment in that ship or enters into any other agreement for employment therein, and the employment card completed in respect of the seafarer pursuant to that subsection and the seafarer's employment registration book are not, at the time he so signs, produced to the Superintendent or the consular officer in accordance with subsection (2), the permitted company concerned commits an offence and is liable on conviction to a fine at level 2.

- (6) Any permitted company which contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 2.

45. Employment of registered seafarers through mustering procedure

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) Where, according to the method used in the Office pursuant to section 41(2) for mustering registered seafarers who have given notice to the Superintendent pursuant to section 41(1)(a)(ii), a registered seafarer is required to attend at the Office to be supplied for selection for employment in a ship, the Superintendent shall serve on the seafarer a notice specifying the date on, and the time at which, he is required to so attend.
- (2) Where a registered seafarer who is supplied by the Office for selection for employment in a ship is selected for employment in that ship, the Superintendent shall issue, in respect of that seafarer, an employment card in the prescribed form to the employer of that seafarer.
- (3) Where a registered seafarer in respect of whom an employment card has been issued under subsection (2) is for any reason not employed in the ship in relation to which that card was issued, the employer concerned shall forthwith return that card to the Superintendent.
- (4) A person intending to employ a registered seafarer at a muster held in the Office shall make available thereat for inspection by the seafarer a copy of the terms and conditions of employment, approved by the Superintendent, on which it is proposed to employ the seafarer.
- (5) Where a registered seafarer who has been selected in accordance with this section at a muster held in the Office

for employment in a ship signs the articles of agreement for employment in that ship or enters into any other agreement for employment therein, there shall be produced to the Superintendent or the consular officer, as the case may be, at the time he so signs—

- (a) the employment card issued in respect of that seafarer under subsection (2); and
 - (b) the seafarer's employment registration book.
- (6) Subject to section 48, an employer shall pay, in respect of every muster held at the Office for the employer—
- (a) the prescribed fee for the muster; and
 - (b) the prescribed fee for each seafarer selected by the employer for employment in a sea-going or coastal-going ship, (*Amended 23 of 1998 s. 2*)

and may at any time require any such seafarer who he then employs and in respect of whom the fee referred to in paragraph (b) is to be paid or was paid, as the case may be, to contribute not more than one-half of that fee.

- (7) Where all the registered seafarers who have been selected for employment in a ship have been employed in such ship, the employer shall not later than 7 working days after the last day of the month during which that employment took place, pay in respect of each such seafarer the prescribed fee referred to in subsection (6)(b).
- (8) Where a registered seafarer who has been selected in accordance with this section for employment in a sea-going ship or a coastal-going ship signs the articles of agreement for employment in that ship or enters into any other agreement for employment therein, and the employment card issued under subsection (2) in respect of the seafarer and the seafarer's employment registration book are not at the time he so signs produced to the Superintendent or the consular

officer in accordance with subsection (5), the employer concerned commits an offence and is liable on conviction to a fine at level 2. (*Amended 23 of 1998 s. 2*)

- (9) Any employer who contravenes subsection (7) commits an offence and is liable on conviction to a fine at level 2.

46. Registered seafarers may offer their services with permission of the Superintendent

Notwithstanding any other provision of this Ordinance, the Superintendent may, as he thinks fit, permit a registered seafarer whose registration is not for the time being suspended under this Ordinance to offer himself for selection for employment or for employment in any particular seafaring post or posts in a ship.

47. Emergency employment procedures

- (1) Where a registered seafarer is to be accepted for employment or employed in a ship pursuant to section 40(6), the employer concerned shall complete in respect of that seafarer an emergency employment card in the prescribed form so as to contain the particulars required thereby.
- (2) Where a registered seafarer referred to in subsection (1) signs the articles of agreement for employment in the ship referred to in that subsection or enters into any other agreement for employment therein, the seafarer's employment registration book and the emergency employment card referred to in that subsection shall be produced, at the time he so signs—
- (a) to the Superintendent or the consular officer; or
 - (b) where the articles of agreement or other agreement for employment are not signed in the presence of the Superintendent or the consular officer, to the master of the ship.

- (3) Where a registered seafarer has under this section been employed in a ship, the employer concerned shall, not later than 2 working days after the employment commenced, and at the same time—
- (a) deliver to the Superintendent—
 - (i) the emergency employment card completed in respect of the seafarer pursuant to subsection (1); and
 - (ii) a notice in the prescribed form containing such particulars with respect to the employment of the seafarer as is required thereby and a statement of the reason for the employment of the seafarer pursuant to section 40(6); and
 - (b) pay in respect of the seafarer—
 - (i) the prescribed fee for employing the seafarer pursuant to section 40(6); and
 - (ii) the prescribed fee for employing the seafarer,and may at any time require the seafarer in respect of whom the fee referred to in paragraph (b)(ii) was paid to contribute not more than one-half of that fee.
- (4) A notice delivered to the Superintendent pursuant to subsection (3)(a)(ii) may relate to more than one registered seafarer.
- (5) Where a registered seafarer who is being accepted for employment or employed in a ship pursuant to section 40(6) signs the articles of agreement for employment in that ship or enters into any other agreement for employment therein, and the emergency employment card and the seafarer's employment registration book are not at the time he so signs produced to the Superintendent or the consular officer or the master of the ship in accordance with subsection (2), then

the employer concerned commits an offence and is liable on conviction to a fine at level 2.

- (6) Where there is a contravention of subsection (1) or (3), the employer concerned commits an offence and is liable on conviction to a fine at level 2.

48. Re-employment of registered seafarers

- (1) Where, at any time before a registered seafarer, including a registered seafarer listed and employed by a permitted company, is discharged from a ship on the termination of his employment agreement, the employer concerned has notified the Superintendent, by delivering to him, together with the prescribed fee, a re-employment card in the prescribed form containing such particulars as are required thereby, that the seafarer is to be re-employed in that ship, then, not later than 30 days after his discharge from that ship, the seafarer may be re-employed therein otherwise than at or through the Office, and without payment of any other fee, if, at the time he is re-employed, he is registered and his registration is not for the time being suspended under this Ordinance and, in the case of a seafarer employed by a permitted company, his name is listed with that company.
- (2) Where a re-employment card is delivered to the Superintendent pursuant to subsection (1), the Superintendent shall enter therein the date on which he received it and return it to the employer who delivered it to him.
- (3) Where a registered seafarer who is being re-employed in a ship pursuant to subsection (1) signs the articles of agreement for employment in that ship or enters into any other agreement for employment therein, there shall be produced to the Superintendent or the consular officer at the time the seafarer so signs —

- (a) the re-employment card delivered to the Superintendent pursuant to subsection (1); and
 - (b) the seafarer's employment registration book.
- (4) Where a registered seafarer who is being re-employed in a ship pursuant to subsection (1) signs the articles of agreement for employment in that ship or enters into any other agreement for employment therein, and the re-employment card and the seafarer's employment registration book are not at the time he so signs produced to the Superintendent or the consular officer in accordance with subsection (3), the master of the ship and the employer concerned each commits an offence and is liable on conviction to a fine at level 2.
- (5) In proceedings for an offence under this section, it shall be a defence for the defendant to show that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence or, in the case of the master of the ship concerned, that he was not present at the time the articles of agreement or other agreement concerned were or was signed.

49. Return of employment and re-employment cards to Superintendent

- (1) Where all the registered seafarers who have been selected for employment in a ship in accordance with this Part have been employed or re-employed, the employer concerned shall, not later than 7 working days after the last day of the month during which the employment or re-employment commenced, and at the same time, deliver to the Superintendent—
- (a) the employment card issued under section 44(1) or 45(2) in respect of each registered seafarer selected or employed in that ship;

- (b) the re-employment card delivered to the Superintendent pursuant to section 48(1) in respect of each registered seafarer re-employed in that ship, which shall contain, in addition to the particulars entered therein pursuant to that section, particulars of the date on which the seafarer was so re-employed; and
 - (c) a notice in the prescribed form specifying the total number of registered seafarers employed or re-employed in that ship and containing such other particulars as are required thereby.
- (2) Where there is a contravention of subsection (1), the employer concerned commits an offence and is liable on conviction to a fine at level 2.

50. Notification of intention not to re-employ

- (1) Where a registered seafarer's employment in a ship is for any reason terminated and it is not intended to re-employ him in that ship, the employer concerned shall, not later than 7 working days after the date of the seafarer's discharge from the ship, cause to be delivered to the Superintendent a notice of the discharge in the prescribed form.
- (2) Where a permitted company does not intend to re-employ a registered seafarer referred to in subsection (1) in the ship referred to in that subsection or in any ship for which it is permitted to employ or supply registered seafarers for employment, the company shall, not later than 14 working days after the discharge of the seafarer from that ship, notify the Superintendent in the prescribed form of such intention and the grounds therefor.

- (3) Except where he is re-employed under section 48, a registered seafarer shall, not later than 30 days after discharge from the last ship in which he was employed, report in person to the Office except that, where such discharge is in a place outside Hong Kong, such period shall not begin to run until his first return to Hong Kong after such discharge.
- (4) A registered seafarer who is not listed with a permitted company may, notwithstanding that he has given notice to the Superintendent pursuant to section 41(1) that he seeks such listing, notify the Superintendent of his intention to take leave of absence by submitting to the Superintendent the prescribed form specifying the period for which he intends to take such leave.
- (5) A permitted company shall, not later than 7 working days after a registered seafarer's last discharge from a ship for which it is permitted to employ or supply registered seafarers for employment, submit any applications that are received by such company requesting leave of absence from that company's listed seafarers to the Superintendent in the prescribed form, specifying the periods for which such seafarers have been granted such leave.
- (6) A registered seafarer who takes leave of absence pursuant to subsection (4) or (5) shall be available for employment with effect on and from the day following the last day of such leave pursuant to subsection (4) and his name shall be entered in the company roster, as the case may be, pursuant to subsection (5), on such day.
- (7) Where there is a contravention of subsection (1), the employer concerned commits an offence and is liable on conviction to a fine at level 2.
- (8) Any permitted company which contravenes subsection (2) or (5) commits an offence and is liable on conviction to a fine at level 2.

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- (9) Any registered seafarer who, without reasonable excuse, fails or refuses to comply with subsection (3) or (6) commits an offence and is liable on conviction to a fine at level 1.

51. Authority may detain ship where seafarer is in the ship in contravention of section 40

Where any registered seafarer is in any ship that is about to leave the waters of Hong Kong in contravention of section 40, the Authority may detain that ship until he is satisfied that the seafarer will not leave such waters in that ship.

PART VII

PERMITTED CREW DEPARTMENTS

52. Permits to maintain company rosters

- (1) Subject to section 54, the Superintendent shall, upon payment of the prescribed fee, grant a permit to maintain a company roster to any company—
 - (a) whose objects as set forth in the company's articles or memorandum of association include the carrying on of the business of shipowner or the business of managing ships or the business of acting as agent for a shipowner; and
 - (b) which in the opinion of the Superintendent is capable of maintaining a company roster.
- (2) Subject to section 54, every permit shall be valid on and from the day on which it is granted.
- (3) The Superintendent may at any time impose upon a permitted company such conditions as he thinks fit by endorsing such conditions on the company's permit or by specifying such conditions in a notice in writing served on the company.

53. Information to be supplied to Superintendent

- (1) An application for the grant of a permit shall be—
 - (a) in the prescribed form and contain the particulars required thereby;
 - (b) accompanied by such particulars, in the prescribed form, in relation to each person employed or to be employed in the permitted crew department as are required by such form; and

- (c) accompanied by such other particulars, in the prescribed form, as are required by such form.
- (2) In addition to the particulars supplied in accordance with subsection (1), the Superintendent may require a company applying for the grant of a permit to supply him with such information as he specifies, being information that is required for the purposes of, or in connection with, the exercise by the Superintendent of his powers under section 54.
- (3) Where at any time there are changes to the particulars of shipowners for whom a permitted company is acting as agent, the company shall forthwith notify the Superintendent of those changes and, upon payment of the prescribed fee, the Superintendent shall, subject to section 57(1), cause the company's permit to be amended accordingly.
- (4) The Superintendent may, at any time, by notice in writing served on a permitted company, require the company to supply him with such information in relation to its permitted crew department as he specifies in the notice and the company shall, as soon as practicable after being served with the notice, so supply such information.
- (5) Any permitted company which contravenes subsection (3) or (4) commits an offence and is liable on conviction to a fine at level 2.

