

DUTIABLE COMMODITIES ORDINANCE

(Cap. 109)

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To amend the law relating to the taxation and control of liquors, tobacco, hydrocarbon oil, methyl alcohol and other substances, for providing for the licensing of certain dealings in liquors and for purposes connected therewith.

(Amended 3 of 1970 s. 2; 40 of 1974 s. 2; 34 of 1976 s. 2; 20 of 1985 s. 2; 66 of 1986 s. 2; 35 of 1992 s. 2; 32 of 1993 s. 2)

[16 October 1963] *L.N. 120 of 1963*

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Dutiable Commodities Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

“A.T.A. Carnet” (暫准進口證) means a document—

- (a) in the form set out in the annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (otherwise known as the A.T.A. Convention) agreed at Brussels on 6 December 1961, or set out in Appendix 1 to Annex A to the Convention on Temporary Admission agreed at Istanbul on 26 June 1990; or
- (b) in such other form as may from time to time be provided by any amendment to the A.T.A. Convention, so long as

it applies to Hong Kong, or by any amendment to the Convention on Temporary Admission, so long as Hong Kong remains a contracting party to it; (*Added 46 of 1996 s. 2. Amended 12 of 1999 s. 3*)

“air transshipment cargo” (航空轉運貨物) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60); (*Added 29 of 2000 s. 4*)

“claimant” (申索人) means a person—

- (a) who claims to be the owner of goods or things liable to forfeiture;
- (b) who is the authorized agent of a person claiming to be the owner of goods or things liable to forfeiture;
- (c) who was in possession of goods or things at the time of seizure of the goods or things liable to forfeiture; or
- (d) who claims to have a legal or equitable interest in goods or things liable to forfeiture,

and who makes a claim or petitions under this Ordinance; (*Added 70 of 1993 s. 2*)

“Commissioner” (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise; (*Added L.N. 294 of 1982. Amended 12 of 1999 s. 3*)

“container” (容器) includes any receptacle or vessel and any wrapper, packing, cover or stopper;

“Customs and Excise warehouse” (海關保稅倉) means a place specified by the Commissioner under section 7(1)(g) as a Customs and Excise warehouse; (*Added 46 of 1996 s. 2*)

“dutiable goods” (應課稅貨品) means goods to which this Ordinance applies, which are not exempt from duty and on which the full duty prescribed by law has not been paid, and

includes goods on which duty has been paid if subsequently reimported; (*Amended 3 of 1970 s. 3*)

“duty-paid goods” (已完稅貨品) means goods on which the full duty prescribed by law has been paid;

“electronic record” (電子紀錄) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 19 of 2001 s. 2*)

“export” (出口) means to carry or cause to be carried out of Hong Kong by land, air or water and includes the export of anything carried or sent from any country and brought into Hong Kong by land, air or water for the sole purpose of being carried to another country after transshipment into another conveyance, but does not include transit cargo;

“goods or things liable to forfeiture” (可予沒收的貨品或東西) means the goods and things referred to in section 48(1) and (2) or any of them; (*Added 70 of 1993 s. 2*)

“gross tonnage” (總噸位) means gross tonnage determined in accordance with the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C); (*Added 3 of 1970 s. 3*)

“HKDNP” is an abbreviation for Hong Kong Duty Not Paid; (*Added 46 of 1996 s. 2*)

“import” (進口) means to carry or cause to be carried into Hong Kong by land, air or water;

“information” (資料) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 19 of 2001 s. 2*)

“information system” (資訊系統) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 19 of 2001 s. 2*)

- “licence” (牌照、牌) means a licence granted or issued under this Ordinance or under the former Ordinance; (*Replaced 3 of 1970 s. 3*)
- “liquor licence” (酒牌) means a licence for the sale or supply of liquor at any premises specified therein for consumption on the premises; (*Added 3 of 1970 s. 3*)
- “manifest” (艙單) means the manifest of a ship or aircraft, and in relation to a vehicle, the statement referred to in section 22 of goods imported or for export in such vehicles;
- “manufacture” (製造) includes every kind of preparation, mixing and treatment except packing and unpacking;
- “master” (船長) includes every person, except a pilot, having command or charge of any ship;
- “member of the Customs and Excise Service” (香港海關人員) means a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); (*Amended 46 of 1977 s. 18*)
- “net register” (淨註冊噸位) means register tonnage determined in accordance with the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C); (*Replaced 3 of 1970 s. 3*)
- “offence” (罪行) means an offence against any of the provisions of this Ordinance, and includes any act or omission declared or deemed by any of the provisions of this Ordinance to be an offence; (*Amended 3 of 1970 s. 36*)
- “pass” (通行證) means a document issued by a licensee who is authorized by the Commissioner under this Ordinance for the removal of dutiable goods from a licensed warehouse; (*Added 46 of 1996 s. 2*)

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“permit” (許可證) means a permit granted or issued under this Ordinance and includes a pass and a voucher; (*Amended 46 of 1996 s. 2*)

“place” (地方) means any area on land or water and includes any ship, aircraft, vehicle, train, building, structure or enclosure, whether movable or not; (*Added 66 of 1986 s. 3*)

“recognized electronic service” (認可電子服務) means a service for the interchange of electronic records that is provided by a specified electronic service provider; (*Added 19 of 2001 s. 2*)

“security device” (保安裝置) means a device issued to a person to be used for authenticating that person as the sender of information using a recognized electronic service; (*Added 19 of 2001 s. 2*)

“ship” (船、船舶) includes every description of vessel (not being or having the status of a vessel of war) used, or adapted for use, in navigation or for the carriage of goods or persons;

“specified electronic service provider” (指明電子服務提供者) means a person specified under Schedule 1A; (*Added 19 of 2001 s. 2*)

“specified eligible agent” (指明合資格代理人) means a person specified under Schedule 1B; (*Added 19 of 2001 s. 2*)

“specified goods” (指明貨品) means—

- (a) liquor, other than wine, with an alcoholic strength of not more than 30% by volume measured at a temperature of 20°C; or
- (b) wine;

(Added 16 of 2008 . 2)

“transit cargo” (過境貨物) means goods which are destined for a place outside Hong Kong and are passing through Hong Kong on the same ship or aircraft without transshipment; (*Amended 23 of 1998 s. 2*)

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“travel document” (旅行證件) means a passport furnished with a photograph of the holder or a similar document establishing to the satisfaction of a member of the Customs and Excise Service or a police officer the identity of the holder and his nationality, domicile or place of permanent residence; *(Added 46 of 1996 s. 2)*

“voucher” (憑單) means a document issued by a licensee who is authorized by the Commissioner under this Ordinance for the removal from a licensed warehouse of dutiable goods on which duty is deemed to have been paid; *(Added 46 of 1996 s. 2)*

“warehouse” (保稅倉) means a place set apart for storing dutiable goods and specified by the Commissioner as—

- (a) a general bonded warehouse;
- (b) a public bonded warehouse; or
- (c) a licensed warehouse,

but does not include a Customs and Excise warehouse. *(Replaced 46 of 1996 s. 2)*

(Amended 46 of 1996 s. 2; 78 of 1999 s. 7)

(2) *(Repealed 66 of 1986 s. 3)*

(3) For the purposes of subsection (1), where—

- (a) duty has been paid on goods by reference to the purpose for which the goods were intended to be used; and
- (b) the goods are used, or are intended to be used, for some other purpose which attracts a higher rate of duty,

then, until duty is paid at that higher rate, the goods shall be deemed to be goods on which the full duty prescribed by law has not been paid. *(Replaced 3 of 1970 s. 3)*

