

An Ordinance to provide for the implementation of the Convention on the Conservation of Antarctic Marine Living Resources (including conservation measures adopted under the Convention); and to provide for related matters.

[1 July 2020] *L.N. 153 of 2019*

(Enacting provision omitted—E.R. 5 of 2020)

Part 1

Preliminary

1. Short title

(Amended E.R. 5 of 2020)

- (1) This Ordinance may be cited as the Conservation of Antarctic Marine Living Resources Ordinance.
- (2) *(Omitted as spent—E.R. 5 of 2020)*

2. Interpretation

In this Ordinance—

AMO means an Antarctic marine organism;

Antarctic marine organism (南極海洋生物) means an organism (live or dead) that belongs to any species of living organisms that is found in the Convention Area, including any part (whether raw, or in any way processed or preserved) of the organism;

authorized officer (獲授權人員) means a public officer appointed to be an authorized officer under section 9(1), and includes the Director performing a function under section 9(2);

Commission (養護委員會) means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention;

Commission Fund (養護委員會基金) means a fund created or administered by the Commission (for example, the Catch Documentation Scheme for *Dissostichus* spp. Fund created by the Commission);

competent authority (主管當局) means—

- (a) in relation to a place to which the Convention applies—the authority designated for the place to perform the administrative functions required of a Contracting Party under the Convention or a Conservation Measure; and
- (b) in relation to any other place—the authority designated for the place to perform the administrative functions that are similar or equivalent to those required of a Contracting Party under the Convention or a Conservation Measure;

Conservation Measure (養護措施) means a measure for the conservation of Antarctic marine living resources that is adopted and as revised, or as repealed and substituted, from time to time by the Commission under Article IX of the Convention;

Contracting Party (締約方) means—

- (a) a party that has signed and ratified, approved or accepted the Convention; or
- (b) a party that has acceded to the Convention;

Convention (《公約》) means the Convention on the Conservation of Antarctic Marine Living Resources that was opened for signature at Canberra on 1 August 1980, as amended from time to time and as applied to Hong Kong;

Convention Area (公約區域) means—

- (a) the area south of 60° south latitude; and
- (b) the area between—
 - (i) that latitude; and
 - (ii) a line joining the following points along parallels of latitude and meridians of longitude: 50° south, 0°; 50° south, 30° east; 45° south, 30° east; 45° south, 80° east; 55° south, 80° east; 55° south, 150° east; 60° south, 150° east; 60° south, 50° west; 50° south, 50° west; 50° south, 0°;

Director (署長) means the Director of Agriculture, Fisheries and Conservation;

function (職能), other than in relation to the Commission, includes a power and a duty;

Hong Kong company (香港公司) means—

- (a) a company as defined by section 2(1) of the Companies Ordinance (Cap. 622); or
- (b) a body corporate that is incorporated or otherwise established by or under any other Ordinance;

Hong Kong person (香港人) means a natural person who is both a Hong Kong permanent resident and a Chinese national;

Hong Kong vessel (香港船隻) means a vessel flying the regional flag of the Hong Kong Special Administrative Region;

perform (執行), in relation to a function, includes exercise and discharge;

proceeds (售賣得益), in relation to a thing that is sold under section 20 or 23, means the sale price less any commission or fee payable for the sale;

Secretary (局長) means the Secretary for Food and Health;

specified form (指明表格), in relation to a matter provided for in this Ordinance, means the form specified under section 8(1) for that matter.

3. Commission has legal personality

The Commission—

- (a) has legal personality in Hong Kong; and

- (b) enjoys in Hong Kong the necessary legal capacity to perform its function and achieve the purposes of the Convention.

Part 2

Regulations and Fees

Division 1—Regulation-making Powers

4. Secretary may make regulations

- (1) The Secretary may make regulations to implement the Convention and the Conservation Measures and to provide for related matters.
- (2) Regulations made under this section may be expressed to apply—
 - (a) to—
 - (i) Hong Kong vessels (wherever they may be); and
 - (ii) other vessels while they are within Hong Kong waters; and
 - (b) to—
 - (i) Hong Kong persons (wherever they may be) and Hong Kong companies (wherever they may be acting); and
 - (ii) other persons (including companies and bodies corporate that are not Hong Kong companies) acting in Hong Kong.
- (3) Regulations made under this section to implement (whether in whole or in part) a provision in the Convention, or in a Conservation Measure, that applies to Hong Kong may—
 - (a) set out or refer directly to the provision; and
 - (b) specify amendments, modifications or adaptations subject to which the provision is to have effect.
- (4) Regulations made under this section may set out or refer directly to any requirement or provision in any other document adopted or issued by the Commission.