54. Grounds on which grant of permit may be refused

- (1) The Superintendent may refuse to grant a permit—
 - (a) if the application therefor is not made in accordance with section 53(1);
 - (b) if he is satisfied that any of the particulars set forth in the application therefor, or any of the particulars accompanying such application in accordance with section 53(1), is false in a material particular;

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- (c) if the company applying for the grant of the permit refuses or fails to supply him with any information required to be supplied under section 53(2) or supplies any such information which is false in a material particular;
- (d) unless he is satisfied that—
 - (i) the person who is specified in the application therefor as the person who is or will be in charge of the permitted crew department is a fit and proper person to be in charge thereof;
 - (ii) suitable and adequate facilities and staff are or will be provided by the company applying for the grant of a permit for dealing with such allotments or remittances as are made by registered seafarers supplied by the permitted crew department for employment in ships;
 - (iii) the terms on which registered seafarers are employed in all ships for which the permitted crew department supplies or will supply seafarers are such as to induce registered seafarers to continue to be employed in such ships; and
 - (iv) the company applying for the grant of the permit is or will be responsible for the payment of wages, allowances, bonuses, remittances and allotments, as they become due, to registered seafarers supplied or to be supplied by the permitted crew department and the acceptance of such responsibility has been or will be declared by the company to such seafarers at the time of their employment in a ship owned, managed or chartered by the company, or for employment in such a ship for which it acts as agent for the shipowner;

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- (e) if any person who is or has been an officer or employee of the company applying for the grant of the permit, or any person who, notwithstanding that he is not or was not an officer or other employee of the company, controls, directs or manages or has controlled, directed or managed, or takes or has taken any part in the management of, the business of the company, has at any time—
 - (i) owned, either wholly or together with other persons, or managed, or taken any part in the management of, any boarding-house commonly used by seafarers or any business by which any such boarding-house is or was carried on or any business engaged in the recruitment or supply of seafarers;
 - (ii) been employed in any such boarding-house or business or by any company carrying on any such business; or
 - (iii) been a broker for any such boarding-house or business or for any company carrying on any such business; or
 - (f) if, where the company applying for the grant of the permit does not own, charter or manage any ship, the Superintendent intends, in the exercise of his powers under section 57, not to approve any person, in the case of that company, for the purposes of section 57(1).
- (2) In addition to the grounds specified in subsection (1), the Superintendent may refuse to grant a permit—
- (a) if the company applying for the permit is or has at any time been engaged solely in the recruitment or supply of registered seafarers for pecuniary advantage without

having been appointed as an agent to a person approved under section 57 by the Superintendent; or

- (b) if in his opinion the interest of registered seafarers, or of registered seafarers who would or might be employed by the permitted crew department in respect of which the permit is applied for, will best be served by refusing to grant the permit.

55. Notice of refusal to grant permit

Where the Superintendent refuses to grant a permit, he shall give notice in writing thereof to the company applying for the grant thereof together with the reasons for such refusal.

56. Cancellation of permit

- (1) The permit held by a permitted company may be cancelled by the Superintendent at any time—
 - (a) if there is or has been a contravention by the company of—
 - (i) any of the provisions of this Ordinance or any requirement of the Superintendent under this Part; or
 - (ii) any condition imposed under section 52(3) on the company;
 - (b) if he is not satisfied that the person in charge of the permitted crew department is a fit and proper person to be in charge thereof;
 - (c) if any person who is or has been an officer or other employee of the company, or any person who, notwithstanding that he is not or was not an officer or employee of the company, controls, directs or manages or has controlled, directed or managed, or takes or has

taken any part in the management of, the business of the company, has at any time—

- (i) owned, either wholly or together with other persons, or managed, or taken any part in the management of, any boarding-house commonly used by seafarers or any business by which any such boarding-house is or was carried on or any business engaged in the recruitment or supply of seafarers;
 - (ii) been employed in any such boarding-house or business or by any company carrying on any such business; or
 - (iii) been a broker for any such boarding-house or business or for any company carrying on any such business;
- (d) if any person other than a member of the staff of the company employed in the permitted crew department or an officer of the Office has taken any part, or assisted in any way, in the employment or supply of any registered seafarer supplied by the company for employment in a ship;
- (e) if any person employed by the company, by himself or by or in conjunction with any other person, has corruptly solicited or received, or agreed to receive, for himself or for any other person, any gift, loan, fee, reward or advantage as an inducement to, or reward for, or otherwise on account of any person employed by the company doing or forbearing to do anything in respect of any matter or transaction, actual or proposed, in which the permitted crew department was concerned; or
- (f) if any registered seafarer has been supplied by the company for employment in any ship other than such a

ship owned, chartered or managed by the company or by a person approved by the Superintendent, in the case of the company, for the purposes of section 57(1).

- (2) Where the Superintendent cancels any permit under subsection (1), he shall forthwith give to the company concerned notice in writing of the cancellation, together with a statement of the ground on which the permit was cancelled, and the cancellation shall take effect on and from the expiration of the period specified or allowed under section 60(1) for an appeal against that cancellation to be made except that, if such an appeal is made, the Superintendent may, in his discretion, suspend the coming into effect of that cancellation pending the determination of that appeal.
- (3) Without prejudice to the generality of subsection (1), the Superintendent may, as he thinks fit, on being requested in writing by a permitted company to do so, by notice in writing served on the company, cancel its permit with effect from such date as is specified in that notice.

57. Restriction on ships for employment in which permitted crew department may supply registered seafarers

- (1) A permitted company may supply registered seafarers for employment in ships that the company owns, charters or manages or for employment in ships that are owned, chartered or managed by such other persons as the Superintendent thinks fit to approve at any time.
- (2) Without prejudice to the discretion conferred on the Superintendent with respect to the approval of persons for the purposes of subsection (1), the Superintendent may refuse to approve any person unless he is satisfied that—
 - (a) the terms on which registered seafarers are employed in all ships that the person owns, charters or manages are

such as to induce registered seafarers to continue to be employed in such ships; and

- (b) the permitted company concerned is or will be responsible for the payment of wages, allowances, bonuses, remittances and allotments, as they become due, to registered seafarers supplied or to be supplied for employment in all ships that the person owns, charters or manages.
- (3) Where the Superintendent refuses to approve any person for the purposes of subsection (1), he shall give notice in writing thereof to the permitted company concerned together with the reasons for such refusal.

58. Changes in staff of permitted crew department to be notified to Superintendent

- (1) Where—
- (a) any person in relation to whom particulars were not supplied to the Superintendent, in accordance with section 53(1)(b), at the time of the application for the grant of a permit commences to be employed in a permitted crew department; or
 - (b) any person in relation to whom particulars were supplied to the Superintendent, in accordance with section 53(1)(b), at the time of the application for the grant of a permit ceases to be employed in the permitted crew department,

the permitted company shall give notice in writing thereof to the Superintendent forthwith and, where such notice is given in relation to a person referred to in paragraph (a), the company shall supply to the Superintendent such particulars in relation to that person as the Superintendent requires on receipt of such notice.

- (2) A notice under subsection (1) shall be signed by the person in charge of the permitted crew department.
- (3) Any permitted company which contravenes subsection (1) or any person in charge of a permitted crew department who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.

59. Display of names of crew department staff

- (1) A permitted company shall cause the names of the members of the staff of its permitted crew department to be displayed in the English and Chinese languages in a conspicuous position in the place where such members are discharging their duties.
- (2) Any permitted company which contravenes this section commits an offence and is liable on conviction to a fine at level 2.

60. Appeal against certain decisions of Superintendent

Any company aggrieved by—

- (a) a refusal of the Superintendent to grant a permit;
- (b) any condition imposed by the Superintendent under section 52(3) on the permitted company;
- (c) a refusal of the Superintendent to approve any person, in the case of that company, for the purposes of section 57(1); or
- (d) the cancellation of its permit,

may—

- (i) in the case referred to in paragraph (a), within 28 days after the giving of the notice under section 55;
- (ii) in the case referred to in paragraph (b), within 28 days after such condition was imposed;

(iii) in the case referred to in paragraph (c), within 28 days after the giving of the notice under section 57(3); and

(iv) in the case referred to in paragraph (d), within 28 days after the giving of the notice under section 56(2),

appeal to the Administrative Appeals Board against that refusal, condition or cancellation, as the case may be.

61. Permitted crew department records

- (1) A permitted company shall keep in its permitted crew department, in such form and manner as the Superintendent approves, a record containing the names of all registered seafarers whose names for the time being appear in the register in respect of the permitted company.
- (2) A permitted company shall not enter the name of a registered seafarer in the crew department record kept in its permitted crew department unless his name appears in the register in respect of the permitted company and his employment registration book is endorsed accordingly.
- (3) A registered seafarer may at any time give notice to a permitted company that he wishes to have his name removed from the crew department record kept in the permitted crew department maintained by the company and his name shall thereupon be removed from the record by the company.
- (4) A permitted company may at any time remove the name of a registered seafarer from the crew department record kept in the permitted crew department maintained by the company where—
 - (a) the seafarer has received 4 or more adverse reports from masters of ships on which he has been employed in the 3 years immediately preceding such removal; or

- (b) there are grounds, other than the ground specified in paragraph (a), acceptable to the Superintendent for such removal.
- (5) Where, under subsection (3) or (4), the name of a registered seafarer is removed from the crew department record, the permitted company concerned shall forthwith give notice thereof to the Superintendent, together with a statement of the ground on which it was removed.
- (6) Where the Superintendent has given notice in writing to a permitted company under section 28(4)(b), 29(4)(b) or 30(3) that the name of a seafarer recorded by it in the permitted crew department maintained by the company has been removed or suspended from the register, the company shall forthwith remove the name of the seafarer from the crew department record kept in the permitted crew department.
- (7) Any permitted company which contravenes subsection (1), (2), (5) or (6) commits an offence and is liable on conviction to a fine at level 2.

62. Superintendent may require registered seafarer's name to be restored to crew department record

- (1) Where the Superintendent, after such inquiry as he thinks fit, considers that the name of a registered seafarer was removed under section 61(4) from the crew department record without any or any sufficient cause, the permitted company concerned shall, if so required by the Superintendent, restore the name of the seafarer to the crew department record.
- (2) A decision of the Superintendent under subsection (1) shall be final.
- (3) Any permitted company which contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

63. Restriction on supply of registered seafarers by permitted company

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) Subject to subsection (3), a registered seafarer shall not be supplied by a permitted company for employment in a ship unless his name appears in the crew department record kept in the permitted crew department maintained by the company.
- (2) After the Superintendent has given notice in writing to a permitted company under section 21(3)(a), 29(4)(b) or 30(3) that the registration of a seafarer recorded by it in the crew department maintained by the company has been suspended or suspended for a further period, as the case may be, the permitted crew department maintained by the company shall not supply that seafarer for employment in a ship while his registration continues to be suspended.
- (3) Where, in any case of emergency—
 - (a) a suitable registered seafarer whose name appears in the crew department record kept in the permitted crew department is not available;
 - (b) the Office is closed at the time the registered seafarer comes to be supplied; or
 - (c) the ship would be delayed if the supply or employment of the registered seafarer were postponed until the time when registered seafarers may next be supplied or employed at or through the Office,

a permitted company may, notwithstanding that the name of the seafarer does not appear in the crew department record kept in the permitted crew department maintained by the company, supply for employment in a sea-going or coastal-going ship a registered seafarer who has been employed other than at or through the Office if the name of the seafarer

appears in Part I or Part II, as the case may be, of the register and whose registration is not for the time being suspended under this Ordinance, and any person who in any such case employs such seafarer or supplies him to the company shall not thereby contravene section 40(1) or (2), as the case may be. (*Amended 23 of 1998 s. 2*)

64. Lists of registered seafarers waiting to be supplied for employment in ships

- (1) Each permitted company shall cause to be kept in its permitted crew department, in such form and manner as the Superintendent approves—
 - (a) a list in the English and Chinese languages containing the name of each registered seafarer, being a seafarer whose name appears in the crew department record, who is for the time being waiting to be supplied for employment in a ship owned, chartered or managed by the company; and
 - (b) subject to subsection (2), a separate list in the English and Chinese languages in respect of each person approved, in the case of the company, for the purposes of section 57(1), containing the name of each registered seafarer, being a seafarer whose name appears in the crew department record, who is for the time being waiting to be supplied for employment in a ship owned, chartered or managed by that person.
- (2) In lieu of the separate lists in respect of each person approved in the case of a permitted company for the purposes of section 57(1) required to be kept by subsection (1)(b), there may, with the permission of the Superintendent, be kept in a permitted crew department, in such form and manner as the Superintendent approves, one list in the English and Chinese languages containing the names of all registered

seafarers who are for the time being waiting to be supplied for employment in ships owned, chartered or managed by all persons approved, in the case of that company, for the purposes of section 57(1) or by such other persons as the Superintendent permits.

- (3) Any list kept under this section shall contain in respect of each registered seafarer whose name appears therein such particulars as the Superintendent requires.
- (4) Any permitted company which contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 2.

65. Particulars of registered seafarers employed by permitted company to be delivered to Superintendent

(Adaptation amendments retroactively made - see 23 of 1998 s. 2)

- (1) Within 7 working days after the last day of each month during the whole or part of which a permit is in force, the permitted company shall deliver to the Superintendent a notice in the prescribed form, and signed by the person in charge of the permitted crew department, containing such particulars in relation to registered seafarers supplied by it for employment in sea-going ships or coastal-going ships during that month as are required by such form. (*Amended 23 of 1998 s. 2*)
- (2) Any permitted company which contravenes this section commits an offence and is liable on conviction to a fine at level 2.

66. Changes in particulars of permitted crew department to be notified to Superintendent

- (1) Within 7 working days after the last day of each month, a permitted company shall deliver to the Superintendent a notice in the prescribed form and signed by the person in charge of the permitted crew department—

- (a) setting out any changes in any of the particulars supplied to the Superintendent pursuant to section 53(2), other than particulars in relation to persons employed in the permitted crew department, since the permit was granted or since the preceding notice delivered pursuant to this section was delivered, as the case may be; or
 - (b) where there have been no such changes, declaring that there have been no such changes.
- (2) Any permitted company which contravenes this section commits an offence and is liable on conviction to a fine at level 2.