(4) *(Repealed 66 of 1986 s. 3)*

- (5) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 1A or 1B; and a notice under this subsection is subsidiary legislation. (*Added 19 of 2001 s. 2. Amended L.N. 106 of 2002; L.N. 130 of 2007*)

3. Application

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

- (1) This Ordinance applies to—
- (a) subject to section 3AA, alcoholic liquors; (*Replaced 16 of 2008 s. 3*)
 - (b) tobacco (other than any smokeless tobacco product within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132));
 - (c) the following types of hydrocarbon oil—
 - (i) aircraft spirit;
 - (ii) light diesel oil;
 - (iii) motor spirit; and
 - (iv) kerosene; and
 - (d) methyl alcohol. (*Replaced 46 of 1996 s. 3*)
- (2) The Legislative Council may from time to time by resolution published in the Gazette apply to any substance any of the provisions of this Ordinance specified in the resolution with such modifications, if any, as may to them seem desirable, having regard to the nature of the substance to which the resolution relates.
- (3) While any resolution relating to any substance is in force under this section the provisions of this Ordinance thereby applied shall have effect as if the substance were goods to which this Ordinance applies, but subject to such modifications, if any, as may be provided by the resolution.

- (4) This Ordinance does not apply to goods which are the property of or imported or purchased for the Central People's Government, the Chinese People's Liberation Army or the Government of the Hong Kong Special Administrative Region. (*Amended 46 of 1996 s. 3; 131 of 1997 s. 2; 2 of 2012 s. 3*)
- (5) Except as may be prescribed by regulations, the provisions of this Ordinance relating to the importation, exportation and movement of goods shall not apply to postal packets as defined in the Post Office Ordinance (Cap. 98).

3AA. Zero-rated specified goods

- (1) Subsection (2) applies to specified goods the rate of duty on which as set out in Part I of Schedule 1 is 0% of the value of the goods (referred to in this section as "zero rate").
- (2) During the period in which the rate of duty is zero rate—
- (a) the provisions of this Ordinance that are set out in Schedule 4 do not apply to the specified goods;
 - (b) references to dutiable goods in this Ordinance shall be construed as not including the specified goods;
 - (c) the specified goods shall be regarded as duty-paid goods; and
 - (d) references to dutiable commodities (however described) in any other Ordinance shall, in the absence of a contrary intention expressed in that Ordinance, be construed as not including the specified goods.
- (3) For the avoidance of doubt, nothing in this section prevents the rate of duty on any specified goods as set out in Part I of Schedule 1 from being amended during the period in which the rate of duty is zero rate.

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Section 3AA

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(Added 16 of 2008 s. 4)

PART IA
USE OF ELECTRONIC RECORDS AND
PROCEDURES

(Part IA added 19 of 2001 s. 3)

3A. Presumption regarding information sent by recognized electronic service

- (1) Where information received by the Commissioner was sent using a recognized electronic service, evidence that shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary, proof that the person issued with the security device—
 - (a) furnished the information; or
 - (b) made any statement or declaration contained in the information.

- (2) Where information received by the Commissioner was sent using a recognized electronic service by a specified eligible agent who has obtained an authorization in accordance with section 3C, a person named in the information as the person who furnished the information or who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who—
 - (a) furnished the information; or
 - (b) made the statement or declaration contained in the information.

3B. Safe-keeping of security device

- (1) A person who has been issued with a security device shall not authorize or allow any other person to use the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.
- (2) A person who has been issued with a security device shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

3C. Duty of specified eligible agent

- (1) A specified eligible agent shall not send on behalf of any person information using a recognized electronic service unless the agent has obtained from the person an authorization in writing to do so.
 - (2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3.
-

PART II

GENERAL

4. Duty

- (1) Duty shall be assessed and payable on dutiable goods and refunded in respect of such goods at the rates and in the manner set out in Schedule 1.
- (2) The Legislative Council may by resolution amend Schedule 1 and in particular, may amend it—
 - (a) to impose any duty on any dutiable goods or any class of dutiable goods;
 - (b) to increase, decrease, recast, abolish, vary, waive or remit whether generally or particularly any duty imposed therein to any extent whatever;
 - (c) to impose new duties on any dutiable goods or class of dutiable goods, including goods that are already in Hong Kong at the time such new duties are imposed; or
 - (d) to empower the Commissioner—
 - (i) to make refunds of duty in any particular case or generally;
 - (ii) to assess duty on any dutiable goods not specified in Schedule 1; or
 - (iii) to assess duty on a quantity, as specified in Schedule 1, of dutiable goods at a rate so specified.

(Replaced 66 of 1986 s. 5. Amended 46 of 1996 s. 4)

5. *(Repealed 46 of 1996 s. 5)*

6. Regulations

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(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 Chief Executive in Council may by regulation prescribe or provide for— (*Amended 12 of 1999 s. 3*)
- (a) regulating, restricting, licensing or prohibiting, except by licensed persons and on, from or to licensed premises, vehicles, trains, ships or aircraft, as the case may be, the importation, exportation, manufacture, storage, sale, supply, use and possession of goods to which this Ordinance applies; (*Amended 66 of 1986 s. 6*)
 - (aa) the Commissioner to authorize a licensee to issue a pass or voucher for the removal of goods to which this Ordinance applies from a licensed warehouse, and conditions that the Commissioner may apply to the authorization; (*Added 46 of 1996 s. 6*)
 - (b) standards of quality for and determining the quality and origin of, and for packing, canning or bottling any goods (to which this Ordinance applies) to be manufactured, sold or exported under licence; and for materials to be used in such manufacture;
 - (c) (*Repealed 46 of 1996 s. 6*)
 - (d) the construction, maintenance, management and control of licensed premises;
 - (e) books and records to be kept for the purposes of this Ordinance, the manner in which they are to be kept, and the periods for which they are to be preserved, and empowering the Commissioner and any member of the Customs and Excise Service so authorized in writing by him to grant exemptions from any such requirement; (*Amended 66 of 1986 s. 6*)

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- (ea) the Commissioner to specify any form or requirement for giving information under this Ordinance in respect of any goods to which this Ordinance applies; (*Added 19 of 2001 s. 4*)
- (f) the containers in which goods to which the Ordinance applies may be imported, exported, kept, sold or supplied and for the labelling or marking of such goods and containers;
- (g) fees other than fees referred to in section 6A; (*Replaced 78 of 1999 s. 7*)
- (h) the payment of fees, duties and drawback; (*Replaced 66 of 1986 s. 6*)
- (ha) the refund of duty—
 - (i) on duty-paid goods used in the manufacture of dutiable goods;
 - (ii) on duty-paid goods destroyed in Hong Kong with the written consent of the Commissioner;
 - (iii) on duty-paid goods exported from Hong Kong with the written consent of the Commissioner;
 - (iv) on duty-paid goods drawn as samples for analysis by the Government Chemist;
 - (iva) on duty-paid fuel for ships of more than 60 tons net register, for use either outside Hong Kong or partly inside and partly outside Hong Kong; (*Added 35 of 1992 s. 4*)
 - (v) on such other duty-paid goods as the Legislative Council may by resolution direct; (*Added 66 of 1986 s. 6*)
- (i) dispensing with or relaxing any of the provisions of this Ordinance or duties imposed under this Ordinance relating to goods to which this Ordinance applies and