5. Regulations—general powers

- (1) Without limiting section 4, regulations made under that section may, for implementing the Convention and the Conservation Measures—
 - (a) regulate, control, prohibit or provide for the registration, licensing or reporting of—
 - (i) the movement of AMOs (including the bringing of AMOs into, or the taking of AMOs out of, Hong Kong);
 - (ii) the entry of any vessel into Hong Kong waters; and
 - (iii) any activity which involves or relates to AMOs;

- (b) empower public officers—
 - (i) to board any vessel to carry out inspections or searches; and
 - (ii) to take a sample of, seize, remove, detain or dispose of AMOs or any thing that is suspected to be an AMO;
 - (c) provide for additional functions of public officers for enforcing this Ordinance; and
 - (d) include provisions generally for the better carrying out of this Ordinance.
- (2) Regulations made under section 4 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 specified circumstances; and
 - (c) contain any incidental, supplementary, consequential, transitional or saving provisions that may be necessary or expedient in consequence of the regulations.
- (3) Regulations made under section 4 may provide that the contravention of a regulation is to constitute an offence punishable by—
- (a) a fine not exceeding level 6 and imprisonment for a term not exceeding 1 year; and
 - (b) for a continuing offence, a further fine not exceeding \$10,000 for each day during which the offence continues.

Division 2—Fees

6. Regulations—fees

Regulations made under section 4 may prescribe the fees for—

- (a) any application under this Ordinance;
- (b) the issue of any licence or the registration or reporting of any matter under this Ordinance; and
- (c) any other matter, service or facility for which a fee is payable under this Ordinance.

7. Prescribed fees not refundable

Any prescribed fee paid under this Ordinance is not refundable.

Part 3

Administrative Provisions

Division 1—Specified Forms

8. Director may specify forms

- (1) The Director may specify a form to be used for a matter provided for in this Ordinance.

- (2) The Director is to make copies of a specified form available—
 - (a) at the office of the Agriculture, Fisheries and Conservation Department during normal office hours; and
 - (b) in any other way the Director considers appropriate.

Division 2—Authorized Officers and Delegation

9. Appointment of authorized officers

- (1) The Director may, in writing, appoint a public officer to be an authorized officer.
- (2) The Director may perform any function of an authorized officer under this Ordinance.

10. Delegation of Director's functions

- (1) The Director may, in writing, delegate to a public officer any of the Director's functions under this Ordinance.
- (2) However, the power to delegate conferred by subsection (1) may not be delegated.

11. Performance of functions

When performing a function under this Ordinance, a public officer to whom any function is delegated under section 10(1) or an authorized officer—

- (a) may be assisted by any person whom the officer reasonably requires; and
- (b) must produce proof of the officer's identity for inspection by a person who is affected by the performance of the function and requires to see it.

Part 4

Enforcement, etc.

Division 1—Functions of Authorized Officers

12. Interpretation

In this Division—

place (地方) includes premises;

transport (交通工具) means a vessel, aircraft, vehicle or train.

13. Power to inspect and take copies of documents

- (1) If an authorized officer reasonably suspects that an AMO is being kept in or on any place or transport, the officer may, for verifying compliance with this Ordinance, on production of proof of the officer's identity—
 - (a) enter or board and inspect the place or transport during reasonable hours;

- (b) require the production of, inspect or examine anything that the officer reasonably suspects to be an AMO; and
 - (c) require the production of, inspect, examine or take copies of any document or electronic information that is related to compliance with this Ordinance.
- (2) Subsection (1) does not empower an authorized officer to—
- (a) enter or board, or inspect, any place or transport that is used wholly or principally for dwelling purposes; or
 - (b) enter or inspect any part of any place or transport that is a part used wholly or principally for dwelling purposes.

14. Power to search and detain

- (1) If an authorized officer reasonably suspects that any transport has been, is being or is about to be used in connection with an offence under this Ordinance, the officer may, on production of proof of the officer's identity, stop, board and search the transport.
- (2) If an authorized officer reasonably suspects that a person has committed, is committing or is about to commit an offence under this Ordinance, the officer may, on production of proof of the officer's identity—
- (a) stop the person or, if the person is in or on a transport, stop and board the transport, to search the person and search the property of the person that—
 - (i) may be found on the person; or
 - (ii) is in or about the location at which the person is stopped,for anything that is likely to be relevant (whether by itself or together with anything else) to the investigation of the suspected offence; and
 - (b) detain the person for a reasonable period while the officer inquires about the suspected offence.
- (3) Subsection (1) does not empower an authorized officer to—
- (a) board or search any transport that is used wholly or principally for dwelling purposes; or
 - (b) enter or search any part of any transport that is a part used wholly or principally for dwelling purposes.