67. Approval of methods used in permitted crew department to select registered seafarers

The method or methods used in a permitted crew department to select registered seafarers whose names are entered in the crew department record to be supplied—

- (a) for employment in ships that are owned, chartered or managed by the permitted company; or
- (b) for employment in ships that are owned, chartered or managed by a person approved, in the case of the permitted company, for the purposes of section 57(1),

shall be such as the Superintendent approves.

68. Certain notices and other documents to be displayed in permitted crew department

- (1) Without prejudice to any other provision of this Ordinance, a permitted company shall at all times cause to be displayed in a conspicuous position in a part of its permitted crew department to which registered seafarers have access—
- (a) a notice or notices in the English and Chinese languages containing the name of each registered seafarer, being

- a seafarer whose name appears in the crew department record, who is for the time being waiting to be supplied for employment in a ship owned, chartered or managed by the permitted company;
- (b) subject to subsection (2), a separate notice or separate notices in the English and Chinese languages in respect of each person approved in the case of the permitted company for the purposes of section 57(1) containing the name of each registered seafarer, being a seafarer whose name appears in the crew department record, who is for the time being waiting to be supplied for employment in a ship owned, chartered or managed by that person;
 - (c) a notice or notices in the English and Chinese languages specifying the wages paid to each rating, grade or rank of registered seafarer on behalf of the owner, charterer or manager of each ship for which the permitted company supplies registered seafarers for employment;
 - (d) a copy in the English and Chinese languages of the articles of agreement, contractual clauses and terms of employment, or other agreement for employment, used in each ship for which the permitted company supplies registered seafarers for employment;
 - (e) a notice setting forth in the English and Chinese languages the provisions of section 71;
 - (f) a notice or notices in the English and Chinese languages specifying the approved method or methods used in the permitted crew department to supply registered seafarers for employment in ships for which the permitted company supplies registered seafarers for such employment; and

- (g) such other notices or documents as are required by the Superintendent.
- (2) In lieu of the separate notice or notices in respect of each person approved in the case of the permitted company for the purposes of section 57(1) required by subsection (1)(b) to be displayed in a permitted crew department, there may, with the permission of the Superintendent, be displayed in a permitted crew department, in such form and manner as the Superintendent approves, a notice or notices in the English and Chinese languages containing the names of all registered seafarers who are for the time being waiting to be supplied for employment in ships owned, chartered or managed by all persons approved, in the case of that permitted company, for the purposes of section 57(1) or by such other persons as the Superintendent permits.
- (3) The notice or notices displayed in a permitted crew department pursuant to subsection (1)(a) or (b) or under subsection (2) shall be in such form as the Superintendent approves and the names of registered seafarers shall be entered in such notice or notices in such manner as the Superintendent approves.
- (4) A notice displayed in a permitted crew department pursuant to subsection (1)(a) or (b) or under subsection (2) shall have marked thereon—
- (a) the date on which it was first so displayed; and
 - (b) if it has been revised, the date on which it was revised or last revised, as the case may be.
- (5) The notice or notices displayed in a permitted crew department pursuant to subsection (1)(a) or (b) or under subsection (2) shall be deemed to contain the names of all registered seafarers who are for the time being waiting to be supplied for employment in such ships as are referred to in

subsection (1)(a) or (b) or in subsection (2), as the case may be—

- (a) if the notice or notices contains or contain the names of all registered seafarers waiting to be supplied for employment in such ships on the day on which the notice or notices was or were first displayed and the notice or notices has not or have not been displayed for more than 16 days; or
 - (b) if the notice or notices has or have been revised within the preceding 16 days so that it or they contains or contain the names of all registered seafarers waiting to be supplied for employment in such ships on the day on which the notice or notices was or were so revised.
- (6) Any notice or other document displayed in a permitted crew department pursuant to subsection (1)(g) shall be in the English language and, if so required by the Superintendent, in the Chinese language.
- (7) Any permitted company which contravenes subsection (1), (3), (4) or (6) commits an offence and is liable on conviction to a fine at level 2.

69. Advance of wages

- (1) Where an advance of wages is to be paid to a registered seafarer supplied by a permitted company for employment in a ship, the whole of such advance of wages, without any deduction therefrom, shall be paid to such seafarer personally by—
- (a) the person in charge of the permitted crew department; or
 - (b) a person employed by the permitted company who has been appointed for the purpose by the person in charge of the permitted crew department.

- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

70. Approval of methods used by permitted company to pay allotments and remittances and display of certain notices

- (1) The method or methods used by a permitted company to pay to persons in whose favour allotments or remittances are made by registered seafarers selected by it—
- (a) for employment in ships that are owned, chartered or managed by the company; or
 - (b) for employment in ships that are owned, chartered or managed by a person approved, in the case of the permitted company, for the purposes of section 57(1),
- shall be such as the Superintendent approves.
- (2) Without prejudice to any other provision of this Ordinance, a permitted company shall at all times cause to be displayed in a conspicuous position in a part of its permitted crew department to which registered seafarers have access and, where allotments and remittances are dealt with elsewhere than in the permitted crew department, in that part of the premises of the permitted company in which the same are dealt with—
- (a) a notice or notices specifying the approved method or methods used by the permitted company to pay allotments and remittances;
 - (b) a notice specifying the days on and times at which allotments and remittances are dealt with; and
 - (c) such other notices relating to allotments and remittances as the Superintendent requires.

- (3) Every notice displayed in a permitted crew department pursuant to subsection (2) shall be in the English and Chinese languages.
- (4) Any permitted company which contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 2.

71. Corruption

- (1) Any person employed by a permitted company who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, loan, fee, reward or advantage as an inducement to, or reward for, or otherwise on account of any person employed by the permitted company doing or forbearing to do anything in respect of any matter or transaction, actual or proposed, in which the permitted crew department maintained by such company is concerned commits an offence.
- (2) Any person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gift, loan, fee, reward or advantage to any person, whether for the benefit of that person or another person, as an inducement to or reward for or otherwise on account of any person employed by a permitted company doing or forbearing to do anything in respect of any matter or transaction, actual or proposed, in which the permitted crew department maintained by the company is concerned commits an offence.
- (3) Any person who commits an offence under subsection (1) or (2) shall be liable—
 - (a) on conviction upon indictment, to a fine at level 3 and to imprisonment for 5 years; and

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- (b) on summary conviction, to a fine at level 2 and to imprisonment for 2 years.
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PART VIII**EXAMINATION AND CERTIFICATION, ETC.
OF OFFICERS AND OTHER SEAFARERS AND
MANNING OF HONG KONG SHIPS****72. Scale of certificated officers and other seafarers, etc.**

(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.)

- (1) The Secretary for Transport and Housing may make regulations for all or any of the following matters— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) the number of officers and other seafarers required to man Hong Kong ships;
 - (b) the qualifications, experience and any other qualities required of officers and other seafarers manning Hong Kong ships;
 - (c) the number of officers and other seafarers with different qualifications, experience or any other qualities required to man Hong Kong ships;
 - (d) the qualifications, experience and other qualities required of officers and other seafarers acting in particular stations in Hong Kong ships;
 - (e) the circumstances in which, and the conditions under which, Hong Kong ships may proceed on a voyage without a particular number of officers or other seafarers or a particular class of officers or other seafarers;
 - (f) the circumstances in which, and the conditions under which, an officer or other seafarer may act in a station

- in a Hong Kong ship in respect of which he is not qualified;
- (g) the power of the Authority to make determinations relating to the manning of Hong Kong ships;
 - (h) generally, provisions in respect of the manning of Hong Kong ships by officers and other seafarers; and
 - (i) the making of false pretences, the supplying of false information or the improper use of certificates or licences.
- (2) Any determinations made by the Authority pursuant to any regulations made under subsection (1)(g) shall be in writing and may be published in such manner as the Authority thinks fit and the Authority shall, upon payment of the prescribed fee, provide a copy of the determinations to any person who applies to him in that behalf.
- (3) The master of a Hong Kong ship, on signing the crew agreement together with the crew before the Superintendent, shall produce to the Superintendent the certificates of competency or of service, or the licences, and any other certificates or endorsements, which the master, officers and other seafarers on the ship are required to hold under this Ordinance.
- (4) The master of a Hong Kong ship who, without reasonable excuse, fails to comply with subsection (3) commits an offence and is liable on conviction to a fine at level 2.

73. Standards of competency of officers and other seafarers

(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.)

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- (1) The Secretary for Transport and Housing may make regulations for all or any of the following matters— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (a) the classes of officers and of other seafarers in the mercantile marine;
 - (b) the classes of certificates of competency or of service, or licences, required in respect of each class of officer or of other seafarer;
 - (c) the standards of competency to be attained and other conditions to be satisfied to qualify an officer or other seafarer for the grant of any particular class of certificate or licence;
 - (d) examinations as a test, or part of a test, for the grant of any particular class of certificate or licence;
 - (e) the method of granting certificates or licences and the issue of certificates or licences, and copies of certificates or licences, by the Authority;
 - (f) the recognition of other qualifications as equivalent to certificates or licences issued by the Authority;
 - (g) the additional training, experience and other qualifications required for officers and other seafarers manning Hong Kong ships;
 - (h) the endorsement of certificates or licences with any particular qualification or limitation;
 - (i) the suspension and cancellation of certificates or licences;
 - (j) the power of the Authority to make determinations in respect of the standards of competency to be attained and other conditions to be satisfied to qualify an officer or any other seafarer for the grant of a particular class

- of certificate or licence and the manner in which such attainment and satisfaction is to be established;
- (k) generally, provisions in respect of the qualifications and other qualities of officers and other seafarers in the mercantile marine;
 - (l) issuing copies of any lost, defaced or destroyed certificates or licences;
 - (m) the making of false pretences, the supplying of false information or the improper use of certificates or licences; and
 - (n) the power of the Authority to refuse to accept an application for any examination prescribed by regulations made under this subsection unless evidence is first produced which satisfies him as to the sobriety, experience, ability and general good conduct on board a ship of the officer or other seafarer concerned.
- (2) The Authority shall conduct the examinations prescribed by the regulations made under subsection (1) and, for that purpose—
- (a) shall appoint examiners and notify the appointments in the Gazette; and
 - (b) regulations made under subsection (1)(j) may provide power for the Authority to make determinations for all or any of the following matters—
 - (i) the conditions to be satisfied by candidates to make themselves eligible to sit the examinations;
 - (ii) the procedure for the conduct of examinations;
 - (iii) the subject and syllabi in respect of the examinations; and
 - (iv) the standards to be achieved in order to pass the examinations.

- (3) Any determinations made by the Authority pursuant to any regulations made under subsection (1)(j) shall be in writing and may be published in such manner as the Authority thinks fit and the Authority shall, upon payment of the prescribed fee, provide a copy of the determinations to any person who applies to him in that behalf.

74. Certificates of competency for seafarers other than officers

- (1) The Authority shall cause examinations to be conducted in respect of persons in the mercantile marine who wish to obtain certificates of competency as seafarers, other than officers, of the prescribed classes, and shall appoint examiners for that purpose and notify the appointments in the Gazette.
- (2) The Authority may make rules prescribing or providing for—
- (a) classes of seafarers, other than officers, for the purposes of subsection (1);
 - (b) the standards of competency to be attained and other conditions to be satisfied (subject to any exceptions allowed by or under the rules) by candidates for any examination conducted under subsection (1);
 - (c) the procedure for and the method of conducting any such examinations;
 - (d) the subjects to be taken at any such examination or the manner in which those subjects are to be specified;
 - (e) forms in relation to any such examination;
 - (f) the method of granting certificates of competency and copies of such certificates;
 - (g) the recognition of other qualifications as equivalent to certificates of competency issued by the Authority;

- (h) the power of the Authority to grant exemptions from the application of the rules in respect of any case or class of case;
 - (i) the suspension and cancellation of certificates;
 - (j) issuing copies of any lost, defaced or destroyed certificates; and
 - (k) the power of the Authority to refuse to accept an application for any examination conducted under subsection (1) unless evidence is first produced which satisfies him as to the experience and ability of the person concerned.
- (3) Rules made under subsection (2) in respect of the grant of certificates of competency as A.B. shall direct that no such certificate shall be granted to any person unless—
- (a) he has reached such minimum age;
 - (b) he has performed such qualifying service at sea; and
 - (c) he has passed such examination,
- as are prescribed in those rules.

75. Rating as A.B.

- (1) No person shall rate as an A.B. a seafarer employed to be entered in any Hong Kong ship unless the seafarer is the holder of a certificate of competency.
- (2) The Superintendent or other officer authorized by him before whom a seafarer is employed to be entered in any Hong Kong ship shall refuse to enter the seafarer as an A.B. on the crew agreement unless the seafarer produces a certificate of competency or such other proof that he is the holder of such a certificate as appears to the Superintendent or other officer authorized by him to be satisfactory.