- empowering the Commissioner to impose conditions in respect of the dispensation or relaxation; (*Replaced 57 of 2000 s. 2*)
- (ia) exemptions from or refunds of duty which are required by any Ordinance as to immunities and privileges of a diplomatic, consular or similar nature; (*Added 40 of 1974 s. 4*)
 - (j) the furnishing of bonds, or cash or other securities, by licensees and others to secure the due payment of duty and the observance of the provisions of this Ordinance and the conditions of licences; (*Amended 3 of 1970 s. 36*)
 - (k) the examination of the baggage and goods of persons entering or leaving Hong Kong;
 - (ka) the procedures for compounding offences under this Ordinance; (*Added 46 of 1996 s. 6*)
 - (l) requiring importers and exporters of goods to which this Ordinance applies to furnish certificates relating to the goods from places outside Hong Kong;
 - (m) marking by means of chemicals and coloration of hydrocarbon oil; (*Amended 66 of 1986 s. 6*)
 - (n) the issue, suspension and revocation of liquor licences and the establishment of a board for the purpose of issuing liquor licences and the functions, powers and procedure of that board; (*Added 3 of 1970 s. 4. Amended 4 of 1979 s. 2; 78 of 1999 s. 7*)
 - (na) exemptions from the requirement for a liquor licence; (*Added 78 of 1999 s. 7*)
 - (o) regulating the premises in respect of which a liquor licence is granted; (*Added 3 of 1970 s. 4*)

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Section 6

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- (p) regulating or prohibiting the sale and supply of liquor to minors; (*Added 3 of 1970 s. 4*)
 - (q) regulating or prohibiting the employment and presence of minors on licensed premises;
 - (r) the conditions of employment of minors on licensed premises; (*Added 3 of 1970 s. 4*)
 - (ra) the issue of certificates as evidence of landing, shortages and breakages of cargo or relating to entries in official records; (*Added 66 of 1986 s. 6*)
 - (s) matters in which the Commissioner may give directions for the protection of the revenue and the carrying out of the provisions of this Ordinance, and for empowering him to give such directions; (*Amended 3 of 1970 s. 36; L.N. 294 of 1982*)
 - (sa) empowering the Commissioner to grant exemptions in any particular case or generally from any regulations made under this section; (*Added 66 of 1986 s. 6*)
 - (t) anything which is by this Ordinance to be prescribed or provided for by regulation;
 - (u) generally, carrying into effect the provisions of this Ordinance.
- (2) Without prejudice to subsection (1)(n), regulations made under this section may provide that a contravention of any regulation shall be an offence and prescribe a penalty therefor: (*Amended 4 of 1979 s. 2*)
- Provided that no penalty so prescribed shall exceed a fine of \$1,000,000 and imprisonment for 2 years. (*Amended L.N. 338 of 1995*)
- (3) Any regulation made under this Ordinance may provide that in any criminal proceedings for a contravention thereof—

- (a) it shall be for the person charged with such contravention to prove certain facts; or
 - (b) facts may be presumed, with or without proof of other facts, until the contrary is proved.
- (4) Any regulation made by the Chief Executive in Council—
- (a) on the matter stated in subsection (1)(i); or
 - (b) in exercise of the powers conferred by subsection (3), shall be subject to the approval of the Legislative Council. *(Replaced 57 of 2000 s. 2)*
- (4A) Without limiting subsection (1)(n), regulations made under that subsection may—
- (a) provide for the composition of the board established under the regulations, including the appointment of its members by the Chief Executive and its staff by the Secretary for Food and Health; *(Amended L.N. 106 of 2002; L.N. 130 of 2007)*
 - (b) empower the board to determine its procedures and forms for the purposes of those regulations (in addition to the procedure provided in the regulations). *(Added 78 of 1999 s. 7)*
- (5) *(Repealed 48 of 1994 s. 2)*
- (6) *(Repealed 66 of 1986 s. 6)*
- (7) *(Repealed 48 of 1994 s. 2)*
- (8) *(Spent)*

6A. Secretary for Food and Health may prescribe fees for liquor licences*

(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 Food and Health may by regulation provide for the fees payable for liquor licences the board established under section 6(1)(n) is empowered to issue, including fees for the issue of a liquor licence or a duplicate licence and renewal, transfer or amendment of a liquor licence and for authorizing a person to manage premises for which a licence has been issued, in place of the licence holder.

(Replaced 78 of 1999 s. 7. Amended L.N. 106 of 2002; L.N. 130 of 2007)

Editorial Note:

* *(Amended L.N. 130 of 2007)*

7. Grant and revocation of licences and permits

- (1) Subject to the provisions of this Ordinance—
- (a) the Commissioner or other officer deputed by him in that behalf may in his absolute discretion grant and issue licences or permits on payment of the fees, for the periods prescribed, or if no such period is prescribed in any case, for periods of one year at a time, and may renew such licences or permits;
 - (b) the Commissioner or an officer deputed by him to grant a licence or permit may—
 - (i) in granting or renewing the licence or permit impose such special conditions or restrictions in particular cases as he thinks fit;
 - (ii) permit the transfer of the licence or permit from one person to another or, if the licence was issued for certain premises, the substitution thereof of other premises, or may amend the licence or permit, on sufficient cause being shown to his satisfaction and on payment of the fee prescribed for such transfer, substitution or amendment and

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of such fee, or such proportionate part of such fee, payable under paragraph (a) as the change may involve;

- (iii) give such directions to licensees or holders of permits in writing in prescribed matters as he may deem necessary for the protection of the revenue; *(Amended 66 of 1986 s. 7; 19 of 2001 s. 5)*
- (iv) revoke the licence or permit on proof to his satisfaction of an offence against this Ordinance, whether any person has been convicted of such offence or not;
- (c) the Commissioner may determine the form of a licence and any conditions that attach to a licence that he may issue under this Ordinance; *(Replaced 46 of 1996 s. 8)*
- (d) the Commissioner may determine the form of a permit and any conditions that attach to a permit that he may issue under this Ordinance; *(Replaced 46 of 1996 s. 8)*
- (e) the Commissioner shall publish a list of general bonded warehouses and a list of public bonded warehouses in January of each year; *(Added 46 of 1996 s. 8)*
- (f) the Commissioner shall publish details of any alterations to the lists of bonded warehouses within one month of the addition or deletion of a warehouse; *(Added 46 of 1996 s. 8)*
- (g) the Commissioner may specify premises to be a Customs and Excise warehouse and shall publish details of the Customs and Excise warehouse on a notice board in a place within the Customs and Excise Department to which the public have access. *(Added 46 of 1996 s. 8)*

*(1A) Without prejudice to subsection (1)(b)(iv) and subject to section 8A(3), the Commissioner or other officer deputed

by him in that behalf may revoke a licence that was granted in respect of any premises. (*Added 4 of 2003 s. 2*)

- (2) Any person who is aggrieved by the exercise of the powers conferred by this section by the Commissioner or by any officer deputed by him in that behalf may appeal to the Administrative Appeals Board. (*Amended 46 of 1996 s. 8*)

(*Amended L.N. 294 of 1982*)

Editorial Note:

* For the saving and transitional provisions relating to the amendments made by the Dutiable Commodities (Amendment) Ordinance 2003 (4 of 2003), see Part III of the Ordinance.

