

TSING MA CONTROL AREA ORDINANCE

(Cap. 498)

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An Ordinance to provide for the control and regulation of vehicular and pedestrian traffic movements within the Tsing Ma Control Area; the delineation of that Area in respect of the management and maintenance thereof and the certification of relevant plans; the powers of authorized officers; the use of image recording devices; the disposal of abandoned vehicles; the closure of roads within the Area; the imposition of financial penalties, and for matters ancillary thereto and connected therewith and to make a related amendment to the Road Tunnels (Government) Ordinance.

[22 May 1997] *L.N. 269 of 1997*

1. Short title

- (1) This Ordinance may be cited as the Tsing Ma Control Area Ordinance.
- (2) *(Omitted as spent)*

2. Interpretation

(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.)

In this Ordinance, unless the context otherwise requires—

“the Area” (管制區) means the Tsing Ma Control Area and any part thereof;

“authorized officer” (獲授權人員) means any person appointed by the Commissioner under section 11 to be authorized as such;

“Commissioner” (運輸署署長) means the Commissioner for Transport and includes any public officer the subject of a written delegation by the Commissioner for Transport under section 9;

- “court” (法院、法庭) includes a magistrate; (*Added 29 of 1999 s. 2*)
- “dangerous goods” (危險品) means dangerous goods as defined in section 2 of the Dangerous Goods Ordinance (Cap. 295);
- “Director” (路政署署長) means the Director of Highways and includes any public officer the subject of a written delegation by the Director of Highways under section 9;
- “driver” (駕駛人), in relation to any vehicle, means any person who is in charge of or assisting in the control of it;
- “driving licence” (駕駛執照) means a driving licence issued under the Road Traffic Ordinance (Cap. 374);
- “installation” (裝置) includes—
- (a) any pipe, conduit or cable;
 - (b) any traffic sign, signal, road marking or lantern;
 - (c) any emergency telephone, public address system or image recording device;
- “Lantau Link” (青嶼幹線) means that part of the Area (formerly known as the “Lantau Fixed Crossing”) described and delineated as such on a plan deposited under section 7 and comprising the Tsing Ma Bridge, the Ma Wan Viaduct and the Kap Shui Mun Bridge, and includes any area adjacent thereto;
- “management” (管理) includes operation;
- “management agreement” (管理協議) means an agreement between the Government (signed in that behalf by the Secretary) and an operator for the management and maintenance of the Area or any part thereof;
- “operator” (營運者) means a person who has entered into a management agreement with the Government;
- “owner” (車主), in relation to a vehicle, includes the person in whose name the vehicle is registered, and the person by

whom a vehicle is kept and used and, in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under the agreement;

“register” (登記冊) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

“registered” (登記) means registered under the Road Traffic Ordinance (Cap. 374);

“road” (道路) has the same meaning as in the Road Traffic Ordinance (Cap. 374), and includes the road surface and adjacent pedestrian access (if any) of any viaduct, bridge (whether comprising one or more levels or decks) or tunnel;

“road works” (道路工程) has the same meaning as in the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G);

“Secretary” (局長) means the Secretary for Transport and Housing and includes any public officer the subject of a written delegation by the Secretary for Transport and Housing under section 9; (*Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007*)

“toll” (使用費) means a charge specified in a regulation made under section 27 for the use of the Lantau Link;

“toll booth” (收費亭) means any structure erected for the purpose of collecting tolls;

“Tsing Ma Control Area” (青馬管制區) means the area described and delineated as such on a plan deposited under section 7, and includes any road, viaduct, bridge or tunnel wholly or partially located within that area, but does not include any part of that area so described and delineated which is for the time being under the ownership, possession or control of the MTR Corporation Limited; (*Amended 13 of 2000 s. 65*)

“tunnel” (隧道) means that part of the Area described and delineated as such on a plan deposited under section 7, and includes any area adjacent thereto;

“vehicle” (車輛) has the same meaning as in the Road Traffic Ordinance (Cap. 374).

3. Application

- (1) Except where otherwise expressly provided, this Ordinance shall apply to vehicles and persons in the service of the Government.
- (2) Any vehicle, person or thing that is partly within the Area shall be deemed to be wholly within the Area.