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- (3) In this section “certificate of competency” (合格證書) means—
- (a) a certificate of competency as an A.B. granted in accordance with rules made under section 74; or
 - (b) a qualification recognized under rules made under that section as equivalent to a certificate referred to in paragraph (a).
- (4) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.
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PART IX**EMPLOYMENT AND DISCHARGE OF SEAFARERS****76. Employment and discharge of seafarers to be conducted before the Superintendent**

- (1) Subject to subsection (2), all the business within Hong Kong connected with the employment and discharge of seafarers in ships shall, unless otherwise approved by the Superintendent, be conducted before the Superintendent at—
 - (a) the Office; or
 - (b) such other place or places as are approved from time to time by the Superintendent.
- (2) Subsection (1) shall not apply where the ship concerned is not a Hong Kong ship and such ship is represented by a consular officer resident in Hong Kong.
- (3) Any person who conducts any business within Hong Kong connected with the employment or discharge of seafarers in ships in contravention of subsection (1) commits an offence and is liable on conviction—
 - (a) in the case of an individual, to a fine at level 4 and to imprisonment for 2 years;
 - (b) in the case of a body corporate, to a fine at level 5.

77. Fees upon employment or discharge

- (1) Where any seafarer is employed or discharged in accordance with section 76(1), the employer concerned, or the agent of the employer, shall pay to the Superintendent—
 - (a) the prescribed fee for that employment; or
 - (b) the prescribed fee for that discharge,

as the case may be.

- (2) The Superintendent shall cause the fees referred to in subsection (1), together with a copy of this section, to be conspicuously exhibited in the Office, and may require the payment of the fee concerned before proceeding with any employment or discharge of a seafarer.

78. Procedure upon discharge, and provision for seafarer left behind or remaining in Hong Kong

- (1) No master or employer, or agent of the employer, shall discharge in Hong Kong any seafarer from any ship without informing the Superintendent or the consular officer, if any, representing the ship, and unless due provision is made for the subsistence and maintenance of such seafarer to the satisfaction of—
 - (a) in the case of a Hong Kong ship or of any other ship not represented in Hong Kong by a consular officer, the Superintendent;
 - (b) in the case of a ship so represented, such consular officer,

and any master or employer, or agent of the employer, who discharges a seafarer in contravention of this subsection commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months:

Provided that no such provision shall be necessary in respect of any seafarer—

- (i) employed in Hong Kong; or
 - (ii) discharged in accordance with the terms of his crew agreement.
- (2) Any seafarer who wilfully remains in Hong Kong after the departure of his ship commits an offence and is liable on

conviction to a fine at level 2 and to imprisonment for 3 months.

- (3) Any master or any other person belonging to a Hong Kong ship, or belonging to any other ship not represented in Hong Kong by a consular officer, who forces on shore and wrongfully leaves behind, or otherwise wrongfully leaves behind in Hong Kong any seafarer belonging to such ship before the completion of the voyage for which the seafarer was employed, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (4) Where a master or other person is convicted of an offence against subsection (3), the court may, in addition to any penalty it may impose in respect of the offence, order the offender to pay any costs incurred by the Government in transporting the seafarer in respect of whom the offence was committed to any place outside Hong Kong, and the amount so ordered to be paid may be recovered in the same manner as a fine.

79. Removal of discharged seafarers

- (1) Except with the permission of the master of the ship, no seafarer who has been lawfully discharged from his ship shall be or remain on the ship.
- (2) Any seafarer who, having been lawfully discharged from his ship, does not leave the ship on being requested so to do by the master may be removed from the ship by an authorized officer.
- (3) In this section, “authorized officer” (獲授權人員) means any police officer of the rank of inspector or above and any officer of the Marine Department above the rank of Marine Inspector I.

80. Crew agreements

(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.)

- (1) Subject to subsection (5), an agreement in writing shall be made between each seafarer employed in a Hong Kong ship and his employer and shall be signed both by the seafarer and by or on behalf of his employer:

Provided that—

- (a) such agreement may be made for a voyage or, if the voyages of the ship average less than 6 months in duration, may be made to extend over 2 or more voyages, and an agreement so made to extend over 2 or more voyages shall be referred to as a running agreement; and
 - (b) a running agreement shall not be for a longer period than 12 months or the first arrival of the ship in Hong Kong after the expiration of that period, or the discharge of cargo consequent on that arrival.
- (2) The agreements made under this section with the seafarers employed in a ship shall be contained in one document (to be known as a “crew agreement”) except that in such cases as the Superintendent approves—
 - (a) the agreements to be made under this section with the seafarers employed in a ship may be contained in more than one crew agreement; and
 - (b) one crew agreement may relate to more than one ship.
- (3) The provisions and form of a crew agreement shall be of a kind approved by the Superintendent, and different provisions and forms may be so approved for different circumstances.
- (4) Subject to subsections (5), (6) and (7), a crew agreement shall be carried in the ship to which it relates whenever the ship goes to sea.

- (5) The Secretary for Transport and Housing may make regulations providing for exemptions from the requirements of this section, and the Authority may grant other exemptions from those requirements (whether with respect to particular seafarers or with respect to seafarers employed by a specified person or in a specified ship or in the ships of a specified person) in cases where the Authority is satisfied that the seafarers to be employed otherwise than under a crew agreement will be adequately protected. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (6) Where, but for an exemption under subsection (5), a crew agreement would be required to be carried in a ship or a crew agreement carried in a ship would be required to contain an agreement with a person employed in the ship, the ship shall carry such document evidencing the exemption as the Authority directs.
- (7) Regulations made under this section may enable ships required under this section to carry a crew agreement to comply with the requirement by carrying a copy thereof, certified in such manner as is provided by the regulations.
- (8) Where a ship goes to sea or attempts to go to sea in contravention of a requirement of this section, the master of the ship, and also the employer or agent of the employer, if such employer or agent is party or privy to the offence, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months and the ship, if within the waters of Hong Kong, may be detained by the Authority.

81. Regulations relating to crew agreements

(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.)

The Secretary for Transport and Housing may make regulations for all or any of the following matters— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

- (a) requiring such notice as is specified in the regulations to be given to the Superintendent, except in such circumstances as are so specified, before a crew agreement is made or an agreement with any person is added to those contained in a crew agreement;
- (b) providing for the delivery to the Superintendent of crew agreements and agreements added to those contained in a crew agreement and of copies of crew agreements and of agreements so added;
- (c) requiring the posting in ships of copies of or extracts from crew agreements;
- (d) requiring copies of or extracts from crew agreements to be supplied to members of the crew demanding them and requiring copies of or extracts from documents referred to in crew agreements to be made available, in such circumstances as are specified in the regulations, for inspection by members of the crew; and
- (e) requiring any document carried in a ship pursuant to section 80 to be produced on demand to the Superintendent.

82. Discharge of seafarers

(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.)

- (1) The Secretary for Transport and Housing may make regulations prescribing the procedure to be followed in connection with the discharge of seafarers from Hong Kong ships. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

- (2) Without prejudice to the generality of subsection (1), regulations made under this section may make provision—
- (a) requiring notice of such a discharge to be given at such time as is specified in the regulations to the Superintendent at a place specified in or determined under the regulations; and
 - (b) requiring such a discharge to be recorded, whether by entries in the crew agreement and employment registration book or equivalent document, and requiring copies of any such entry to be given to the Superintendent.
- (3) Regulations made under this section may provide that in such cases as may be specified in the regulations, or except in such cases as may be specified in or determined under the regulations, a seafarer shall not be discharged outside Hong Kong from a Hong Kong ship without informing the Superintendent.

83. Discharge of seafarers when ship ceases to be registered in Hong Kong

Where a ship registered in Hong Kong ceases to be so registered, any seafarer employed in the ship shall be discharged from the ship unless he consents in writing to continue his employment in the ship, and sections 84 to 87 inclusive shall apply to his wages as if the ship had remained registered in Hong Kong.

84. Payment of seafarer's wages

- (1) Except as provided by or under this Ordinance or any other enactment, the wages due to a seafarer under a crew agreement relating to a ship shall be paid to him in full at the time when he leaves the ship on being discharged therefrom (in this section and section 85 referred to as the “time of discharge”).

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- (2) Where the amount shown in the account delivered to a seafarer under section 85(1) as being the amount payable to him under subsection (1) is replaced by an increased amount shown in a further account delivered to him under section 85(3), the balance shall be paid to him within 7 days of the time of discharge, and if the amount so shown in the account delivered to him under section 85(1) exceeds \$1,500 and it is not practicable to pay the whole of it at the time of discharge, not less than \$1,500 nor less than one-quarter of the amount so shown shall be paid to him at that time and the balance within 7 days of that time.
- (3) If any amount which, under subsection (1) or (2), is payable to a seafarer is not paid at the time at which it is so payable the seafarer shall be entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid during the period of 56 days following the time of discharge, and if any such amount or any amount payable by virtue of this subsection remains unpaid after the end of that period it shall carry interest at the rate of 20% per annum.
- (4) Subsection (3) shall not apply if the failure to pay was due to a mistake, to a reasonable dispute as to liability or to the act or default of the seafarer or to any other cause, not being the wrongful act or default of the employers liable to pay his wages or of their servants or agents, and so much of that subsection as relates to interest on the amount due shall not apply if a court in proceedings for its recovery so directs.
- (5) Where a seafarer is employed under a crew agreement relating to more than one ship, subsections (1), (2), (3) and (4) shall have effect, in relation to wages due to him under the agreement, as if for any reference to the time of discharge, there were substituted a reference to the termination of his employment under the crew agreement.

- (6) Where a seafarer, pursuant to section 83, is discharged from a ship outside Hong Kong but returns to Hong Kong under arrangements made by the employer or agent of the employer, this section shall have effect, in relation to the wages due to him under a crew agreement relating to the ship, as if for the references in subsections (1), (2) and (3) to the time of discharge there were substituted references to the time of his return to Hong Kong, and subsection (5) were omitted.

85. Account of seafarers' wages

- (1) Subject to subsection (4) and to regulations made under section 86 or 104, the master of a Hong Kong ship shall deliver to every seafarer employed in the ship under a crew agreement an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.
- (2) The account shall indicate that the amounts stated therein are subject to any later adjustment that may be found necessary and shall be delivered not later than 24 hours before the time of discharge or, where the seafarer is discharged without notice or at less than 24 hours' notice, at the time of discharge.
- (3) Where the amounts stated in the account require adjustment, the employer or agent of the employer of the seafarer shall deliver to him a further account stating the adjusted amounts, and that account shall be delivered not later than the time at which the balance of his wages is payable to the seafarer.
- (4) Where a seafarer is employed under a crew agreement relating to more than one ship, any account which under this section would be required to be delivered to him by the master shall instead be delivered to him by the employer of the seafarer and shall be so delivered on or before the termination of his employment under the crew agreement.

- (5) Where a person fails, without reasonable excuse, to comply with any of the provisions of this section, he commits an offence and is liable on conviction to a fine at level 1.

86. Regulations relating to wages and accounts

(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.)

The Secretary for Transport and Housing may make regulations for all or any of the following matters— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

- (a) authorizing deductions to be made from the wages due to a seafarer under a crew agreement (in addition to any authorized by any provision of this Ordinance or of any other enactment) in cases where a breach of his obligations under the agreement is alleged against him and such conditions, if any, as are specified in the regulations are complied with, or in such other cases as are specified in the regulations;
- (b) regulating the manner in which any amounts deducted under the regulations are to be dealt with;
- (c) prescribing the manner in which wages due to a seafarer under a crew agreement are to be or may be paid;
- (d) regulating the manner in which such wages are to be dealt with and accounted for in circumstances where a seafarer leaves his ship in Hong Kong otherwise than on being discharged therefrom; and
- (e) prescribing the form and manner in which any account required to be delivered by section 85 is to be prepared and the particulars to be contained therein (which may include estimated amounts).

87. Power of Superintendent to decide disputes about wages

- (1) Any dispute relating to the amount payable to a seafarer employed under a crew agreement may be submitted by the parties to the Superintendent for decision, but the Superintendent shall not be bound to accept the submission or, if he has accepted it, to decide the dispute, if he is of opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him.
- (2) The decision of the Superintendent on a dispute submitted to him under this section shall be final.

88. Power of court to award interest on wages due otherwise than under crew agreement

In any proceedings by the master of a Hong Kong ship or a person employed in a ship otherwise than under a crew agreement for the recovery of any sum due to him as wages the court, unless it appears to it that the delay in paying the sum was due to a mistake, to a reasonable dispute as to liability or to the act or default of the person claiming the amount or to any other cause, not being the wrongful act or default of the persons liable to make the payment or their servants or agents, may order them to pay, in addition to the sum due, interest on it at the rate of 20% per annum or such lower rate as the court specifies, for the period beginning 7 days after the sum became due and ending when the sum is paid.

89. Allotment notes

(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.)

- (1) Subject to this section, a seafarer may, by means of an allotment note issued in accordance with regulations made under this section by the Secretary for Transport and Housing, allot to any person or persons part of the wages to which he will become entitled in the course of his employment in a

Hong Kong ship or Hong Kong ships. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

- (2) A seafarer's right to make an allotment under this section shall be subject to such limitations as may, by virtue of the following provisions of this section, be imposed by regulations made by the Secretary for Transport and Housing. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (3) Regulations made by the Secretary for Transport and Housing for the purposes of this section may prescribe the form of allotment notes and— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) may limit the circumstances in which allotments may be made;
 - (b) may limit (whether by reference to an amount or by reference to a proportion) the part of the wages that may be allotted and the number of persons to whom it may be allotted and may prescribe the method by which that part is to be calculated;
 - (c) may limit the persons to whom allotments may be made by a seafarer to persons of such descriptions or persons standing to him in such relationships as may be prescribed by the regulations; and
 - (d) may prescribe the times and the intervals at which payments under allotment notes are to be made.