15. Power to enter and search on issue of warrant

- (1) A magistrate may, on application, issue a warrant authorizing an authorized officer to enter or board and search any place or transport if the magistrate is satisfied by information on oath that there are reasonable grounds to suspect that—
- (a) an offence under this Ordinance has been, is being or is about to be committed in or on the place or transport; or
 - (b) there is in or on the place or transport anything that is or contains evidence of an offence under this Ordinance.
- (2) Unless otherwise specified in it, a warrant issued under subsection (1) continues in force until the purpose for which the entry or boarding is necessary has been satisfied.

- (3) An authorized officer, authorized by a warrant issued under subsection (1) to enter or board and search any place or transport, may—
 - (a) at the time specified in the warrant or, if no time is specified, at any time enter or board and search the place or transport;
 - (b) for that purpose, use reasonably necessary force; and
 - (c) remove anything that obstructs the entry, boarding or search.
- (4) An authorized officer may also detain any person found in or on the place or transport for a period that is reasonably required to permit the search to be carried out, if the person might prejudice the purpose of the search if not detained.

16. Power to seize, remove and detain things

An authorized officer may seize, remove and detain—

- (a) a thing that the officer reasonably suspects that an offence under this Ordinance has been, is being or is about to be committed in respect of the thing; or
- (b) a thing that the officer reasonably suspects to be or to contain evidence of an offence under this Ordinance.

17. Power to take samples and carry out tests

- (1) An authorized officer may, for verifying compliance with this Ordinance or obtaining evidence of an offence under this Ordinance—
 - (a) take a sample of a thing that the officer reasonably suspects to be an AMO;
 - (b) require a person in charge, in control or in possession of the thing to provide a sample of it; and
 - (c) take any photograph or make any video recording of the thing.
- (2) An authorized officer may take any step that is necessary to satisfy the officer that the sample taken is an appropriate sample of the thing.
- (3) An authorized officer who takes a sample under subsection (1) must issue a receipt for the sample, but is not required to pay for it or return it to the person from whom it was taken.
- (4) The Director may dispose of a sample taken under subsection (1) in a way that the Director considers appropriate.
- (5) An authorized officer may arrange to carry out any necessary test in respect of a sample taken under subsection (1) to ascertain the identity of the thing.
- (6) A certificate of analysis issued by an accredited laboratory on a sample taken under subsection (1) may be given in evidence in any proceedings under this Ordinance and is evidence of the facts stated in it unless the contrary is proved.
- (7) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (1)(b) commits an offence and is liable on conviction to a fine at level 5.
- (8) In this section—

accredited laboratory (認可實驗室) means a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme managed by the Commissioner for Innovation and Technology on behalf of the Government.

18. Power to require identification

- (1) If an authorized officer reasonably suspects that a person has committed, is committing or is about to commit an offence under this Ordinance, the officer may, without warrant and on production of proof of the officer's identity, stop the person or, if the person is in or on a transport, stop and board the transport, to require the person—
 - (a) to state the person's name and address; and
 - (b) to produce the person's proof of identity for inspection.
- (2) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (1) commits an offence and is liable on conviction to a fine at level 3.
- (3) In subsection (1)(b)—

proof of identity (身分證明文件) means proof of identity as defined by section 17B(1) of the Immigration Ordinance (Cap. 115).

19. Power to arrest

- (1) If—
 - (a) an authorized officer reasonably suspects that a person has committed, is committing or is about to commit an offence under this Ordinance; and
 - (b) it appears to the officer that service of a summons would be impracticable because—
 - (i) the person's name is unknown to, and cannot be readily ascertained by, the officer;
 - (ii) the officer has reasonable grounds for doubting whether a name given by the person as the person's name is the person's real name;
 - (iii) the person has failed to give a satisfactory address for service of the summons; or
 - (iv) the officer has reasonable grounds for doubting whether an address given by the person is a satisfactory address for service of the summons,

the officer may, on production of proof of the officer's identity, arrest the person.
- (2) An authorized officer who arrests a person under subsection (1) must immediately take the person to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232).
- (3) If a person who is liable to be arrested under subsection (1) forcibly resists or attempts to evade the arrest, an authorized officer may use any force that is reasonably necessary to effect the arrest.