4. Area is a public place

- (1) For the purposes of liability for a contravention of any Ordinance, the Area shall be a public place.
- (2) In this section and section 5, “the Area” (管制區) shall not include those parts of the Area within the meaning of section 2 (such as administration buildings, toll booths and electricity sub-stations) to which access to the public is restricted.

5. Application of Road Traffic Ordinance, etc.

Unless the contrary intention appears from this Ordinance, the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) shall apply to the Area as if the Area were a road within the meaning of the Road Traffic Ordinance (Cap. 374).

6. Area boundaries and plans

- (1) The Commissioner in consultation with the Director of Lands shall determine the boundaries of the Area and the Director of Lands shall delineate the boundaries on a plan, and different

boundaries may be so determined and delineated in respect of the management and maintenance of the Area.

- (2) The Commissioner in consultation with the Director of Lands may from time to time vary the boundaries of the Area.
- (3) Where the boundaries of the Area are varied under subsection (2), the Director of Lands shall prepare a plan delineating the boundaries of the Area so varied and that plan shall supersede any previous plan prepared under this section.

7. Certification and deposit of plans

- (1) A plan prepared under section 6 shall be numbered, dated, signed and certified by the Commissioner as being a plan of the Area (or any part thereof including the Lantau Link) to which the plan relates and shall be deposited by the Commissioner in the Land Registry.
- (2) The Commissioner shall cause notification of the deposit of a plan under subsection (1) to be published in the Gazette.

8. Proof of plans

- (1) In any proceedings before a court, a copy of a plan prepared under section 6 and certified under section 7, certified by the Commissioner to be a copy of the plan, shall be conclusive proof of the extent of the Area at the date of certification.
- (2) Any plan purporting to be certified by the Commissioner under subsection (1) shall be admitted without further proof and shall be presumed, until the contrary is proved, to have been certified by the Commissioner.

9. Relevant officer may delegate powers

- (1) A relevant officer may in writing delegate any public officer to exercise the powers and perform the duties conferred or imposed on a relevant officer by this Ordinance.

- (2) In this section, “relevant officer” (有關人員) means the Secretary, the Commissioner or the Director, as the case may be.

10. Secretary may give directions

The Secretary may, if he considers the public interest so requires, give directions of a general character in writing to an operator in relation to the performance of the functions or the exercise of the powers vested by this Ordinance in the operator or any authorized officer employed by the operator and the operator shall comply with those directions.

11. Power of Commissioner to appoint authorized officers

The Commissioner may in writing appoint any public officer or any person employed by an operator to be an authorized officer for the purposes of this Ordinance.

12. Uniform and identification

An authorized officer on duty shall—

- (a) wear a uniform of a design approved by the Commissioner of Police;
- (b) carry such means of identity as may be approved by the Commissioner;
- (c) carry such evidence of his appointment as an authorized officer as may be approved by the Commissioner;
- (d) promptly produce his means of identity and evidence of his appointment to any person who on reasonable grounds requests him to do so.

13. Powers of authorized officers

- (1) An authorized officer may within the Area—

- (a) for the purpose of collecting any toll, fee or charge or requiring payment of such toll, fee or charge where the driver of a vehicle has evaded payment of that toll, fee or charge;
- (b) for the purpose of preventing or detecting the commission of an offence against this Ordinance, the Road Traffic Ordinance (Cap. 374) or the Road Traffic (Driving-offence Points) Ordinance (Cap. 375); or
- (c) if he reasonably suspects that the driver of a vehicle—
 - (i) has committed an offence against this Ordinance, the Road Traffic Ordinance (Cap. 374) or the Road Traffic (Driving-offence Points) Ordinance (Cap. 375);
 - (ii) has been involved in an accident; or
 - (iii) is carrying any dangerous goods in or on the vehicle,

exercise such of the powers specified in subsection (2) as may be appropriate in respect of the particular purpose or circumstances described in paragraph (a), (b) or (c).