90. Right of person named in allotment note to sue in own name

- (1) A person to whom any part of a seafarer's wages has been allotted by an allotment note issued in accordance with regulations made under section 89 shall have the right to recover that part in his own name and for that purpose shall have the same remedies as the seafarer has for the recovery of his wages.

- (2) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seafarer's wages has been allotted, it shall be presumed, unless the contrary is shown, that the seafarer is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

91. Right, or loss of right, to wages in certain circumstances

- (1) Where a Hong Kong ship is wrecked or lost and a seafarer whose employment in the ship is thereby terminated, or a seafarer's employment in a Hong Kong ship is terminated other than for disciplinary reasons, before the date contemplated in the crew agreement under which he is so employed he shall, subject to this section, be entitled to wages at the rate payable under that agreement at the date of the wreck, loss or termination of employment other than for disciplinary reasons, for every day on which he is unemployed in the 2 months following that date.
- (2) Where a Hong Kong ship is sold or ceases to be a Hong Kong ship and a seafarer's employment in the ship is thereby terminated before the date contemplated in the crew agreement under which he is so employed, then he shall, subject to this section, be entitled to wages at the rate payable under that agreement at the date on which his employment is terminated for every day on which he is unemployed in the 2 months following that date.
- (3) A seafarer shall not be entitled to wages by virtue of subsection (1) or (2) for a day on which he was unemployed, if it is shown—
- (a) that the unemployment was not due to the wreck or loss of the ship, or termination of employment other than for disciplinary reasons or, as the case may be, the

termination of his employment on the sale of the ship or its ceasing to be a Hong Kong ship; or

- (b) that the seafarer was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

92. Certificate of discharge to be provided to seafarer discharged in Hong Kong

Where any seafarer is discharged from any ship before the Superintendent in Hong Kong, the master of the ship shall give to the seafarer at the time of such discharge a written certificate of discharge, specifying the time and nature of employment, and the time and discharge of the seafarer, signed by the master.

93. Protection of certain rights and remedies

- (1) Subject to subsection (2), a seafarer's lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship, and any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.
- (2) Subsection (1) shall not affect such of the terms of any agreement made with the seafarer belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, as provide for the remuneration to be paid to them for salvage services rendered by that ship.

94. Remedies of master for remuneration, disbursements, etc.

The master of a Hong Kong ship shall have the same lien for his remuneration, and all disbursements or liabilities properly made or incurred by him on account of the ship, as a seafarer has for his wages.

95. Lists of crew

(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.)

- (1) Except as provided by regulations made under this section, the master of a Hong Kong ship shall make and maintain a list of the crew containing such particulars as are required by the regulations.
- (2) The Secretary for Transport and Housing may make regulations for all or any of the following matters— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) specifying the particulars to be entered in a list of the crew;
 - (b) limiting the time for which a list of the crew shall remain in force;
 - (c) providing for the maintenance by such persons and either in such place as is specified in the regulations or, if it is so specified, in the ship of a copy or copies of each list of a crew, and for the notification to such persons of any changes therein;
 - (d) for the production of a list of the crew to such persons, in such circumstances and within such time as are specified in the regulations; and
 - (e) for the delivery to the Superintendent, in such circumstances as are specified in the regulations, of a list of the crew or a copy thereof maintained under the regulations and for the notification to him of any changes in such a list.
- (3) Regulations made under this section may enable a list of the crew to be contained in the same document as a crew agreement and may treat any particulars entered in the crew agreement as forming part of the particulars entered in the list.

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- (4) Regulations made under this section may provide for the delivery to the Superintendent, in such circumstances as are specified in the regulations, of copies of the certificates of competency or of service, or licences, and any other certificates and endorsements, required by this Ordinance to be held by persons entered in a list of the crew.
 - (5) Regulations made under this section may exempt from the requirements thereof such descriptions of ship as are specified in the regulations and may make different provision for different circumstances.
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PART X**HEALTH, SAFETY AND WELFARE OF SEAFARERS****96. Regulations relating to health, safety and welfare of seafarers**

(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.)

- (1) The Secretary for Transport and Housing may make regulations— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) for securing the health, safety and welfare of seafarers employed in, or persons carried on board—
 - (i) any Hong Kong ship; or
 - (ii) any other ship while it is within the waters of Hong Kong; and
 - (b) for giving effect to any provisions of any international agreement applicable to Hong Kong so far as the agreement relates to the health, safety or welfare of seafarers or persons referred to in paragraph (a).
- (2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular, prescribe or provide for—
 - (a) the maintenance of safe working conditions and safe means of access for seafarers employed in ships;
 - (b) the investigation and reporting of accidents and dangerous occurrences on board, and of injuries sustained by seafarers employed in, ships;
 - (c) the carriage on board ships of copies of such regulations, directions or other information as are specified;

- (d) the medical standards to be met by seafarers employed in ships, the grant or refusal of certificates in respect of such standards and the hearing of appeals relating to such grants or refusals;
- (e) the employment in ships of persons qualified to attend to the health and safety of seafarers and other persons on such ships;
- (f) the furnishing of information;
- (g) the maximum number of hours for which seafarers are required or permitted to work continuously in specified operations or in specified circumstances in ships;
- (h) the issue of guidelines by the Superintendent in respect of provisions and water to be provided on ships.

97. Regulations relating to crew accommodation

(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.)

- (1) The Secretary for Transport and Housing may make regulations with respect to the crew accommodation to be provided in Hong Kong ships. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular—
 - (a) prescribe the minimum space per man which must be provided by way of sleeping accommodation for crew and the maximum number of persons by whom a specified part of such sleeping accommodation may be used;
 - (b) regulate the position in the ship in which the crew accommodation or any part thereof may be located

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- and the standards to be observed in the construction, equipment and furnishing of any such accommodation;
- (c) require the submission to a surveyor of ships of plans and specifications of any works proposed to be carried out for the purpose of the provision or alteration of crew accommodation and authorize the surveyor to inspect any such works; and
 - (d) provide for the maintenance and repair of crew accommodation and prohibit or restrict the use of any such accommodation for purposes other than those for which it is designed.
- (3) The Authority may grant exemptions from all or any of the provisions of the regulations made under this section for classes of cases or individual cases on such conditions, if any, as he thinks fit and may, subject to giving reasonable notice, alter or cancel any such exemption.
 - (4) Regulations made under this section may make different provision with respect to different descriptions of ships or with respect to ships which were registered in Hong Kong at different dates or the construction of which was begun at different dates and with respect to crew accommodation provided for seafarers of different descriptions.
 - (5) Regulations made under this section may require the master of a ship or any officer authorized by him for the purpose to carry out such inspections of the crew accommodation as are specified in the regulations.
 - (6) Where the provisions of any regulations made under this section are contravened in the case of a ship, the owner and master of the ship each commits an offence and shall be liable on conviction to a fine at level 3 and the ship, if within the waters of Hong Kong, may be detained by the Authority.

- (7) In this section “crew accommodation” (船員艙房) includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seafarers but does not include any accommodation which is also used by or provided for the use of passengers.

98. Complaints about provisions or water

- (1) Where 3 or more seafarers employed in a Hong Kong ship consider that the provisions or water provided for the seafarers employed in that ship are not in accordance with regulations made under section 96 (whether because of bad quality, unfitness for use or deficiency in quantity) they may complain to the master of the ship, who shall investigate the complaint.
- (2) Where the seafarers who have made a complaint referred to in subsection (1) are dissatisfied with the action taken by the master of the ship concerned as a result of his investigation or by his failure to take any action, they may state their dissatisfaction to him and may claim to complain to the Superintendent and thereupon the master shall make adequate arrangements to enable the seafarers to do so as soon as practicable.
- (3) The Superintendent upon receipt of a complaint under this section shall investigate the complaint and may examine the provisions or water provided for seafarers in the ship concerned or cause them to be examined.
- (4) The master of a ship who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable on conviction to a fine at level 2 and, where he has been notified in writing by the Superintendent after making an examination under subsection (3) that any provisions or water

in that ship are found to be unfit for use or not of the quality required by regulations made under section 96, then—

- (a) if such provisions and water are not replaced within a reasonable time, the master, owner and charterer, and the agent of the owner or charterer, of the ship each commits an offence and is liable on conviction to a fine at level 3 unless he proves that the failure to replace them was not due to his neglect or default; and
- (b) if the master of the ship, without reasonable excuse, permits such provisions and water to be used, then he commits an offence and is liable on conviction to a fine at level 3.

99. Other complaints

- (1) Where a seafarer employed in a Hong Kong ship considers that he has cause to complain about the master of the ship or any other seafarer employed in the ship or about the conditions on board the ship he may complain to the master.
- (2) Where a seafarer who has made a complaint referred to in subsection (1) is dissatisfied with the action taken by the master of the ship on the complaint or by his failure to take any action, he may state his dissatisfaction to him and may claim to complain to the Superintendent and thereupon the master shall make adequate arrangements to enable the seafarer to do so as soon as practicable.
- (3) The Superintendent upon receipt of a complaint under this section shall investigate the complaint.
- (4) The master of a ship who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable on conviction to a fine at level 2.

100. Medical stores

(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.)

- (1) The Secretary for Transport and Housing may make regulations requiring Hong Kong ships, or such descriptions of Hong Kong ships as are specified, to carry such medicines and other medical stores (including books containing instructions and advice) as are specified, and such regulations may make different provision for different circumstances. *(Amended L.N. 106 of 2002; L.N. 130 of 2007)*
- (2) Where a ship goes to sea or attempts to go to sea without carrying the medical stores which it is required to carry by regulations made under this section, the master, owner and agent of the owner of the ship each commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months unless he shows that the failure to carry the stores was not due to his neglect or default.

101. Medical treatment on board ship

Where a Hong Kong ship does not carry a medical practitioner among the seafarers employed in it the master of the ship shall make arrangements for securing that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose.

102. Expenses of medical treatment, etc. during voyage

Where a seafarer employed in a Hong Kong ship receives outside Hong Kong any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by his employer and, if the seafarer dies while so employed and is buried or cremated outside Hong Kong, the expenses of his burial or cremation shall also be borne by his employer.

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103. Medical inspection

The master of a Hong Kong ship before employing any seafarer may require that the seafarer shall be medically examined by a medical practitioner or, if he is of the opinion that a seafarer employed in the ship may be medically unfit for such employment, require such a seafarer to be inspected by such a practitioner.

PART XI**REPATRIATION OF SEAFARERS****104. Relief and return of seafarers left behind, etc.**

(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.)

- (1) The Secretary for Transport and Housing may make regulations— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) providing, where—
 - (i) a seafarer employed in a Hong Kong ship is left behind in any place outside Hong Kong or is taken to such a place on being shipwrecked; or
 - (ii) a seafarer employed in a Hong Kong ship became so employed under a crew agreement entered into in any place outside Hong Kong is left behind in Hong Kong or is taken to Hong Kong on being shipwrecked,for his return, and for his relief and maintenance until his return, by his last employer;
 - (b) providing, in respect of any seafarer referred to in paragraph (a)—
 - (i) who is shipwrecked, for the repayment of expenses incurred in bringing the seafarer ashore and maintaining him until he is brought ashore; and
 - (ii) who dies before he can be returned, for the payment of the expenses of the burial or cremation of the seafarer;

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- (c) providing for the manner in which any wages due to any seafarer referred to in paragraph (a), and any property of his left on board ship, are to be dealt with; and
 - (d) requiring the Superintendent—
 - (i) to make such provision as is specified in regulations with respect to any matter for which provision is required to be made by regulations made under paragraph (a), (b) or (c); and
 - (ii) to make the like provision with respect to any registered seafarers found in distress in any place outside Hong Kong after being employed in ships registered in, or belonging to the government of, such place.
- (2) Without prejudice to the generality of subsection (1), regulations made under that subsection may make provision for—
- (a) determining the place to which a seafarer is to be returned;
 - (b) requiring the master of a Hong Kong ship to convey a seafarer to a place determined in accordance with the regulations and for enabling the Superintendent to give the master directions for that purpose;
 - (c) the making of payments in respect of the conveyance of a seafarer in accordance with the regulations; and
 - (d) the keeping of records and the rendering of accounts.
- (3) This section applies to a seafarer left behind on being discharged pursuant to section 83, whether or not at the time he is left behind the ship concerned is still a Hong Kong ship.

105. Limit of employer's liability under section 104

Where a seafarer left behind in or taken to any place outside Hong

Kong as referred to in section 104 remains there after the end of a period of 3 months, his last employer shall not be liable under that section to make provision for his return or for any matter arising after the end of that period, unless the employer has before the end of that period been under an obligation imposed on him by regulations made under that section to make provision with respect to that seafarer.

106. Recovery of expenses incurred for relief and return, etc.

- (1) Where any expenses are incurred in respect of any matter for which the employer of a seafarer is required to make provision under section 104, then—
 - (a) if the expenses are incurred by the Government, or are incurred by the government of any place outside Hong Kong and repaid to such government on behalf of the Government, the Government may recover them from the employer as a civil debt; and
 - (b) if the expenses are incurred by the seafarer, he may recover them from the employer as a civil debt unless the employer proves either that under the terms of the seafarer's employment they were to be borne by the seafarer or that he would not have been left behind but for his own wrongful act or neglect.
- (2) Where, in the case of any seafarer, expenses are incurred by the Government or are incurred by the government of any place outside Hong Kong and repaid to such government on behalf of the Government—
 - (a) in respect of any matter for which, but for section 105, the seafarer's last employer would have been required to make provision under section 104; or
 - (b) in respect of any matter for which provision is required to be made under section 104(1)(d)(ii),

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the Government may recover them from the seafarer (or, if he has died, from his personal representatives) as a civil debt.