8. Applications for licences and permits

Any person seeking a licence or permit or the renewal, extension, transfer or amendment of a licence or permit shall make application—

- (a) in accordance with regulations; or
- (b) in any case not provided for by regulations, to the Commissioner in accordance with a form approved by him and subject to his directions, (*Amended 19 of 2001 s. 6*)

and shall furnish such information and evidence relating to the application as may be prescribed or as the Commissioner may require.

(*Replaced 3 of 1970 s. 6. Amended L.N. 294 of 1982*)

8A. Determining applications for and revocation of licences in respect of premises

(For the saving and transitional provisions relating to the amendments made by the Dutiable Commodities (Amendment) Ordinance 2003 (4 of 2003), see Part III of the Ordinance.)

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- (1) In determining an application for the grant or renewal of a licence in respect of any premises, the Commissioner or the officer deputed by him in that behalf shall take into account—
 - (a) whether the applicant possesses the appropriate financial status;
 - (b) whether the books of account and other documents that are kept or proposed to be kept by the applicant in relation to the premises are sufficient for the purpose of auditing;
 - (c) whether the systems, procedures and standards that are used or proposed to be used by the applicant in respect of inventory control, record keeping and security are appropriate;
 - (d) whether the applicant and his responsible personnel are fit and proper persons; and
 - (e) any other relevant matter.
- (2) No licence shall be granted in respect of any premises which are or will be used wholly or partly as a place of residence.
- (3) In determining whether to revoke under section 7(1A) a licence that was granted in respect of any premises, the Commissioner or the officer deputed by him in that behalf shall take into account—
 - (a) whether the licensee possesses the appropriate financial status;
 - (b) whether the books of account and other documents that are kept by the licensee in relation to the premises are sufficient for the purpose of auditing;
 - (c) whether the systems, procedures and standards that are used by the licensee in respect of inventory control, record keeping and security are appropriate;

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- (d) whether the licensee and his responsible personnel are fit and proper persons; and
 - (e) any other relevant matter.
- (4) In determining whether a person is a fit and proper person for the purposes of subsection (1)(d) or (3)(d), the Commissioner or the officer deputed by him in that behalf shall take into account—
- (a) the fact that the person has a conviction in Hong Kong or elsewhere for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
 - (b) the fact that the person has been convicted of an offence against this Ordinance;
 - (c) if the person is an individual, the fact that the person is an undischarged bankrupt or has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application;
 - (d) if the person is a body corporate, the fact that the person is in liquidation, is the subject of a winding-up order or there is a receiver appointed in relation to it or it has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application; and
 - (e) any other relevant matter.
- (5) The Commissioner or the officer mentioned in subsection (1) or (3), as the case may be, shall give reasons in writing to the applicant or licensee, as the case may be, for refusing an application to grant or renew a licence in respect of any

premises, or for revoking a licence granted in respect of any premises, under section 7.

- (6) In this section, “responsible personnel” (負責人員), in relation to a person who is an applicant or licensee (as the case may be), means—
- (a) where the person is a body corporate, any of its directors;
 - (b) where the person is an unincorporated association, the president, chairman, vice chairman or secretary of its management or executive committee (however described), or a person holding a similar office; or
 - (c) any other person who is or will be wholly or mainly responsible for the management of the premises concerned.

(Added 4 of 2003 s. 3)

9. Register of requisitions and permits

Every requisition for a permit and a copy of every permit issued shall be kept under the control of the officer authorized to issue the permit, and the absence of any requisition or copy from its usual place of keeping shall be prima facie evidence that a permit has not been applied for or, as the case may be, that a permit has not been issued.

(Amended 19 of 2001 s. 7)

10. *(Repealed 4 of 2003 s. 4)*

11. Powers of the Customs and Excise Service

- (1) Every member of the Customs and Excise Service shall for the purposes of this Ordinance have power to do all or any of the following things—

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- (a) to enter at all reasonable times or, if specially authorized in writing by the Commissioner for the purposes of this section, at any time by day and night and remain as long as he thinks fit upon any premises or place in respect of which any person holds a licence and to inspect and examine the premises or place and every part thereof; *(Amended 3 of 1970 s. 7)*
 - (b) to require the production of any licence, permit, and any book or document kept in pursuance of this Ordinance or any other document which has a bearing on the quantity, origin, value or nature of any goods to which this Ordinance applies, and to inspect, remove and detain for the purpose of examination for so long as the Commissioner may consider necessary and to examine and copy any such books or documents; *(Amended 3 of 1970 s. 36; 34 of 1984 s. 2; 66 of 1986 s. 9)*
 - (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Ordinance are complied with as respects any goods to which this Ordinance applies; *(Amended 3 of 1970 s. 36)*
 - (d) without payment, to take such samples of any goods to which this Ordinance applies as the Commissioner may direct for examination or for ascertaining the duty payable on such goods, and samples so taken for examination or for ascertaining the duty payable may be disposed of as the Commissioner may think fit; and
 - (e) to exercise such other powers as may be necessary for giving effect to the provisions of this Ordinance.
- (2) The holder of every licence or permit issued under this Ordinance and his servants or agents shall furnish the means required by a member of the Customs and Excise Service as necessary for any entry, inspection, examination, inquiry or the exercise of his powers under this Ordinance in relation

to any goods to which this Ordinance applies and which are or have been in the possession, custody or control of such licensee or permittee.

- (3) If in pursuance of this section any member of the Customs and Excise Service, having demanded admission into any premises and declared his name and business at any entrance thereof, is not immediately admitted, he and any person acting in his aid may break into and forcibly enter the premises.

11A. Books and documents, etc. in non-legible form

- (1) Any book or document kept in pursuance of this Ordinance shall be kept in a legible form or in a non-legible form capable of being reproduced in a legible form.
- (2) If any licence, permit, book or other document was issued or is kept otherwise than in a legible form, any power conferred by this Ordinance to require the production of such licence, permit, book or other document, to remove and detain it for the purpose of examination, to examine it or to take copies of it shall be construed as including power to require production of it, to remove it and to detain it for the purpose of examination, to examine or to take copies of a reproduction of the licence, permit, book or other document or of the relevant part of it in a legible form. *(Amended 19 of 2001 s. 8)*
- (3) Without affecting the generality of subsection (2), where any premises or place have been entered under section 11(1)(a), a power conferred by this Ordinance—
 - (a) to require the production of any licence, permit, book or other document shall be construed as including the power to require that any information of a kind specified in subsection (4) and relating to such licence, permit, book or other document be produced in the premises or place in a legible form;

- (b) to inspect, remove and detain for the purposes of examination, or to examine and copy, any licence, permit, book or other document shall be construed as including the power—
 - (i) to require that any information of a kind specified in subsection (4) and relating to such licence, permit, book or other document be produced in a form in which it can be taken away and in which it is either legible or capable of being retrieved on a computer; and
 - (ii) to take away the material so produced. (*Added 19 of 2001 s. 8*)
- (4) The information specified for the purposes of subsection (3) is information that is—
 - (a) stored in the form of an electronic record in or accessible from the premises or place entered under section 11(1)(a); or
 - (b) contained in any device found in the premises or place entered under section 11(1)(a) and that is capable of being retrieved in the form of an electronic record. (*Added 19 of 2001 s. 8*)

(Added 66 of 1986 s. 10)

12. Seizure without warrant

Any member of the Customs and Excise Service may without warrant—

- (a) seize, remove and detain any goods to which this Ordinance applies and in respect of which he finds or has reasonable cause to suspect that an offence against this Ordinance has been committed, or that the goods are otherwise liable to forfeiture under this Ordinance; (*Amended 3 of 1970 s. 36*)

- (b) stop and board any ship, aircraft, train or vehicle and search the same and every part thereof, and may remain thereon as long as it remains in Hong Kong.