- (2) For the purposes of subsection (1), an authorized officer may—
 - (a) order, direct or signal the driver of a vehicle—
 - (i) to stop the vehicle forthwith; or
 - (ii) to proceed to any place within the Area so ordered, directed or signalled and to stop thereat;
 - (b) require any person to give his name and address and to produce any document in his possession which is or contains evidence of that information;
 - (c) require the driver of a vehicle—
 - (i) to produce his driving licence for examination;

- (ii) to give the name and address of the registered owner of the vehicle where that information is within his knowledge;
- (d) enter, examine and search a vehicle and any thing therein or thereon if the authorized officer reasonably suspects that that vehicle is carrying dangerous goods;
- (e) detain, if necessary by the use of reasonable force, a driver or a vehicle, or both, until he or it or both can be delivered into the custody of a police officer.
- (3) For the purpose of regulating vehicular and pedestrian traffic, an authorized officer may within the Area order, direct or signal the driver of a vehicle—
 - (a) to stop the vehicle forthwith; or
 - (b) to proceed to any place within the Area so ordered, directed or signalled and to stop thereat.
- (4) Any person who fails to comply with an order, direction or signal given under subsection (2)(a) or (3), or any requirement made under subsection (2)(b) or (c), commits an offence.

14. Additional powers of authorized officers

- (1) An authorized officer may, if he reasonably suspects that any person within the Area—
 - (a) has committed a hawker offence within the meaning of section 83 the Public Health and Municipal Services Ordinance (Cap. 132);
 - (b) has committed a littering offence;
 - (c) has tampered with any installation, structure, building, facility, utility, equipment, appliance, vehicle or other article in contravention of a regulation made under section 27; or

- (d) has entered or remained in any building or other facility without the approval or permission of a public officer the subject of a delegation under section 9, authorized officer or any other person employed by an operator so authorized, as the case may be, in contravention of a regulation made under section 27,
- exercise any of the powers specified in subsection (2).
- (2) For the purposes of subsection (1), an authorized officer may—
- (a) require any person to give his name and address and to produce any document in his possession which is or contains evidence of that information;
- (b) detain, if necessary by the use of reasonable force, that person until he can be delivered into the custody of a police officer or an officer of the Food and Environmental Hygiene Department duly authorized for that purpose. (*Amended 78 of 1999 s. 7*)
- (3) For the purposes of this section “littering offence” (拋棄垃圾的罪行) means an offence against section 4(1), 9 or 9A of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK). (*Amended 78 of 1999 s. 7*)
- (4) Any person who fails to comply with any requirement made under subsection (2)(a) commits an offence.

15. Directions of authorized officers to be obeyed

- (1) Any person within the Area shall comply with any order, signal, requirement or instruction given or made by an authorized officer in the course of his duty.
- (2) Any person who fails to comply with any order, signal, requirement or instruction given or made under subsection (1) commits an offence.

16. Obstruction of authorized officers

Any person who obstructs an authorized officer in the exercise of the powers or the performance of the duties conferred or imposed on him by this Ordinance commits an offence.

17. Obligation to give information relating to the driving of vehicles

- (1) Without prejudice to section 63 of the Road Traffic Ordinance (Cap. 374), where the driver of a vehicle is suspected of having committed an offence against this Ordinance, the Road Traffic Ordinance (Cap. 374) or the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) within the Area, any person (including both the registered owner of the vehicle and the person suspected of being the driver of the vehicle at the time of the alleged offence) shall, on demand made within 6 months after the date of the alleged offence, give to an authorized officer in the manner prescribed in this section the name, address and driving licence number of the person driving the vehicle at the time of the alleged offence and his relationship (if any) to the driver.
- (2) A demand under subsection (1) may be made orally or by means of a notice served personally or by post on the person on whom it is made.
- (3) Where a demand under subsection (1) is made orally to any person he shall—
 - (a) if he was the driver of the vehicle at the time of the alleged offence—
 - (i) give immediately his name and address; and
 - (ii) give the number of his driving licence to a specified authorized officer within 21 days after the date of the demand; and