PART XII

DISCIPLINARY OFFENCES BY, AND CIVIL LIABILITY OF, SEAFARERS

107. Disciplinary offences

(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.)

- (1) For the purpose of maintaining discipline on board Hong Kong ships, the Secretary for Transport and Housing may make regulations specifying any misconduct on board a Hong Kong ship as a disciplinary offence and enabling the master of the ship, or such officer as may under such regulations be required or authorized to exercise the powers of the master, to impose fines on seafarers committing such disciplinary offences. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (2) A fine referred to in subsection (1) that may be imposed on a seafarer for a disciplinary offence shall be such as may be provided in the regulations made under this section by reference to his pay for such period as is specified in the regulations, calculated in such manner as is so specified, but, in any case, the period so specified shall not exceed 5 days.
- (3) Regulations made under this section shall prescribe the procedure to be followed in dealing with disciplinary offences.
- (4) Regulations made under this section shall enable the master of a ship to remit, in such circumstances as is specified in the regulations, the whole or part of any fine imposed thereunder.
- (5) Regulations made under this section may provide for a seafarer who has committed a disciplinary offence to make a

complaint to the Superintendent and for the Superintendent to deal with that complaint in such manner as is specified in the regulations.

- (6) In this section, “seafarer” (海員) does not include an officer.

108. Payment of fines for disciplinary offences

- (1) The amount of a fine imposed on a seafarer for a disciplinary offence, so far as not remitted by the master of the ship concerned, may be deducted from his wages or otherwise recovered by his employer and shall be paid by his employer (whether or not it has been so deducted or otherwise recovered) to the Superintendent.
- (2) Where the wages or part of the wages of a seafarer on whom a fine is imposed for a disciplinary offence are paid by the master of the ship concerned on behalf of the seafarer’s employer or where the master is the employer of the seafarer, the amount referred to in subsection (1) of the fine shall be paid at the time when the seafarer leaves the ship at the end of the voyage or, if earlier, when his employment in the ship is terminated; and, in any other case, the master of the ship concerned shall at that time notify such amount to the seafarer’s employer and the employer shall pay it when the next payment in respect of the seafarer’s wages falls to be made by the employer.
- (3) Any amount paid under this section to the Superintendent shall be transmitted by him to the Government and any amount required to be so paid but remaining unpaid shall be recoverable by the Government as a civil debt.
- (4) Where the master of a ship or an employer fails without reasonable cause to pay any fine as required by this section, he shall for each offence be liable on conviction to a fine not exceeding 6 times the amount of the fine not so paid.

109. Civil liability for smuggling

Where a seafarer employed in a Hong Kong ship is found in civil proceedings before a court in Hong Kong to have committed an act of smuggling, whether within or outside Hong Kong, he shall be liable to make good any loss or expense that the act has caused to any other person.

110. Civil liability for fines imposed under immigration laws

- (1) This section shall apply where, at a time when a Hong Kong ship is in the national or territorial waters of any place outside Hong Kong, a seafarer employed in the ship is absent without leave and present in that place in contravention of that place's law.
- (2) Where, by reason of a contravention referred to in subsection (1) by a seafarer, a penalty is incurred under the laws of the place where that contravention occurred by the employer of the seafarer, the penalty shall be treated as being attributable to the seafarer's absence without leave and may, unless the seafarer proves that his absence was due to an accident or mistake beyond his control and that he took all reasonable precautions to avoid being absent, be recovered from the seafarer as special damages for breach of contract.
- (3) Where, by reason of a contravention referred to in subsection (1) by a seafarer, a penalty is incurred under the laws of the place where that contravention occurred by any other person, the amount of such penalty, or, if that amount exceeds \$20,000, \$20,000 may be recovered by that person from the seafarer.

PART XIII

DISQUALIFICATION OF OFFICERS AND INQUIRIES

111. Interpretation

In this Part, “certificate” (證書) means a certificate of competency or of service issued or deemed to be issued under regulations made under section 73.

112. Inquiry into fitness or conduct of officer

(Adaptation amendments retroactively made - see 64 of 1999 s. 3)

- (1) Where it appears to the Authority that an officer—
 - (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason;
 - (b) has been seriously negligent in the discharge of his duties; or
 - (c) has failed to comply with the provisions of section 78 of the Merchant Shipping (Safety) Ordinance (Cap. 369),the Authority may cause an inquiry to be held and may, if he thinks fit, suspend, pending the outcome of the inquiry, any certificate or licence issued to the officer and require the officer to deliver it to him.
- (2) Where an inquiry is to be held under this section—
 - (a) the inquiry shall be—
 - (i) held by one or more persons appointed by the Chief Justice; and
 - (ii) conducted in accordance with rules made under section 115 (which rules shall require the persons

holding the inquiry to hold it with the assistance of one or more assessors); and

- (b) the persons holding the inquiry shall for the purpose of the inquiry have the powers specified in section 113(1).
- (3) The persons holding an inquiry under this section and the assessors assisting them shall be remunerated at a rate which shall take account of the amount of work and time occupied by them upon the business of the inquiry and such remuneration shall be determined by the Chief Executive either generally from time to time or specifically in any particular case: (*Amended 64 of 1999 s. 3*)

Provided that nothing in this subsection shall be construed to authorize the payment of remuneration to any person employed full time in any office of emolument under the Government.

- (4) The persons holding an inquiry under this section into the fitness or conduct of an officer—
- (a) may, if satisfied of any of the matters specified in subsection (1)(a), (b) or (c), cancel or suspend any certificate or licence issued to him or censure him;
 - (b) may make such order with regard to the costs of the inquiry or any part thereof (including witnesses' costs) as they think just, and such order shall be enforced by them in the same way as an order for costs under the Magistrates Ordinance (Cap. 227); and
 - (c) shall make a report on the case to the Authority, and if the certificate or licence is cancelled or suspended the officer, unless he has delivered it to the Authority pursuant to subsection (1), shall deliver it forthwith to the persons holding the inquiry or to the Authority.
- (5) Any costs which a person is ordered to pay under subsection (4)(b) may be recovered from him by the Authority.

113. Powers of persons holding inquiry

- (1) The persons holding an inquiry under section 112 may—
 - (a) make such examination and investigation as they consider necessary for the purpose of the inquiry;
 - (b) require any person who they have reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (a)—
 - (i) to attend at a place and time specified by the persons holding the inquiry;
 - (ii) to answer (in the absence of persons other than any persons whom the persons holding the inquiry may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the persons holding the inquiry think fit to ask;
 - (iii) to sign a declaration of the truth of his answers;
 - (c) may require the production of, and inspect and take copies of or of any entry in—
 - (i) any books or documents which by virtue of any provision of the Merchant Shipping Ordinance (Cap. 281), the Shipping and Port Control Ordinance (Cap. 313), the Merchant Shipping (Safety) Ordinance (Cap. 369) or this Ordinance are required to be kept;
 - (ii) any other books or documents which they consider it necessary for them to see for the purposes of any examination or investigation under paragraph (a);
 - (d) may require any person to afford them such facilities and assistance with respect to any matters or things within that person's control, or in relation to which

that person has responsibilities as the persons holding the inquiry consider are necessary to enable them to exercise any of the powers conferred on them by this section.

- (2) A person shall be obliged to answer questions put to him under this section by the persons holding the inquiry, but if the answers might tend to incriminate him, and he so claims before answering the question, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 116 or under section 36 of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer, and the persons holding the inquiry shall, before asking any question under this section, inform the person concerned of the limitation imposed by this subsection in respect of the admissibility in evidence of the question and any answer given.

114. Re-hearing of and appeal from inquiries

(Adaptation amendments retroactively made - see 64 of 1999 s. 3)

- (1) Where an inquiry has been held under section 112, the Authority may, on application by any person or otherwise, order the whole or part of the case to be re-heard, and shall do so—
- (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
 - (b) if there appears to him to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) Where a re-hearing is to be held under this section—
- (a) the re-hearing shall be held by one or more persons appointed by the Chief Justice, who may provide for

- the re-hearing to be held by the persons who held the inquiry to which the order under subsection (1) relates;
- (b) the re-hearing shall be conducted in accordance with rules made under section 115; and
 - (c) section 112(2)(b), (3), (4) and (5) shall, with any necessary modifications, apply to and in relation to the re-hearing as it applies to and in relation to an inquiry.
- (3) Where the persons holding the inquiry have decided to cancel or suspend the certificate or licence of any person or have found any person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who—
- (a) has an interest in the inquiry;
 - (b) has appeared at the hearing;
 - (c) is affected by the decision or finding; and
 - (d) is dissatisfied in point of law with the decision or finding,
- may appeal to the Court of First Instance.
- (4) Where the persons holding a re-hearing under this section have—
- (a) confirmed (whether with or without variation) a decision at an inquiry to cancel or suspend the certificate or licence of any person or a finding at an inquiry that any person was at fault; or
 - (b) decided to cancel or suspend the certificate or licence of any person or have found any person at fault,
- then, in either case, that person or any other person who—
- (i) has an interest in the re-hearing;
 - (ii) has appeared at the re-hearing;

- (iii) is affected by the decision or finding; and
 - (iv) is dissatisfied in point of law with the decision or finding,
- may appeal to the Court of First Instance.
- (5) If on an appeal under subsection (3) or (4) the Court of First Instance is of the opinion that the decision or finding of the persons holding the inquiry or re-hearing was erroneous in point of law, the court may—
- (a) allow the appeal and give such directions in the matter as it thinks proper; or
 - (b) remit the matter to those persons for determination in accordance with the court's decision on the point of law.

(Amended 64 of 1999 s. 3)

115. Rules as to inquiries, etc.

- (1) The Chief Justice may make rules for the conduct of inquiries under section 112 and for the conduct of any re-hearing under section 114.
- (2) Without prejudice to the generality of subsection (1), rules made under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

116. Penalty for refusing to attend as witness, etc.

Any person who refuses to attend as a witness before any person having the powers specified in section 113(1), after having been required in the exercise of any such power to do so, or refuses or neglects to make any answer, or to give any return, or to produce any document in his possession or under his control, or to make or subscribe any declarations required by any such person in the

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exercise of any such power, commits an offence and is liable on conviction to a fine at level 2.

117. Failure to deliver cancelled or suspended certificate, etc.

Where a person fails to deliver a certificate or licence as required under section 112(1) or (4), he commits an offence and is liable on conviction to a fine at level 2.

118. Power to restore certificate, etc.

Where a certificate or licence has been cancelled or suspended under this Part, the Authority, if required to do so by the Court of First Instance or the persons holding the inquiry concerned, shall re-issue the certificate or licence or, as the case may be, reduce the period of suspension and return the certificate or licence, or shall grant a new certificate or licence of the same or a lower grade in place of the cancelled or suspended certificate or licence.

(Amended 43 of 1999 s. 91)

PART XIV

MISCELLANEOUS

119. Official log books

(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.)

- (1) Except as provided by regulations made under this section, an official log book in the prescribed form shall be kept in every Hong Kong ship.
- (2) The Secretary for Transport and Housing may make regulations prescribing the particulars to be entered in official log books, the persons by whom such entries are to be made, signed or witnessed, the procedure to be followed in the making of such entries and in their amendment or cancellation, and remedial action that may be taken by the Superintendent in respect of any matters the subject of any entries which have been amended or cancelled. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
- (3) Regulations made under this section may require the production or delivery of official log books to such persons, in such circumstances and within such times as are specified in the regulations.
- (4) Regulations made under this section may exempt ships of any description from any requirements of the regulations, either generally or in such circumstances as are specified in the regulations.
- (5) Where a person, without lawful authority, wilfully destroys or mutilates or renders illegible any entry in an official log book, he commits an offence and is liable on conviction to a fine at level 3.

120. Admissibility in evidence and inspection of certain documents

(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.)

The following documents shall be admissible in evidence and, when in the custody of the Superintendent, shall be open to public inspection—

- (a) crew agreements, lists of crews made under section 95 and notices given under this Ordinance of additions to or changes in crew agreements and lists of crew;
- (b) subject to section 34, the official log book of any ship kept under section 119 and any document purporting to be a copy of an entry therein certified as a true copy of the entry by the master of the ship;
- (c) documents purporting to be submissions to or decisions by the Superintendent under section 87;
- (d) returns or reports under section 121 or under regulations made under section 86;
- (e) any other document specified by the Secretary for Transport and Housing, by notice in the Gazette, to be a document to which this section applies. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

121. Returns of births, deaths and missing persons, etc.

- (1) The Secretary for Transport and Housing may make regulations requiring— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) the master of any Hong Kong ship to make a return to the Superintendent of—
 - (i) any birth or death occurring in the ship;

- (ii) the death, where occurring outside Hong Kong, of any person employed in the ship;
 - (iii) any person missing from the ship,
and to notify any such death to such person, if any, as the deceased may have named to the master as his next of kin;
- (b) the master of any ship not registered in Hong Kong which enters the waters of Hong Kong in the course of or at the end of a voyage to make a return to the Superintendent of—
- (i) any birth of a child to, or death of, a person who holds an identity card which has occurred in the ship during the voyage;
 - (ii) any person who holds an identity card missing from the ship during the voyage;
- (c) the Superintendent to obtain such information as is specified in the regulations about a death referred to in paragraph (a) in a case where it appears to him that the master of the ship cannot perform the duty imposed on him by virtue of that paragraph in respect of the death because he himself has died or is incapacitated or missing and—
- (i) the death in question has been the subject of an inquest held by a coroner or an inquiry held pursuant to section 122 and the findings of the inquest or inquiry, as the case may be, include a finding that the death occurred; or
 - (ii) an autopsy has been performed on the deceased's body and in consequence the coroner is satisfied that an inquest is unnecessary.