13. **Ships failing to bring to**

The master of any ship not exceeding 250 tons gross tonnage in the waters of Hong Kong who shall refuse to stop and receive any member of the Customs and Excise Service on board such ship or who shall refuse or neglect, to bring his ship to when hailed by a member of the Customs and Excise Service in charge of any ship employed in the service of the Government of Hong Kong having displayed the customary flag or having exhibited or made a recognition signal shall be guilty of an offence and shall be liable to a fine at level 5 in addition to any other penalty to which he may be liable under the provisions of this Ordinance.

(Amended 3 of 1970 s. 8; L.N. 338 of 1995)

[cf. 1952 c. 44 s. 78 U.K.]

14. **Search of place or ship with warrant or authority or by police officer**

- (1) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to believe that in any place there are concealed or deposited any goods subject to forfeiture under this Ordinance, or with respect to which an offence has been committed or is about to be committed against the provisions of this Ordinance, the magistrate may, by his warrant directed to any member of the Customs and Excise Service or to any police officer, empower such member or officer by day or by night- *(Amended 3 of 1970 s. 36)*

- (a) to enter the place named in the warrant and there to search for and seize, remove and detain any such goods; and

- (b) to arrest any person being in such place in whose possession such goods may be found, or whom such member or officer may reasonably suspect of having concealed or deposited any such goods there or thereabout. (*Amended 66 of 1986 s. 11*)
- (2) Such member or officer may, if necessary—
- (a) break open any outer or inner door of the place and enter thereinto;
- (b) forcibly enter the place and every part thereof;
- (c) remove by force any obstruction to such entry, search, seizure and removal as he is empowered to effect;
- (d) detain every person found in such place and prevent every person from approaching or entering the same, until the search is complete;
- (e) seize, remove and detain any such goods, whether in such place or in any place whatever within Hong Kong, in the possession, custody or control of any of the persons against whom his warrant has been issued. (*Amended 66 of 1986 s. 11*)
- (3) Whenever it appears to any member of the Customs and Excise Service generally or specially authorized in writing by the Commissioner for the purposes of this section, or to any police officer not below the rank of inspector, that there is reasonable cause to believe that in any place there are concealed or deposited goods liable to forfeiture under this Ordinance, or with respect to which an offence has been committed or is about to be committed against this Ordinance, and he has reasonable ground for believing that unless the place is searched forthwith the goods are likely to be removed, the said officer in virtue of his office may exercise in, upon and in respect of such place all the powers

mentioned in this section as if he were empowered to do so by warrant. (*Amended 66 of 1986 s. 11*)

(4) (*Repealed 66 of 1986 s. 11*)

15. Seizure of things used for commission of offences

(1) Whenever it is lawful under this Ordinance for a member of the Customs and Excise Service or a police officer to seize, remove and detain any goods, it shall be lawful for him in a like manner to seize, remove and detain- (*Amended 66 of 1986 s. 12*)

(a) any receptacle in which the goods are contained;

(b) any ship not exceeding 250 tons gross tonnage or any vehicle or aircraft not being a public transport or state aircraft in which the goods are found; (*Amended 3 of 1970 s. 9*)

(c) any machinery, implement, utensil or material used or intended to be used for the commission of an offence against this Ordinance; and

(d) anything which may appear to be or to contain evidence that any offence against this Ordinance has been or is about to be committed. (*Amended 3 of 1970 s. 36*)

(2) For the purposes of this section, “public transport” (公共交通工具) in relation to “vehicle” means “taxis” or “public buses” as defined in section 2 of the Road Traffic Ordinance (Cap. 374). (*Amended 75 of 1982 s. 114*)

16. Obstruction of member of the Customs and Excise Service or police officer

No person shall—

(a) delay, obstruct, hinder or molest any person duly engaged in the performance of any duty or in the

exercise of any power imposed or conferred on him by or under this Ordinance or any person acting in his aid; or (*Amended 3 of 1970 s. 36*)

- (b) rescue, damage or destroy any thing so liable to forfeiture or do anything calculated to prevent the procuring or giving of evidence as to whether or not any thing is so liable to forfeiture; or
- (c) fail to produce any licence, permit, book or document which he is required by or in pursuance of this Ordinance to produce; or
- (d) fail to comply with the requisition of any person duly engaged in the performance of any duty or the exercise of any power under this Ordinance.

17. Restrictions on dealing with and possession of certain goods

- (1) No person shall import or export or have in his possession, custody or control, or in any way deal with or dispose of, any goods to which this Ordinance applies—
 - (a) except in accordance with the provisions of this Ordinance; or (*Amended 3 of 1970 s. 36*)
 - (b) unless he has discharged all the obligations with respect to the goods imposed upon him by or under this Ordinance.
- (2) No person shall have in his possession, custody or control any goods knowing that in respect thereof an offence against this Ordinance has been committed:

Provided that no person shall be convicted of an offence against this subsection if he proves that when such goods came into his possession, custody or control he had good and sufficient reason to believe that the provisions of this Ordinance relating to the goods had been complied with. (*Amended 3 of 1970 s. 36*)

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- (3) A person shall not import goods to which this Ordinance applies except under and in accordance with a licence or an exemption from a licence. *(Replaced 46 of 1996 s. 9)*
- (3A) A person who imports goods to which this Ordinance applies without a licence—
- (a) for his own use other than for trade or business and the goods are declared to a member of the Customs and Excise Service; or
 - (b) as a commercial consignment entered in a manifest, shall, after import of the goods, immediately apply for—
 - (i) an import licence, or an import and export licence; and
 - (ii) a permit. *(Replaced 46 of 1996 s. 9)*
- (3AA) A person shall not—
- (a) remove, for the purpose of export, duty-paid goods for which a refund of duty has been applied without a permit; or *(Added 46 of 1966 s. 9)*
 - (b) export—
 - (i) dutiable goods; or
 - (ii) duty-paid goods for which a refund of duty has been applied,except under and in accordance with a licence. *(Replaced 67 of 1997 s. 2)*
- (3AB) A person shall not, except under and in accordance with a licence, manufacture—
- (a) alcoholic liquor, except as provided in section 64A;
 - (b) methyl alcohol, tobacco or hydrocarbon oil. *(Replaced 57 of 2000 s. 3)*
- (3AC) A person who contravenes subsection (3), (3A), (3AA) or (3AB) commits an offence. *(Added 46 of 1996 s. 9)*

(3AD) A person does not require a licence or permit for dutiable goods that are—

- (a) exempt from duty under this Ordinance; or
- (b) transit cargo or air transshipment cargo. (*Added 46 of 1996 s. 9. Amended 29 of 2000 s. 4*)

(3AE) The owner, charterer, agent, master or person in charge of a ship, vehicle, train or aircraft importing or exporting goods to which this Ordinance applies does not require a licence if the goods are properly entered in the manifest and the person does not have a legal or equitable interest in the goods. (*Added 46 of 1996 s. 9*)

(3AF) A person does not require a permit to remove goods to which this Ordinance applies from an aircraft directly to—

- (a) a Customs and Excise warehouse;
- (b) a general bonded warehouse; or
- (c) a licensed warehouse for the storage of aircraft store, at the airport. (*Added 46 of 1996 s. 9*)