- (b) if he was not the driver of the vehicle at the time of the alleged offence, give the information required under subsection (1) to a specified authorized officer either orally or in writing within 21 days after the date of the demand.
- (4) A notice under subsection (2) shall require the person to whom it is addressed—
 - (a) to furnish, within 21 days after the date of the notice, to an authorized officer specified therein, a written statement, in such form as may be specified in the notice, giving the name, address and driving licence number of the person driving the vehicle at the time of the alleged offence and his relationship (if any) to the driver; and
 - (b) to sign that statement.
- (5) Subject to subsection (6), any person who contravenes subsection (1) commits an offence.
- (6) In proceedings for an offence under subsection (5), it shall be a defence to show that the accused person did not know, and could not with reasonable diligence have ascertained, the name or address or driving licence number of the person driving the vehicle at the time of the alleged offence.

18. Making false statements and omitting material particulars

- (1) A person who makes a false statement in supplying particulars required under section 13, 14 or 17 commits an offence.
- (2) In proceedings for an offence under subsection (1), it is a defence for the accused person to show that he did not know and had no reason to believe the statement to be false.
- (3) A person who omits any material particular required under section 13, 14 or 17 commits an offence.

- (4) In proceedings for an offence under subsection (3), it is a defence for the accused person to show that he did not know, and could not with reasonable diligence have ascertained, the particular required.

(Replaced 29 of 1999 s. 2)

19. Proof of identity of driver

If, in a prosecution for an offence under this Ordinance, there is produced to the court a statement which—

- (a) purports to have been signed by the accused person;
- (b) was furnished in accordance with a notice served on him under section 17(2); and
- (c) states that the accused person was the driver of the vehicle at the time of the offence,

the court shall admit the statement as prima facie evidence that the accused person was the driver of the vehicle at the time of the offence.

20. Certificates of image recording and printing devices

- (1) A document in such form as may be specified by the Commissioner purporting—
- (a) to be a record of the testing of the functioning, inspection or servicing of an image recording device, with or without any associated image printing device, used for the purpose of recording and, where appropriate, reproducing the images of any vehicle which passes through a toll booth without the payment of a toll, or which exceeds a speed limit indicated by a traffic sign, specified in the document; and

(b) to be certified as to such testing, inspection or servicing by a person authorized in this behalf by the Commissioner, (*Amended 29 of 1999 s. 2*)

shall be admitted as evidence in any criminal or civil proceedings before any court on its production without further proof.

- (2) On the production of a document under subsection (1)—
- (a) the court before which it is produced shall, in the absence of evidence to the contrary, presume—
- (i) that it was signed at the time and place specified therein by a person authorized by the Commissioner;
 - (ii) that the facts stated in the document relating to the testing of the functioning, inspection or servicing of the image recording device and the associated image printing device, if any, specified therein are true; and
 - (iii) that the record of the facts stated in the document was made and compiled at the time stated therein;
- (b) the document shall be evidence of all other matters contained therein; and
- (c) the recording and print, if any, produced by using the image recording device and the associated image printing device, where appropriate, shall be evidence of all matters contained therein.
- (3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the subject-matter thereof.

21. Certificates as to photographic process

- (1) A document in such form as may be specified by the Commissioner purporting to be signed by a person duly appointed under subsection (2) and purporting to be a certificate as to the processing of exposed film received and processed by him shall, together with the photographic prints or photographic enlargements referred to therein, be admitted in evidence in any criminal or civil proceedings before any court on its production without further proof, and—
 - (a) in the absence of evidence to the contrary, the court before which such document is produced shall presume that the signature to the document is genuine and that the person signing it was duly appointed under subsection (2) at the time when he signed it; and
 - (b) such document shall be evidence of all matters contained therein.
- (2) The Commissioner may appoint in writing such persons as he thinks fit to carry out the processing of exposed film and to sign certificates under subsection (1) in relation thereto.
- (3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the subject-matter thereof.

22. Vehicles, etc. causing obstruction

If any vehicle or thing—

- (a) is causing an obstruction to traffic in any part of the Area;
- (b) is otherwise likely to render the use of any part of the Area unsafe; or

- (c) is parked or otherwise left in any part of the Area in contravention of this Ordinance or the Road Traffic Ordinance (Cap. 374),

the Commissioner or an operator may at the risk and expense of the owner of such vehicle or thing take all reasonable steps to remove or impound it or cause it to be removed to any place, including any road, or be impounded at such place, that the Commissioner or the operator may think fit and, where necessary in the opinion of the Commissioner or the operator, may provide for the safe custody thereof.