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- (2) Regulations made under this section may contain provisions authorizing the reporting of a death outside Hong Kong of a person who holds an identity card where—
- (a) the person was, at the time of his death, a seafarer employed in a ship other than a Hong Kong ship, whether or not the death occurred in the ship; and
 - (b) no return is required to be made in respect of the death under regulations made under subsection (1).
- (3) Regulations made under this section may—
- (a) require the Superintendent—
 - (i) to keep a record of any returns made thereunder;
 - (ii) to keep a record of such information as is specified in the regulations about a death referred to in subsection (2);
 - (b) provide for the rectification or amendment of any record kept thereunder;
 - (c) provide for the sending to the Registrar of a certified copy of any record kept thereunder, including a certified copy of any corrected or amended entry in any such record.
- (4) *(Repealed 8 of 2006 s. 48)*
- (5) Sections 22, 24, 25 and 28 of the Births and Deaths Registration Ordinance (Cap. 174) shall have effect as if— *(Replaced 80 of 1997 s. 72. Amended 8 of 2006 s. 48)*
- (a) the Marine Register of Births and Deaths were a register referred to in those sections; and
 - (b) the reference to the computer record in those sections were a reference to the database of a register computer. *(Amended 8 of 2006 s. 48)*

121A. Maintenance of register and storage of information

- (1) The Registrar shall maintain a register called the Marine Register of Births and Deaths.
- (2) The Marine Register of Births and Deaths shall be compiled from the certified copies sent to the Registrar under regulations made under section 121(3)(c), which are recorded in the form of digital image in accordance with this section.
- (3) The Registrar shall, on receipt of a certified copy of any record sent to him under regulations made under section 121(3)(c), cause—
 - (a) the certified copy to be recorded in the form of digital image; and
 - (b) the particulars contained in the certified copy to be stored in the database of a register computer in the form of data which are capable of being retrieved and reproduced in a legible form.
- (4) The Registrar shall, on receipt of a certified copy of any corrected or amended entry sent to him under regulations made under section 121(3)(c), cause—
 - (a) the certified copy to be recorded in the form of digital image and substituted for the corresponding digital image kept in the Marine Register of Births and Deaths; and
 - (b) the particulars contained in the certified copy to be—
 - (i) stored in the manner described in subsection (3)(b); and
 - (ii) substituted for the corresponding particulars that have been so stored.
- (5) Where the Registrar is aware of a clerical error in the particulars stored in the database referred to in subsection

(3)(b), he shall cause the error to be corrected as soon as possible.

- (6) The certified copies filed in the Marine Register Book of Births and Deaths shall, on the commencement* of the Births, Deaths and Marriages (Digital Image) Ordinance (8 of 2006), form part of the Marine Register of Births and Deaths and be recorded in the form of digital image by the Registrar.
- (7) The Registrar shall cause the particulars contained in the certified copies referred to in subsection (6) to be stored in the manner described in subsection (3)(b).

(Added 8 of 2006 s. 49)

Editorial Note:

Commencement date: 27 August 2007.

121B. Disposal of certified copies filed in Marine Register Book of Births and Deaths

Where—

- (a) any certified copy filed in the Marine Register Book of Births and Deaths has been recorded in the form of digital image; and
- (b) the particulars contained in the certified copy have been stored in the manner described in section 121A(3)(b),

the Registrar may destroy or otherwise dispose of the certified copy in such manner as he thinks fit.

(Added 8 of 2006 s. 49)

122. Inquiries into deaths of persons in Hong Kong ships

- (1) Subject to subsection (5), where any person dies in a Hong Kong ship—

- (a) while the ship is within the waters of Hong Kong, or if the ship enters the waters of Hong Kong as the next port of call after the death, the Superintendent shall hold an inquiry in Hong Kong into the cause of the death; and
 - (b) in any other case, the Superintendent shall hold an inquiry into the cause of the death at such place as he thinks fit.
- (2) The Superintendent holding an inquiry referred to in subsection (1) shall for the purpose of the inquiry be empowered to exercise the powers contained in section 115 of the Merchant Shipping (Safety) Ordinance (Cap. 369), and section 116 of that Ordinance shall apply accordingly.
 - (3) The Superintendent holding an inquiry referred to in subsection (1) shall make a report of his findings.
 - (4) The Superintendent shall make a copy of a report referred to in subsection (3) available—
 - (a) if the deceased person to which the report relates was a seafarer employed in the Hong Kong ship concerned and a person was named as his next of kin in the crew agreement or list of the crew in which the deceased person's name last appeared, to the person so named; and
 - (b) in any case, to any person requesting it who appears to the Superintendent to be interested.
 - (5) No inquiry referred to in subsection (1) shall be held in respect of a death which is, or is to be, the subject of an inquest held by a coroner in Hong Kong.

123. Entry to premises, etc. and power to search, seize, etc.

- (1) Where a warrant has been issued under subsection (2) in respect of any place, or subsection (3) applies in respect of any place, a prescribed officer may—

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- (a) at any time, using such force as may be necessary, enter and search such place;
 - (b) remove anything which obstructs any such entry and search;
 - (c) detain any person found in such place, during such period as is reasonably required to permit any such search to be carried out, where that person might prejudice the purpose of such search if he were not so detained;
 - (d) inspect, seize and detain anything which is or appears to him to be or to contain, or to be likely to be or contain, evidence of the commission of an offence against this Ordinance.
- (2) Where a magistrate is satisfied by information upon oath that there are reasonable grounds for believing that—
- (a) an offence against this Ordinance is being or has been committed in any place; or
 - (b) there is or may be in any place anything which is or contains, or is likely to be or to contain, evidence of the commission of an offence against this Ordinance,
- he may issue a warrant authorizing any prescribed officer to enter such place.
- (3) A prescribed officer may exercise any of the powers conferred under subsection (1) on a prescribed officer without a warrant issued under subsection (2)—
- (a) in respect of any place not being domestic premises; and
 - (b) where—
 - (i) he has reason to believe that—
 - (A) an offence against this Ordinance is being or has been committed in that place; or

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- (B) there is or may be in that place anything which is or contains, or is likely to be or contain, evidence of the commission of an offence against this Ordinance; and
- (ii) it is not reasonably practicable to obtain such a warrant in respect of that place before exercising those powers.
- (4) For the purposes of ascertaining whether the provisions of this Ordinance are being complied with, a prescribed officer may—
- (a) at all reasonable times, enter any place occupied by a permitted company, being a place which appears to him to be used for the purposes of the business of the permitted crew department maintained by the company;
- (b) inspect any books, records or other documents belonging to or in the possession of the company, being books, records or documents kept or used for the purposes of the business of the permitted crew department maintained by the company or in connection with the payment of allotments or remittances;
- (c) take notes, copies or extracts of or from any such books, records or other documents.
- (5) This section shall be without prejudice to any powers of entry and search conferred on police officers under any other law.
- (6) In this section—
- “enter” (進入) includes board;
- “domestic premises” (住宅處所) means any premises used wholly or mainly for residential purposes and constituting a separate household unit;
- “place” (地方) includes premises and ship;
- “prescribed officer” (訂明人員) means—

- (a) the Authority;
- (b) the Superintendent;
- (c) any public officer authorized in writing for the purposes of this section by the Superintendent either generally or in any particular case;
- (d) any police officer.

124. Power of Authority to prescribe forms

- (1) Subject to any rules made under section 74(2)(e) or any regulations made under section 134(4)(e), the Authority may prescribe the form of any notice or document required by or under this Ordinance to be in the prescribed form and the form of such other notices or documents required for the purposes of this Ordinance as he thinks fit.
- (2) For the avoidance of doubt, it is hereby declared that a form prescribed under this section is not subsidiary legislation.

125. Delegations

(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.)

- (1) Subject to subsection (2), where under this Ordinance a function is imposed or a power is conferred upon the Authority or the Superintendent, then the person upon whom such function is imposed or power is conferred may delegate in writing to any public officer to perform on his behalf such function, or to exercise on his behalf such power, as the case may be.
- (2) No delegation shall be made under subsection (1) in respect of any function imposed, or power conferred, upon the Authority or the Superintendent, as the case may be, under—
 - (a) section 74(2) or this section;

- (b) any regulations made pursuant to section 72(1)(g), 73(1)(j) or 134(1)(a), (b) or (c);
 - (c) any provisions of this Ordinance specified in Schedule 1;
 - (d) any provisions of any regulations made under this Ordinance which are specified in the regulations as provisions which shall not be subject to this section.
- (3) A delegate of the Authority or the Superintendent—
- (a) shall perform the delegated functions and may exercise the delegated powers as if he were the Authority or the Superintendent, as the case may be; and
 - (b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of evidence to the contrary.
- (4) The Secretary for Transport and Housing may, by notice in the Gazette, amend Schedule 1. (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

126. Service of notices and documents on seafarers, etc.

- (1) Any notice or document required or permitted by this Ordinance to be served on a registered seafarer shall be deemed to have been served if it is—
- (a) delivered to the seafarer personally; or
 - (b) sent by post to the seafarer at his registered address.
- (2) Where, for the purposes of this Ordinance, any notice or document is required or permitted to be served on a person (other than a registered seafarer), it shall be deemed to have been served if it is—
- (a) in any case, delivered to the person personally or left at his last place of abode;

- (b) in the case of a notice or document to be served on the master of a ship, where there is one, or on a person belonging to a ship, left for him on board that ship with the person being or appearing to be in charge or command of the ship;
 - (c) in the case of a notice or document to be served on the master of a ship, where there is no master and the ship is within the waters of Hong Kong, delivered personally to, or left at the last known address of, the owner or charterer of the ship or the agent of the master, owner or charterer or, where no such owner or charterer or agent is known or can be found, it is affixed to a conspicuous part of the ship.
- (3) Any person who obstructs the service under this Ordinance of any notice or document on the master of a ship commits an offence and is liable on conviction to a fine at level 2.
 - (4) Any owner, agent of the owner or master of a ship who is party or privy to an offence against subsection (3) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
 - (5) For the purposes of this section, “notice or document” (通知或文件) includes a copy of a notice or document.

127. False statement or information

- (1) Any person who in any form required by, under or for the purposes of this Ordinance, or in any notice or document given, issued or made pursuant to or for the purposes of this Ordinance, makes any statement or furnishes any information which he knows or reasonably ought to know to be false in a material particular commits an offence.

- (2) Any person who furnishes any information required to be furnished under section 53, or supplies any particular required to be supplied under section 66(1), which he knows or reasonably ought to know to be false in a material particular commits an offence.
- (3) Any person who signs any form required by, under or for the purposes of this Ordinance, or any notice or document given, issued or made pursuant to or for the purposes of this Ordinance, in which any statement or information which he knows or reasonably ought to know to be false in a material particular is made or furnished commits an offence.
- (4) Any person who commits an offence against this section shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (5) For the purposes of this section, “Ordinance” (條例) does not include any regulations made under Part VIII or section 119.

128. Forgery, etc. of certificate

- (1) Any person who—
 - (a) makes, assists in making or procures to be made any false representation for the purpose of procuring, either for himself or for any other person, a certificate of competency;
 - (b) fraudulently uses a certificate or copy of a certificate of competency which has been forged, altered, cancelled or suspended or to which he is not entitled; or
 - (c) fraudulently lends his certificate of competency or allows it to be used by any other person,commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (2) In this section, “certificate of competency” (合格證書) means a certificate of competency or of service other than one issued or deemed to be issued under any regulations made under section 73.
- (3) Where a person is convicted of an offence under subsection (1) or of the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of competency, or of a conspiracy to commit any such offence, or of a conspiracy to defraud in relation to a certificate of competency, the Authority may cancel, or suspend for any period, the certificate of competency held by such person.
(Amended 45 of 1999 s. 8)

129. Handing over of documents on change of master

- (1) Where a person ceases to be the master of a Hong Kong ship during a voyage of the ship he shall deliver to his successor the documents relating to the ship or its crew which are in his custody and, where he does so, shall make an entry in the ship’s official log book to the effect that he has done so.
- (2) Any person who, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 2.

130. Power to detain ships in certain cases

Where under this Ordinance it is enacted that, under certain conditions, a ship shall not leave the waters of Hong Kong, but, apart from this section, no provision is made under this Ordinance for the detention of the ship under such conditions, the Authority may under such conditions detain the ship until he is satisfied that such conditions no longer apply to the ship.