(3AG) A person does not require a permit to remove goods to which this Ordinance applies from a train at Kowloon Station of the Kowloon-Canton Railway directly to a Customs and Excise warehouse located at Kowloon Station. (*Added 46 of 1996 s. 9*)

(3B) Where regulations prohibit the sale or supply of any liquor except on the authority of a prescribed licence or permit, no person shall sell, or advertise or expose for sale, or supply, or possess for sale or supply, such liquor except on the authority of such a licence or permit and in accordance with the terms thereof. (*Added 29 of 1989 s. 2*)

- (4) Subject to section 64A, no person shall manufacture, make, distil, rectify, purify, refine or process any spirit except under

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and in accordance with a licence. (*Added 3 of 1970 s. 10. Amended 57 of 2000 s. 3*)

- (5) No person shall sell, advertise or expose for sale, or supply, or possess for sale or supply, any goods to which this Ordinance applies as goods of a standard prescribed by regulations, if the goods are not goods of that standard. (*Amended 66 of 1986 s. 13*)
- (6) No person shall have any dutiable goods in his possession, custody or control unless—
- (a) he is—
- (i) the holder, or the servant of the holder, of a removal or export permit, personally conveying the goods direct from one place, ship, vehicle, train or aircraft to another place, ship, vehicle, train or aircraft in accordance with the permit; or
 - (ii) the licensee, or the servant of the licensee, of a general bonded warehouse, personally conveying the goods, if imported in a ship, vehicle, train or aircraft and duly entered in the manifest, direct from the ship, vehicle, train or aircraft in which they were imported to the warehouse; or
- (b) the goods are—
- (i) in a general bonded warehouse, a public bonded warehouse or a licensed warehouse; or (*Amended 46 of 1996 s. 9*)
 - (ii) in a place licensed for the manufacture of such goods; or
 - (iii) (*Repealed 46 of 1996 s. 9*)
 - (iv) in a ship, vehicle, train or aircraft, if the goods were imported, or are to be exported, in that ship,

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- vehicle, train or aircraft and are duly entered in the manifest; or (*Amended 66 of 1986 s. 13*)
- (v) in a place approved by the Commissioner under section 28A; or (*Added 66 of 1986 s. 13. Amended 29 of 2000 s. 4*)
- (vi) air transshipment cargo. (*Added 29 of 2000 s. 4*)
- (7) No person, not being authorized so to do by permit or otherwise in accordance with the provisions of this Ordinance, shall remove, deliver or send out any dutiable goods from his stock, custody or possession; nor shall any person take, receive or have in his stock, custody or possession any dutiable goods removed or delivered thereto in contravention of this subsection. (*Amended 3 of 1970 s. 36*) [*cf. 1832 c. 16 s. 10 U.K.*]
- (8) No person shall, on his own account or on behalf of another, sell, offer for sale or buy any dutiable goods which are in Hong Kong, unless the goods are—
- (a) in a general bonded warehouse, a public bonded warehouse or licensed warehouse; or (*Amended 46 of 1996 s. 9*)
- (b) in the place where they were manufactured; or
- (c) in the ship, vehicle, train or aircraft in which they were imported. (*Replaced 46 of 1996 s. 9*)
- (d) (*Repealed 46 of 1996 s. 9*)
- (9) The onus of proving that dutiable goods are in course of direct removal from any place, ship, vehicle, train or aircraft to any other place, ship, vehicle, train or aircraft shall be upon the accused.
- (10) It shall be no defence to any charge under this section that the possession or control of the accused was a joint possession or control. (*Added 66 of 1986 s. 13*)

- (11) It is a defence to a charge under this section for the defendant to show that the offence was committed without his consent or connivance and that he took all reasonable steps to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions. (*Added 46 of 1996 s. 9*)

18. (*Repealed 29 of 1989 s. 3*)

19. Goods embarked for export not to be relanded

- (1) If any goods to which this Ordinance applies are placed on board any ship, vehicle, train or aircraft for exportation or as stores and, except with the express permission of the Commissioner in writing, are not duly exported or are unshipped or removed or relanded in any part of Hong Kong, the master of the ship, the person in charge of the vehicle, train or aircraft and any person by whom or by whose orders or means the goods are so unshipped, removed or relanded, shall be guilty of an offence, and the ship, if less than 250 tons gross tonnage, vehicle, train or aircraft, not being a public transport or state aircraft, may by order of a magistrate be forfeited. (*Amended L.N. 294 of 1982*)
- (2) For the purpose of this section, “public transport” (公共交通工具) in relation to “vehicle” means “taxi”, “public light bus” or “public bus” as defined in section 2 of the Road Traffic Ordinance (Cap. 374). (*Amended 75 of 1982 s. 114*)

(*Amended 3 of 1970 s. 12*)

[*cf. 1876 c. 36 s. 120 U.K.*]

20. Restrictions on import and export

Except with the written permission of the Commissioner, no goods to which this Ordinance applies shall—

- (a) be imported or exported otherwise than by air, road, rail or sea and to or from such ports or places and by such routes; or (*Amended L.N. 235 of 1996*)
- (b) be landed from or loaded or taken on any ship, aircraft, train or vehicle elsewhere than at such places,

as the Commissioner by notification in the Gazette may appoint.

(Amended L.N. 294 of 1982)

21. Penalty on not bringing to at stations; or carrying away officers

- (1) If any ship arriving in or departing from Hong Kong or on which any goods to which this Ordinance applies are being imported or exported does not bring to at such stations as may be appointed by the Commissioner for examination or for the landing of officers from such ships, the master of the ship shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5. (*Amended 3 of 1970 s. 13; L.N. 294 of 1982; L.N. 338 of 1995*)
- (2) If any ship departs from any such station without the knowledge of the proper member of the Customs and Excise Service or from Hong Kong with any member of the Customs and Excise Service or other Government officer on board, without the consent of such member or officer, the master of the ship shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5. (*Amended L.N. 338 of 1995*)
- (3) This section shall apply to aircraft and vehicles and persons in charge thereof as it applies to ships and the masters of ships.

[cf. 1876 c. 36 s. 136 U.K.; 1883 c. 55 s. 5 U.K.]

22. Import and export statements

- (1) The owners, charterers or agents of every ship, aircraft or vehicle, in which goods to which this Ordinance applies are imported or exported, or the master of every such ship, the person in charge of every such aircraft or the driver of every such vehicle shall, within 14 days or such longer period as the Commissioner may specify, after the arrival in or departure from Hong Kong of such ship, aircraft or vehicle furnish to the Commissioner at the office of the Commissioner an accurate and complete statement of all such goods. (*Amended L.N. 294 of 1982; 19 of 2001 s. 9*)
- (2) The owners, charterers or agents of every ship or aircraft which arrives in or departs from Hong Kong having on board no goods to which this Ordinance applies, or the master of every such ship or the persons in charge of every such aircraft, shall, within 14 days or such longer period as the Commissioner may specify, after such arrival or departure furnish to the Commissioner or other prescribed officer at the office of the Commissioner a statement that no such goods were carried in the ship or aircraft. (*Amended 3 of 1970 s. 14; L.N. 294 of 1982; 66 of 1986 s. 14; 19 of 2001 s. 9*)
- (3) Every statement furnished in accordance with the provisions of this section shall be in a form approved by the Commissioner, signed by the party furnishing it, and shall contain such particulars, if any, as may be prescribed by regulations and such further particulars as the Commissioner or other prescribed officer may require. (*Amended L.N. 294 of 1982; 66 of 1986 s. 14*)
- (4) Separate statements shall be furnished in respect of each class of goods specified in section 3 or by any resolution under that section:

Provided that—

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- (a) where no goods of a class so specified were carried, it shall be sufficient to include a statement to that effect in any other statement made under this section; and
 - (b) where no goods to which this Ordinance applies were carried, a single statement to that effect shall suffice. *(Replaced 3 of 1970 s. 14)*
- (5) If any statement is not furnished in accordance with, or is furnished in breach of, the provisions of this section, the owners, charterers and agents of the ship, aircraft or vehicle, the master of the ship, the person in charge of the aircraft and the driver of the vehicle, in respect of which the statement is, or should have been, furnished, shall each and all be guilty of an offence.
- (6) The Commissioner may, with respect to any case or class of cases, grant in writing exemptions from any of the requirements of this section and may impose conditions with respect to such exemptions. *(Added 66 of 1986 s. 14)*
- (7) The requirement under subsection (1) to furnish, in accordance with this section, a statement in relation to goods to which this Ordinance applies that are imported or exported in any ship, aircraft or vehicle shall be regarded as having been complied with if—
 - (a) a manifest of the cargo imported or exported in the ship, aircraft or vehicle is lodged for the purposes of regulation 11 or 12 (as may be appropriate) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg. E) using services provided by a specified body;
 - (b) the manifest contains such particulars in relation to the goods as is required to be contained in a statement furnished to the Commissioner under subsection (1); and

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- (c) the manifest is lodged within the period specified for the furnishing of a statement under subsection (1). (*Added 19 of 2001 s. 9*)
- (8) Despite subsection (7), the Commissioner may, by notice in writing given to any person to whom subsection (1) applies, require that a statement as required under subsection (1) be furnished and, if such a notice is given—
- (a) a statement as required under subsection (1) shall be furnished to the Commissioner in accordance with that subsection, except that the statement shall be furnished within 14 days after service of the notice or such longer period as the Commissioner may specify in the notice;
- (b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (1). (*Added 19 of 2001 s. 9*)
- (9) The requirement under subsection (2) to furnish, in accordance with this section, a statement that no goods to which this Ordinance applies were carried in a ship or aircraft that arrived in or departed from Hong Kong shall be regarded as having been complied with if—
- (a) a manifest of the cargo imported or exported in the ship or aircraft is lodged for the purposes of regulation 11 or 12 (as may be appropriate) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg. E) using services provided by a specified body; and
- (b) the manifest is lodged within the period specified for the furnishing of a statement under subsection (2). (*Added 19 of 2001 s. 9*)
- (10) Despite subsection (9), the Commissioner may, by notice in writing given to any person to whom subsection (2) applies,

require that a statement as required under subsection (2) be furnished and, if such a notice is given—

- (a) a statement as required under subsection (2) shall be furnished to the Commissioner in accordance with that subsection, except that the statement shall be furnished within 14 days after service of the notice or such longer period as the Commissioner may specify in the notice;
- (b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (2). (*Added 19 of 2001 s. 9*)

23. Removal of goods from ships, vehicles or aircraft

- (1) Subject to section 17(3AD), (3AE), (3AF) and (3AG), if any goods to which this Ordinance applies are in any ship, vehicle or aircraft or on the railway premises they shall not be removed therefrom by, or discharged or delivered therefrom to, any person except the licensee of a general bonded warehouse or the holder of a valid permit in that behalf or the servant of such permittee or licensee.
 - (1A) Goods put on board any ship, vehicle, train or aircraft under a permit are not to be relanded except under a permit. (*Added 46 of 1996 s. 10*)
 - (1B) Subsection (1) does not apply to duty-paid goods after their first removal within Hong Kong from the ship, vehicle, train or aircraft on which they were imported. (*Added 46 of 1996 s. 10*)
- (2) Where an offence of removing, discharging or delivering any goods from any ship, vehicle or aircraft contrary to subsection (1) is proved to have been committed, every person being an owner, charterer, agent, master or other person in charge or comprador of the ship, vehicle or aircraft is deemed guilty of

that offence in the absence of evidence that the goods were removed or discharged without his knowledge and that he had taken all reasonable steps to prevent such removal or discharge. *(Replaced 46 of 1996 s. 10)*

- (3) In the absence of evidence to the contrary, goods thrown overboard from any ship, vehicle, train or aircraft shall be deemed to have been unlawfully removed therefrom in contravention of this section. *[cf. 1876 c. 36 s. 179 U.K.]*
- (4) The Commissioner may direct a person who imports goods to which this Ordinance applies in a vehicle without a permit and which goods are properly entered in a manifest to store the goods in a warehouse or a Customs and Excise warehouse under the conditions the Commissioner imposes. *(Added 46 of 1996 s. 10)*
- (5) A person who does not comply with a direction of the Commissioner under subsection (4) commits an offence. *(Added 46 of 1996 s. 10)*

(Amended 46 of 1996 s. 10)

24. Ships' or aircraft stores, etc.

- (1) Goods to which this Ordinance applies and which are imported as transit cargo or which are to be used as ships' or aircraft stores shall, while the ship or aircraft is in Hong Kong, be kept in the prescribed manner or, in the absence of such provision, in a secure place under the custody and control of the master or person in charge of the ship or aircraft. Goods so imported shall not be landed in Hong Kong unless the landing of such goods is specially authorized by the Commissioner in writing. *(Amended 40 of 1974 s. 5)*
- (2) The issue of permits to export any dutiable commodities as ships' or aircraft stores shall be at the absolute discretion of the Commissioner or any person authorized by him.

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- (3) The master shall use only such quantity of dutiable commodities as ships' stores as the Commissioner or any person authorized by him shall in his discretion provide.

(Amended L.N. 294 of 1982)

25. Inspection, etc. of goods

- (1) The Commissioner or any member of the Customs and Excise Service or other person authorized by him in writing either generally or in any particular instance may at all times inspect any goods to which this Ordinance applies and place locks, marks or seals on any container or place in which they may be. *(Amended L.N. 294 of 1982)*
- (2) Where in pursuance of any powers conferred by this section the Commissioner, any member of the Customs and Excise Service or an authorized officer has placed any lock, mark or seal upon any goods in any place, ship, vehicle, train or aircraft or upon any container in which such goods are kept, then if, without the authority of the Commissioner or such member or officer, at any time or in the case of a ship, vehicle, train or aircraft, while the ship, vehicle, train or aircraft is within the limits of Hong Kong, that lock, mark or seal is opened, altered or broken, or if, before that lock, mark or seal is lawfully removed, any of the goods are conveyed away, any person so doing and the person who was in control of the goods, container or place at the time any such lock, mark or seal was placed upon them or the master of the ship or person in charge of the vehicle, train or aircraft shall be guilty of an offence and shall be liable to a fine at level 5. *(Amended 66 of 1986 s. 15; L.N. 338 of 1995) [cf. 1952 c. 44 s. 70 U.K.]*

26. Assessment of duty

- (1) Subject to the provisions of sections 4 and 26A, the duty on

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dutiable goods shall be assessed by the Commissioner or any officer authorized by him in that behalf, and the duty shall be paid at such times and to such officer, at the office of the Commissioner or elsewhere, as he may direct. In assessing the duty on any goods allowance may be made for any loss or contraction which may since the goods became dutiable have occurred therein from unavoidable accident or natural causes and, in the discretion of the Commissioner, for waste or loss in manufacture if the loss, contraction or waste has been duly notified and accounted for to the satisfaction of the Commissioner. (*Amended 46 of 1980 s. 3; 34 of 1984 s. 3; 46 of 1996 s. 11*)