23. Disposal of abandoned vehicles

(1) Where any vehicle has been permitted to remain stationary at any part of the Area in such a position or in such condition or in such circumstances that there is reasonable cause to believe that the vehicle has been abandoned, an authorized officer may cause a notice to be given, requiring the person in whose name the vehicle is registered to remove it or cause it to be removed.

(2) A notice under subsection (1) shall be addressed to the person in whose name the vehicle is registered and shall be given—

- (a) by sending it to him by registered post or recorded delivery at the address shown on the register; or
- (b) by affixing it to the vehicle.

(3) The notice shall—

(a) require the person in whose name the vehicle is registered to move or cause it to be moved to a place which is not within any part of the Area—

- (i) if the notice is sent by registered post or recorded delivery, within 7 days of its service on him; or
- (ii) if the notice is affixed to the vehicle, within 7 days of the date on which it is so affixed; and

- (b) state that—
 - (i) unless the vehicle is removed within the time so stated, the vehicle will be seized by the Commissioner or an operator and removed to a place specified in the notice; and
 - (ii) if the vehicle is not claimed within a period of 14 days from the date of seizure, it will become the property of the Government.
- (4) If the vehicle is not removed as required by a notice given under subsection (1) an authorized officer may seize it and may take all reasonable steps to remove it or cause it to be removed to the place specified in the notice.
- (5) If a vehicle which is seized and removed under subsection (4) is not claimed within the period specified in the notice given under subsection (1), it shall become the property of the Government and may be sold or otherwise disposed of as the Commissioner thinks fit.
- (6) For the purposes of this section “vehicle” (車輛) includes any load carried by, on or in a vehicle.

24. Unauthorized installations

- (1) Despite the provisions of any other Ordinance, no person shall install, place, lay or erect any installation on, in, under or above any part of the Area without the prior consent in writing of the Director of Lands in respect of an installation within the meaning of paragraph (a) of the definition of “installation” in section 2, or the Commissioner in respect of an installation within the meaning of paragraph (b) or (c) of that definition, as the case may be.
- (2) A consent given under subsection (1) in respect of an installation within the meaning of paragraph (a) of the definition of “installation” shall be subject to the payment of

such charges and to such conditions, as the Director of Lands may impose.

- (3) Any person who contravenes subsection (1) commits an offence.

25. Closure of road, etc. within the Area

- (1) Despite section 4 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370), the Secretary may authorize the total or partial closure of any road within the Area for such period as he considers necessary in the case of any emergency repairs or works exceeding, or likely to exceed, a period of 14 days.
- (2) No criminal or civil proceedings before any court may be brought in respect of any closure under subsection (1) and no person shall have any right against the Government or any other person to restrain any closure authorized under that subsection or to recover any money in respect of that closure.
- (3) In this section, “emergency repairs or works” (緊急修葺或工程) includes any repairs or works not capable of being foreseen by the Secretary and the undertaking and completion of which is necessary for the safety of persons and vehicles.

26. Penalties for offences

Any person who commits an offence under section 13(4), 14(4), 15(2), 16, 17(5), 18(1) or (3) or 24(3) is liable to a fine at level 2 and to imprisonment for 6 months.

(Amended 29 of 1999 s. 2)

27. Regulations

- (1) The Governor in Council may by regulation provide for—
 - (a) the imposition and collection of tolls payable for the use of the Lantau Link;