Division 2—Disposal and Forfeiture of Things Seized

20. Sale or disposal of things seized

- (1) If any of the things specified in subsection (2) is seized under section 16, the Director may sell the thing or dispose of the thing in any other way that the Director considers appropriate.
- (2) The things specified for subsection (1) are—
 - (a) an organism that is alive, which—
 - (i) for any reason, is impracticable for the Director to keep in captivity; or
 - (ii) is likely to die or be subject to unnecessary suffering if it is kept in captivity; and
 - (b) any other thing that—
 - (i) for any reason, is impracticable for the Director to keep; or
 - (ii) is perishable.
- (3) If—
 - (a) a thing is sold under subsection (1); and
 - (b) the proceeds from the sale are forfeited to the Government under this Ordinance (including under an order made under this Ordinance),the proceeds are to be paid into the general revenue or a Commission Fund, as decided by the Director.

21. Return or forfeiture of things seized—offences prosecuted

- (1) If a person is convicted of an offence under this Ordinance, an AMO seized under section 16 in connection with the offence, or any proceeds from the sale of the AMO, are to be forfeited to the Government.
- (2) If a person is convicted of an offence under this Ordinance, the court or magistrate may order a thing, that is not an AMO, seized under section 16 in connection with the offence, or any proceeds from the sale of the thing—
 - (a) to be returned—
 - (i) if the thing was seized from a person—to the person or to its owner; or
 - (ii) in any other case—to its owner; or
 - (b) to be forfeited to the Government.
- (3) If an offence is prosecuted under this Ordinance and no defendant in the proceedings is convicted of the offence, the court or magistrate may order a thing seized under section 16 in connection with the prosecution, or any proceeds from the sale of the thing—
 - (a) to be returned—
 - (i) if the thing was seized from a person—to the person or to its owner; or
 - (ii) in any other case—to its owner; or
 - (b) to be forfeited to the Government.

22. Return or forfeiture of things seized—no offence prosecuted

- (1) If a thing is seized under section 16 but no prosecution is brought in respect of the thing under this Ordinance, an authorized officer may apply to the court or magistrate for an order in respect of the thing or any proceeds from the sale of the thing.
- (2) On an application under subsection (1), the court or magistrate may order the thing, or any proceeds from the sale of the thing—
 - (a) to be returned—
 - (i) if the thing was seized from a person—to the person or to its owner; or
 - (ii) in any other case—to its owner; or
 - (b) to be forfeited to the Government.
- (3) Without limiting subsection (2)(b), the court or magistrate may, if satisfied that the owner of the thing is unknown or cannot be found, order the thing or any proceeds from the sale of the thing to be forfeited to the Government.

23. Sale or disposal of forfeited things

- (1) The Director may sell, or dispose of in any other way that the Director considers appropriate, a thing that is forfeited to the Government under this Ordinance (including under an order made under this Ordinance).
- (2) If a thing is sold under subsection (1), the proceeds from the sale are to be paid into the general revenue or a Commission Fund, as decided by the Director.

24. Compensation for things seized or detained

- (1) If a thing is seized or detained under section 16, the Government is liable to compensate the owner of the thing for any loss suffered by the owner—
 - (a) because of the seizure or detention; or
 - (b) on the ground that the thing dies, perishes or deteriorates, or is lost or damaged, during the time when the thing is seized or detained.
- (2) Subsection (1) does not apply if—
 - (a) the owner is convicted of an offence under this Ordinance in relation to the thing; or
 - (b) the thing is forfeited to the Government under this Ordinance (including under an order made under this Ordinance).
- (3) In any proceedings against the Government in respect of a claim for compensation under subsection (1), the amount of the compensation recoverable is an amount that is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of—
 - (a) the owner of the thing;
 - (b) the person in charge, in control or in possession of the thing immediately before the seizure;
 - (c) the employees or agents of the persons specified in paragraphs (a) and (b); and

- (d) any public officers and other persons concerned.
- (4) No proceedings are maintainable in respect of a claim for compensation under subsection (1) unless the proceedings are commenced—
 - (a) for a claim for compensation in respect of a thing that was seized or detained but subsequently returned to its owner by order of the court or magistrate or by any person having authority to return the thing to the owner—within 6 months after the return of the thing; or
 - (b) for a claim for compensation on the ground that the thing died, perished or deteriorated, or was lost or damaged, during the time when the thing was seized or detained—within 6 months after—
 - (i) the date on which the owner discovers the existence of the ground; or
 - (ii) the date on which the owner could, by the exercise of reasonable diligence, have discovered the existence of the ground,whichever is the earlier.
- (5) A claim for compensation under subsection (1) is to be made—
 - (a) if the claim is within the jurisdiction of the Small Claims Tribunal—in the Tribunal; or
 - (b) otherwise—in the District Court.