131. Penalty for taking detained ship to sea

- (1) Where under this Ordinance a ship is to be detained, if the

ship, after such detention or after service on the master of the ship of any notice of or order for such detention, proceeds or attempts to proceed to sea before having been released by the Authority or a person authorized by the Authority for that purpose, the master, and also the owner or agent, and any person who sends the ship to sea, if such owner, agent or person is party or privy to the offence, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (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 penalty to which he may be liable under subsection (1), each commits an offence against this subsection and is liable on conviction to a fine at level 4 and to imprisonment for 6 months and an additional fine of \$1,000 for each day during the period from the date on which the ship proceeded to sea until the date on which the officer is returned 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) shall be jointly and severally liable to pay all expenses incidental to the taking of the officer to sea and to securing his return to Hong Kong,

and all such expenses may be recovered in the same manner as a fine.

132. Notice to be given to nearest consular officer where proceedings taken in respect of foreign ship

Where any ship which is not a Hong Kong ship is detained under this Ordinance and where any proceedings are taken under this Ordinance against the master or owner of any such ship but, apart

from this section, no provision is made under this Ordinance for giving notice thereof to the consular officer of the country in which the ship is registered, notice shall forthwith be given by the Authority to the nearest consular officer of the country in which the ship is registered, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken, as the case may be.

133. Regulations relating to fees

- (1) The Financial Secretary may by regulation prescribe or provide for—
 - (a) fees to be paid in respect of registration or the grant of certificates, clearances, licences, permits and other documents, or the performance of services or surveys or grant of facilities under this Ordinance; and
 - (b) fees to be paid whenever by or under this Ordinance the official signature of the Authority or the Superintendent to any certificate, authorization, consent, licence, permit or exemption, or to any alteration, transfer or renewal thereof, addition thereto or endorsement thereon, is requested or required, or wherever a search of any register kept under this Ordinance is granted.
- (2) Any fees prescribed under this section 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 the matters to which this Ordinance relates, 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.

134. Regulations—general powers

- (1) Any regulations made under this Ordinance may empower the

Authority or the Superintendent to—

- (a) amend any Schedule to the regulations except any regulations made under section 133;
 - (b) prescribe, by notice in the Gazette, specifications, standards or additional requirements for the purposes of the regulations;
 - (c) issue instructions, directions or codes of practice providing practical guidance with respect to specifications, standards or requirements prescribed by or under the regulations; or
 - (d) grant exemptions from the requirements of the regulations, either generally or in any particular case.
- (2) Any instructions, directions or codes of practice referred to in subsection (1)(c) and any amendment thereof shall be published in such manner as is specified in the regulations or, if not so specified, in such manner as the person issuing them thinks fit, and such publication shall be notified in the Gazette together with advice as to where copies may be obtained.
- (3) Any regulations made under this Ordinance and any notice or other instrument made or issued under the regulations may provide for the adoption, for the purposes of the regulations, of standards, specifications or codes of practice issued by the International Maritime Organization or other appropriate authority.
- (3A) Any regulations made under this Ordinance for giving effect (whether in whole or in part) to a provision of an international agreement that is applicable to Hong Kong and amended from time to time may—
- (a) set out (whether in a schedule or otherwise) or refer directly to the provision; and

- (b) specify (whether in a schedule or otherwise) amendments, modifications or adaptations subject to which the provision is to have effect. (*Added 16 of 2013 s. 66*)
- (4) Any regulations made under this Ordinance may—
- (a) make different provisions for different circumstances and provide for a particular case or class of cases;
 - (b) be made so as to apply only in such circumstances as are prescribed by the regulations;
 - (c) be made to apply to Hong Kong ships wherever they may be;
 - (d) specify provisions of the regulations which shall not be subject to section 125;
 - (e) specify forms for the purposes of the regulations;
 - (f) provide that in such cases as are prescribed by the regulations a ship shall be liable to be detained or delayed or refused a port clearance by such person as is prescribed by the regulations;
 - (g) authorize, or provide for the authorization of, persons to carry out inspections or other matters required by the regulations;
 - (h) provide for appeals to the Administrative Appeals Board—
 - (i) against any decision made under the regulations by the Authority or Superintendent;
 - (ii) by any person aggrieved by any such decision made in respect of him; or
 - (i) be made generally for the better and more effectual carrying out of the provisions of this Ordinance,

including incidental, consequential, evidential and supplemental provisions.

- (5) Without prejudice to section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), any regulations made under this Ordinance may include regulations which provide for transitional or savings provisions in respect of any of the enactments repealed or amended under Part XV.
- (6) Any regulations made under this Ordinance may prescribe offences in respect of contraventions of the regulations, and may provide for the imposition in respect of any such offence of a fine not exceeding level 6 and of imprisonment for a period not exceeding 2 years.
- (7) For the purposes of subsection (6), “regulations” (規例) shall not include rules.

135. Payment of remuneration to certain persons

(Adaptation amendments retroactively made - see 64 of 1999 s. 3)

- (1) There may be paid out of the general revenue to any officer or person appointed under this Ordinance, or to any assessor, such remuneration as this Ordinance directs, or in so far as this Ordinance does not extend as the Chief Executive may direct.
- (2) There may be paid out of the general revenue all costs and compensation payable by the Chief Executive or the Government pursuant to this Ordinance.
- (3) The fees prescribed by the Financial Secretary under section 133 are hereby declared to be payable to the Superintendent, and the same and all other fees payable under this Ordinance may be recovered in the District Court as a civil debt.

(Amended 64 of 1999 s. 3)

PART XV

TRANSITIONAL AND SAVINGS PROVISIONS AND CONSEQUENTIAL AMENDMENTS AND REPEALS*

Editorial Note:

* (Amended L.N. 391 of 1996)

136. Interpretation

In this Part, unless the context otherwise requires—

“former permit” (先前的許可證) means a permit which was—

- (a) granted under section 34(1) of the repealed Ordinance;
and
- (b) in force immediately before the commencement of this Ordinance;

“former permitted company” (先前的核准公司) means a company holding a former permit;

“former permitted crew department” (先前的核准船員部), in relation to a former permitted company, means the permitted crew department maintained by the company as such permitted crew department was constituted immediately before the commencement of this Ordinance;

“former permitted crew department list” (先前的核准船員部名冊), in relation to a former permitted company, means the record kept in the company’s former permitted crew department pursuant to the conditions endorsed on its former permit as such record was in force immediately before the commencement of this Ordinance;

“former register” (先前的登記冊) means the register kept pursuant to section 6 of the repealed Ordinance;

“repealed Ordinance” (已廢除條例) means the Merchant Shipping (Recruiting of Seamen) Ordinance (Cap. 135) repealed by this Ordinance;

“seaman” (海員) means a seaman within the meaning of section 2(1) of the repealed Ordinance.

137. Place appointed to be the Office

The place which was, immediately before the commencement of this Ordinance, called the Mercantile Marine Office pursuant to section 9(1) of the Merchant Shipping Ordinance (Cap. 281) shall, on and from that commencement, be deemed to be the Office as if, on that commencement, the Secretary for Economic Services had appointed that place to be the Office pursuant to section 5(2), and the provisions of this Ordinance, and of any other enactment which refers to the Mercantile Marine Office of Hong Kong (and whether or not the words “of Hong Kong” or the Chinese characters “香港” are used), shall apply accordingly.

138. Registered seamen deemed to be registered seafarers, etc.

- (1) Subject to this section, a seaman who was, immediately before the commencement of this Ordinance, registered under the repealed Ordinance shall be deemed to be a seafarer registered under this Ordinance as if—
- (a) in the case of a seaman whose name was entered in Part I of the former register, his name were entered in Part I of the register; and
 - (b) in the case of a seaman whose name was entered in Part IV of the former register, his name were entered in Part I of the register.

- (2) Subsection (1) shall cease to apply to a seaman immediately upon—
- (a) in the case of a seaman who is employed as a seaman in a ship on the commencement of this Ordinance, the expiration of one month immediately following the seaman's first return to Hong Kong after ceasing to be so employed in that ship; and
 - (b) in any other case, the expiration of 12 months immediately following that commencement,
- unless the seaman has, before the expiration of the relevant period, made an application to the Superintendent to be registered under this Ordinance, in which case that subsection shall cease to apply to that seaman immediately upon the determination of that application by the Superintendent.
- (3) Where any act, matter or thing has been done under a provision of Part IV of the repealed Ordinance to or in relation to a seaman (and irrespective of whether subsection (1) applies to that seaman) then, to the extent that but for the enactment of this Ordinance that act, matter or thing would on or after the commencement of this Ordinance have had any force or effect or been in operation, then that act, matter or thing shall, in the like manner, be deemed to have been done under the corresponding provision of Part V to or in relation to the seaman as if—
- (a) any reference in that corresponding provision to a seafarer were a reference to that seaman; and
 - (b) that act, matter or thing were, to that extent, done under that corresponding provision to or in relation to that seaman,
- and the provisions of this Ordinance shall apply accordingly.

139. Certain unregistered seamen deemed to be registered seafarers

- (1) Subject to this section, a person, other than a seaman to whom section 138(1) applies, who was, immediately before the commencement of this Ordinance, employed as a seaman in any coastal-going ship shall be deemed to be a seafarer registered under this Ordinance as if his name were entered in Part II of the register.
- (2) Subsection (1) shall cease to apply to a person immediately upon the expiration of 12 months immediately following the commencement of this Ordinance unless that person has, before the expiration of that period, made an application to the Superintendent to be registered, in which case that subsection shall cease to apply to that person immediately upon the determination of that application by the Superintendent.

140. Former permitted companies deemed to be permitted companies, etc.

Subject to section 56, a former permitted company shall be deemed to be a permitted company—

- (a) for the unexpired portion of the period of validity of its former permit remaining immediately before the commencement of this Ordinance; or
- (b) until it is granted a permit,

whichever first occurs, and, for that purpose and for that period or until it is granted a permit, as the case may be—

- (i) the company's former permit shall be deemed to be a permit;
- (ii) any conditions endorsed upon the company's former permit and in force immediately before the commencement of this Ordinance shall be deemed to be conditions imposed under section 52(3) upon the company;

- (iii) the company's former permitted crew department shall be deemed to be its permitted crew department; and
 - (iv) the company's former permitted crew department list shall be deemed to be its crew department record,
- and the provisions of this Ordinance shall apply accordingly.

141. *(Repealed 2 of 2012 s. 3)*

(Adaptation amendments retroactively made - see 2 of 2012 s. 3)

142. Application of Merchant Shipping Acts, etc.

- (1) The provisions of the Merchant Shipping Acts as applied in or extended to Hong Kong immediately before the commencement of this Ordinance—
 - (a) are hereby repealed so far as they are inconsistent with the provisions of this Ordinance which relate to Hong Kong ships, the owners, masters or crews of such ships, or the employers of such masters or crews;
 - (b) are hereby repealed so far as they are inconsistent with the provisions of this Ordinance which expressly relate to ships other than Hong Kong ships, the owners, masters or crews of such ships, or the employers of such masters or crews.
- (2) The Merchant Shipping (Hong Kong) Order 1936 (App. III, p. Y1) is repealed.
- (3) Sections 23, 24 and 25 of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply in relation to the repeal of a provision of an United Kingdom enactment effected by this section as they apply in relation to the repeal of a provision of an Ordinance.
- (4) In this section, “Merchant Shipping Acts” (《商船法令》) means the Merchant Shipping Acts 1894 to 1979 of the United Kingdom and any regulations made thereunder.

MERCHANT SHIPPING (SEAFARERS) ORDINANCE

PART XV

15-12

Section 143

Cap. 478

143. *(Omitted as spent)*

Schedule 1A

[s. 2A]

Persons Not Included in Definition of *Seafarer*

1. The following persons who work on board a ship are not seafarers—
 - (a) a person who works on board the ship as a pilot;
 - (b) the owner of the ship;
 - (c) a person, including the manager or charterer of the ship, who has assumed responsibility for the operation of the ship from the owner (*responsible person*);
 - (d) a person (except the master of the ship) who represents the owner or responsible person on board the ship;
 - (e) an officer of a law enforcement agency who carries out law enforcement duties on board the ship;
 - (f) a person who works on board the ship only within a port or at a port facility;
 - (g) a person whose work—
 - (i) only relates to the construction, alteration, repair or testing of the ship or of its machinery or equipment; but
 - (ii) does not in any way relate to the normal operation of the ship within its deck, engine room or catering department.

(Schedule 1A added 16 of 2013 s. 67)

MERCHANT SHIPPING (SEAFARERS) ORDINANCE

SCHEDULE 1

S1-2

Section 1

Cap. 478

SCHEDULE 1

[s. 125]

SPECIFIED PROVISIONS FOR PURPOSES OF SECTION 125

(Adaptation amendments retroactively made - see 2 of 2012 s. 3)

Item of Ordinance	Provision
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1. Section 5(3)
2. Section 8(3)
3. Section 21(1)
4. Section 28(1)
5. Section 28(2)
6. Section 29(1)
7. Section 29(3)
8. Section 61(1)
9. Section 62(1)
10. Section 72(2)

MERCHANT SHIPPING (SEAFARERS) ORDINANCE

SCHEDULE 1

S1-4

Section 11

Cap. 478

- 11. Section 73(3)
- 12. Section 80(2)
- 13. Section 80(3)
- 14. Section 112(1)
- 15. Section 114(1)
- 16. Section 118

17. *(Repealed 2 of 2012 s. 3)*

MERCHANT SHIPPING (SEAFARERS) ORDINANCE

Schedule 2

S2-2

Cap. 478

Schedule 2

(Omitted as spent)