- (b) the imposition and collection of additional charges (including surcharges) in respect of any evasion or underpayment of tolls payable for the use of the Lantau Link;
 - (c) the imposition and collection of fees in respect of the escort of vehicles;
 - (d) the imposition and collection of administration fees in respect of any refund of any overpayment of tolls made in cash for the use of the Lantau Link;
 - (e) the imposition and collection of fees in respect of the processing of an application, or the processing of an application and issue of a permit by the Commissioner or an operator with the approval of the Commissioner;
 - (f) the imposition and collection of fees and charges in respect of the removal, impounding and storage of a vehicle or thing under section 22 or 23.
- (2) The Secretary may by regulation provide for—
- (a) the classification, design, colour, erection, placing, operation, maintenance, alteration and removing of traffic signs, signals and road markings within the Area;
 - (b) prohibiting, controlling, restricting and regulating vehicular and pedestrian traffic movements by or in relation to traffic signs, signals or road markings within the Area;
 - (c) prohibiting, controlling, restricting, regulating, directing or advising traffic both vehicular and pedestrian and passengers conveyed upon or within vehicular traffic within the Area;
 - (d) controlling and regulating the manner of driving and the use of vehicles and the equipment and apparatus pertaining thereto within the Area;

- (e) controlling and regulating the use of any road within the Area and in particular prohibiting either absolutely or during specified hours—
 - (i) the driving of any specified type or class of vehicle; and
 - (ii) the manner in which a motor vehicle of any type or class may be used;
- (f) the imposing of maximum or minimum speed limits on any road within the Area for any vehicle or type or class of vehicle;
- (g) the towing of or drawing of vehicles by motor vehicles on any road within the Area;
- (h) controlling and regulating the manner of loading vehicles and securing of loads on vehicles within the Area;
- (i) the maximum weight to be transmitted to any road within the Area by a vehicle of any type or class or by any part or parts of such a vehicle in contact with that road;
- (j) controlling and regulating the manner in which passengers may be carried in vehicles within the Area;
- (k) controlling and restricting animals within the Area;
- (l) controlling and regulating the total or partial closure of any road within the Area;
- (m) the escort of vehicles on any road within the Area;
- (n) the control, prohibition and restriction upon the painting or affixing of any poster, placard or bill or other matter within the Area;

- (o) the exemption of vehicles or any type or class thereof from the operation of any regulation whether by permit or otherwise;
- (p) the powers of an operator for the management and maintenance of the Area and the control, restriction and safety of traffic within the Area;
- (q) controlling and regulating the manner in which road works and other works of repair may be undertaken within the Area, whether by permit or otherwise;
- (r) the methods of toll collection, including methods other than by the collection of cash at toll booths;
- (s) regulating the use of automatic toll collection facilities;
- (t) the sale, purchase, issue and collection of toll tickets in respect of the use of the Lantau Link;
- (u) the imposition of fees and charges by the Director (commonly known as lighting and guarding fees) in respect of the provision of traffic signs, signals, road markings or lanterns by the Director or an operator;
- (v) the collection of fees and charges (commonly known as lighting and guarding fees) in respect of the provision under paragraph (u) of traffic signs, signals, road markings or lanterns by the Director or an operator;
- (w) prohibiting the tampering by any unauthorized person with any installation, structure, building, facility, utility, equipment, appliance, vehicle or other article within the Area;
- (x) prohibiting the entry or presence of any person in any building or other facility within the Area without approval or permission, whether by permit or otherwise;
- (y) generally carrying into effect the provisions of this Ordinance.

- (3) Any regulation made under this section may provide that a contravention thereof shall be an offence and may provide penalties for such offence not exceeding a fine at level 2 and imprisonment for 6 months.

28. Financial penalties

- (1) Subject to subsections (2) and (3), where an operator without reasonable excuse fails to comply with any requirement of this Ordinance or is in breach of a management agreement, the Commissioner in relation to the management of the Area or the Director in relation to the maintenance of the Area (“the relevant officer”) may, with the approval of the Governor in Council in respect of each such failure or breach, impose a financial penalty on the operator in accordance with this section.
- (2) The relevant officer shall not impose a financial penalty in respect of any failure to comply with a requirement in this Ordinance or a breach of a management agreement unless the relevant officer has notified the operator of the failure or the breach, as the case may be, and where it is capable of being remedied, afforded the operator a reasonable opportunity to comply with the requirement or remedy the breach.
- (3) Where a financial penalty is imposed, the relevant officer shall serve a notice in writing on the operator requiring the operator to pay to the Government that financial penalty, the amount of which shall be specified in the notice, not later than 30 days beginning on the date the notice is served on the operator.
- (4) Where a failure or breach referred to in subsection (1) is—
 - (a) capable of being remedied, the relevant officer may impose in respect of it, a financial penalty of an amount which shall not exceed the sum specified in Part I of the Schedule and where the failure or breach continues, a