Division 3—Director’s Power to Obtain and Exchange Information

25. Power to obtain information from Director of Marine

Despite any provision in any Ordinance—

- (a) the Director may obtain from the Director of Marine any information of or in relation to a vessel (including the particulars of its owner) as reasonably required for performing a function under this Ordinance; and
- (b) the Director of Marine may supply to the Director any information mentioned in paragraph (a).

26. Power to exchange information

For implementing any provision in the Convention or the Conservation Measures, the Director may exchange any information, as reasonably required, with the Secretariat of the Commission or the competent authority of any place.

Part 5

Miscellaneous Provisions

Division 1—Offences

27. Obstruction and non-compliance with requirements or instructions

- (1) A person—
 - (a) must not wilfully obstruct or resist an authorized officer, or a person assisting an authorized officer under section 11(a), in the performance of a function under this Ordinance; and
 - (b) must comply with a requirement or instruction made by an authorized officer under this Ordinance.
- (2) A person who—
 - (a) contravenes subsection (1)(a); or
 - (b) without reasonable excuse, contravenes subsection (1)(b) (except in relation to a requirement made under section 17(1)(b) or 18(1)),commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

28. Provision of false information

- (1) A person must not, in purported compliance with this Ordinance, produce any document, provide any information or make any statement that the person—
 - (a) knows or believes to be false;
 - (b) has no reasonable ground to believe to be true; or
 - (c) knows or believes to be misleading in a material particular.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

Division 2—Liability of Directors, Partners, etc. for Offences**29. Bodies corporate—liability of directors, etc.**

- (1) If—
 - (a) a body corporate commits an offence under this Ordinance; and
 - (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate,the director, manager, secretary or other similar officer also commits the offence.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

30. Partnerships and unincorporated bodies—liability of partners, members, etc.

- (1) If—

- (a) a partner in a partnership commits an offence under this Ordinance; and
- (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other partner in the partnership or any other person concerned in the management of the partnership,

the other partner or the other person concerned in the management of the partnership also commits the offence.

(2) If—

- (a) a member of an unincorporated body commits an offence under this Ordinance; and
- (b) it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other member or any manager, secretary or other similar officer of the unincorporated body,

the other member or the manager, secretary or other similar officer also commits the offence.

Division 3—Liability of Employers and Principals and Defence for Employees

31. Liability of employers and principals

- (1) An act done or omission made by an employee in the course of employment is to be treated for the purposes of this Ordinance as done or made by the employer, as well as by the employee.
- (2) An act done or omission made by an agent of another person with the authority (whether express or implied and whether precedent or subsequent) of that other person is to be treated for the purposes of this Ordinance as done or made by that other person, as well as by the agent.
- (3) In any proceedings for an offence under this Ordinance brought against a person in respect of an act or omission alleged to have been done or made by an employee or agent of the person, the person is liable to be convicted of and punished for the offence unless the person establishes the defence described in subsection (4).
- (4) In any proceedings brought against a person as described in subsection (3), it is a defence for the person to establish that the person exercised all due diligence to prevent the employee or agent from—
 - (a) doing the act or making the omission; or
 - (b) doing an act or making an omission of that description in the course of the employee's employment or the agent's authority.
- (5) A person is taken to have established a fact that needs to be established for a defence under subsection (4) if—
 - (a) there is sufficient evidence to raise an issue with respect to the fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

32. Defence for employees

- (1) It is a defence for an employee charged with an offence under this Ordinance for an act done or omission made by the employee to establish that—
 - (a) the act was done or the omission was made in the course of the employee's employment and under an instruction given by the employer in the course of that employment; and
 - (b) the employee was not, at the relevant time, in a position to make or influence a decision regarding the instruction.
- (2) An employee is taken to have established a fact that needs to be established for a defence under subsection (1) if—
 - (a) there is sufficient evidence to raise an issue with respect to the fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

Division 4—Immunity**33. Immunity from civil liability**

- (1) A public officer is not civilly liable for an act done or omission made by the officer in good faith in performing or purportedly performing a function under this Ordinance.
- (2) Subsection (1) does not affect the liability of the Government for the act or omission.