- further penalty of an amount which shall not exceed that sum for each day it so continues after the date the notice under subsection (3) is served; and
- (b) not capable of being remedied, the following shall apply—
- (i) the relevant officer may impose, in respect of the failure or breach, a financial penalty of an amount which shall not exceed—
 - (A) on the first occasion on which a financial penalty is imposed on the operator, the sum specified in Part II of the Schedule;
 - (B) on the second occasion on which a financial penalty is imposed on the operator, the sum specified in Part III of the Schedule; and
 - (C) on the third or a subsequent occasion on which a financial penalty is imposed on the operator, the sum specified in Part IV of the Schedule;
 - (ii) in determining, as regards a particular failure or breach (“the relevant failure or breach”), whether it is the first, second, third or a subsequent occasion on which a financial penalty is being imposed, only occasions, if any, on which a financial penalty has been imposed in respect of a failure or breach which is of the same type as the relevant failure or breach shall be taken into account.
- (5) The requirement of the approval of the Governor in Council referred to in subsection (1) shall not apply in relation to the imposition of a further penalty under subsection (4)(a).
- (6) A financial penalty shall be recoverable as a debt due to the Government, and may be so recovered (in whole or in part) by the Government—

- (a) deducting or offsetting any sum that may be due to an operator under the terms of a management agreement or otherwise; or
 - (b) enforcing any guarantee or letter of credit provided in accordance with a management agreement.
- (7) The operator shall not take into account any financial penalty paid by the operator or any legal costs incurred by the operator in connection with the recovery of a financial penalty under subsection (6) in calculating the operator's costs for the purpose of determining any sums payable to the operator under the terms of a management agreement by way of a cost-related basis.
- (8) Nothing in this section shall be construed as affecting any powers of the Government under the terms of a management agreement, including the determination of that management agreement and the recovery of liquidated or unliquidated damages.
- (9) In this section, "cost-related basis" (與成本掛鈎的基準) means a basis whereby the actual costs incurred by an operator are taken into account in determining any sums payable by the Government to the operator under the terms of a management agreement.

29. Limitation of liability

No liability (other than that imposed under the terms of a management agreement) shall be imposed upon the Government or any public officer in respect of the management and maintenance of the Area by an operator.

30. Amendment of Schedule

The Governor in Council may by notice in the Gazette amend the Schedule.

31. Saving

- (1) Nothing in this Ordinance shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty, conferred or imposed by or under any law upon any person in the service of the Government.
- (2) Nothing in this Ordinance shall affect any rights of ownership in any installation, structure, building, facility, appliance, vehicle or other article owned by, or vested in, the Government.
- (3) Those parts or percentages of any tolls or other fees and charges imposed by any regulation made under section 27 which—
 - (a) constitute remuneration of, or reimbursement to, an operator under the terms of a management agreement; or
 - (b) are required to clear or close any advance account opened for that purpose,shall, subject to the approval of the Financial Secretary, not form part of the general revenue and may in the case of paragraph (a) be retained by that operator in accordance with that management agreement.

32. *(Omitted as spent)*

SCHEDULE

[ss. 28 & 30]

FINANCIAL PENALTIES

PART I

**SUM SPECIFIED FOR THE PURPOSES OF SECTION
28(4)(a)**

\$10,000

PART II

**SUM SPECIFIED FOR THE PURPOSES OF SECTION
28(4)(b)(i)(A)**

\$20,000

PART III

TSING MA CONTROL AREA ORDINANCE

SCHEDULE—PART IV

S-4

Cap. 498

SUM SPECIFIED FOR THE PURPOSES OF **SECTION
28(4)(b)(i)(B)**

\$50,000

PART IV

SUM SPECIFIED FOR THE PURPOSES OF **SECTION
28(4)(b)(i)(C)**

\$100,000