- (2) Where any notification of duty payable is given under the provision of subsection (1) such notice shall be deemed to have been duly served on the person concerned—
 - (a) if given verbally by the Commissioner or other authorized officer to the person responsible; or
 - (b) if delivered to him personally; or
 - (c) if addressed to him and left or forwarded by registered post to him at his usual or last known place of abode or business; or (*Amended 19 of 2001 s. 10*)
 - (d) if sent to him in the form of an electronic record. (*Added 19 of 2001 s. 10*)
- (3) A person aggrieved by the decision of the Commissioner as to the amount of duty payable on goods may appeal to the Administrative Appeals Board. (*Added 46 of 1996 s. 11*)

(Amended L.N. 294 of 1982)

26A. Value of goods and assessment of ad valorem duty

- (1) Subject to subsections (2), (3), (4), (5) and (5A), for the purpose of assessing and calculating duty by reference to the value of any goods, the value shall be the normal price which

the goods would fetch, at the relevant time, on their sale in the open market between a buyer and seller independent of each other. (*Replaced 20 of 1985 s. 5. Amended 45 of 1994 s. 2*)

- (2) The normal price of any imported dutiable goods and of any dutiable goods manufactured in Hong Kong shall be determined on the assumptions that—
- (a) the goods are treated as having been delivered to the buyer in Hong Kong at the time when they are removed from the premises of the seller for the purpose of such delivery;
 - (b) the buyer will bear transport, insurance and all other costs, charges and expenses incidental to the delivery of the goods to his premises in Hong Kong;
 - (c) the seller will bear any commission and all other costs, charges and expenses incidental to the sale of the goods;
 - (d) the price does not include the amount of any duty payable under this Ordinance; and
 - (e) the price includes the value of the right to use any patent, design or trade mark in respect of the goods (including the value of any royalty or licence fee). (*Replaced 45 of 1994 s. 2*)
- (2A) (*Repealed 45 of 1994 s. 2*)
- (3) A sale in the open market between a buyer and seller independent of each other pre-supposes that—
- (a) the price is the sole consideration;
 - (b) the price made is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him (other than

the relationship created by the sale of the goods in question); and

- (c) no part of the proceeds of the subsequent re-sale, use or disposal of the goods will accrue either directly or indirectly to the seller or any person associated in business with him.

For the purposes of this subsection, 2 persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.

- (4) For the purpose of subsection (1), the Commissioner or any officer authorized by him in that behalf may, subject to subsections (5) and (5A), accept the value of the goods as stated in the contract of sale, invoice or other document, relating to the goods and produced under section 27, if the date of the contract of sale, invoice or other document precedes the date on which the duty is assessed by not more than 12 months. (*Amended 45 of 1994 s. 2*)
- (5) If—
 - (a) an importer or manufacturer fails to produce any contract of sale, invoice or other document required to be produced by the Commissioner under section 27; (*Amended 20 of 1985 s. 5*)
 - (b) in the opinion of the Commissioner or any officer authorized by him in that behalf the information in any contract of sale, invoice or other document produced under section 27 is insufficient or inaccurate as to the value of the goods; or
 - (c) in the opinion of the Commissioner or any officer authorized by him in that behalf the value of the goods

stated in any contract of sale, invoice or other document produced under section 27 is not the value in accordance with subsection (1),

the Commissioner or such officer may fix a value which shall be deemed to be the value of the goods for the purpose of assessing and calculating duty.

- (5A) If in the opinion of the Commissioner or any officer authorized by him in that behalf the transport, insurance and other costs, charges and expenses incidental to the delivery of the goods to the buyer in Hong Kong cannot be separately identified in the values stated in any contract of sale, invoice, book of account or other document produced under section 27(1), the Commissioner or such officer may take into account any value or values stated in a declaration made under section 27(2) in determining the value of the goods for the purpose of assessing and calculating the duty. (*Added 45 of 1994 s. 2*)
- (6) If in any contract of sale, invoice or other document the value of the goods is stated in a currency other than Hong Kong dollars, the Hong Kong dollars equivalent of the other currency is calculated at the opening indicative counter exchange selling rate published by the Hong Kong Association of Banks—
- (a) for a person permitted to make monthly returns, on the last date of that return; and
 - (b) in any other case, on the 15th day of the month immediately preceding the month in which the goods are imported.

The Commissioner shall calculate the Hong Kong dollars equivalent where the rate is not published on the relevant day at the indicative counter exchange selling rate published

by the Hong Kong Association of Banks on the immediately preceding working day. *(Replaced 46 of 1996 s. 12)*

- (7) A person who is aggrieved by the exercise of the powers conferred under this section may appeal to the Administrative Appeals Board. *(Replaced 46 of 1996 s. 12)*
- (8) In this section “relevant time” (有關時間) means—
- (a) in the case of imported goods the time such goods are removed from the premises of the seller for the purpose of export; *(Amended 45 of 1994 s. 2)*
- (b) in the case of goods manufactured in Hong Kong the time such goods are removed from the premises on which they were manufactured. *(Added 20 of 1985 s. 5)*

(Added 34 of 1984 s. 4)

[cf. 1952 c. 44 s. 258 U.K.]

26B. Administrative Appeals Board to assess duty

- (1) The Administrative Appeals Board shall assess the duty payable if an aggrieved party appeals and the Board finds that duty (other than duty assessed by the Commissioner) is payable.
- (2) An assessment of duty by the Administrative Appeals Board is treated as if it is an assessment of duty by the Commissioner except that an aggrieved party may not appeal further to the Administrative Appeals Board.

(Added 46 of 1996 s. 13)

27. Production of documents necessary for calculating duty

- (1) The Commissioner may require the importer or manufacturer of any goods to which this Ordinance applies to produce contracts of sale, invoices, books of account and any other documents which the Commissioner considers are necessary

for the purpose of assessing and calculating duties and such documents may be retained by the Commissioner and disposed of as he may think fit. (*Amended L.N. 294 of 1982; 34 of 1984 s. 5*)

- (2) Any document required to be produced under subsection (1) shall, if the Commissioner so requires, be accompanied by a declaration in a form specified by the Commissioner. (*Added 34 of 1984 s. 5*)

27A. (*Repealed 70 of 1993 s. 3*)

28. Delivery of imported goods on giving security for duty

- (1) Where it is impracticable immediately to ascertain whether any or what duty is payable in respect of any imported goods which are imported into, or manufactured in, Hong Kong, the Commissioner or other officer authorized in accordance with section 26 or 26A may, if he thinks fit and notwithstanding any other provision of this Ordinance, allow these goods to be delivered upon the importer giving a security by deposit of money or otherwise to his satisfaction for the payment of any amount unpaid which may be payable by way of duty. (*Amended 3 of 1970 s. 16; 34 of 1984 s. 6; 20 of 1985 s. 7*)
- (2) Where goods are allowed to be delivered under this section the Commissioner or authorized officer shall, when he has determined the amount of duty which in his opinion is payable, give to the importer a notice specifying the amount; and the amount so specified or, where any amount has been deposited under subsection (1), any difference between those amounts shall forthwith be paid or repaid, as the case may require.

(*Amended L.N. 294 of 1982*)

[*cf. 1952 c. 44 s. 255(1) & (3) U.K.*]

28A. Goods imported for processing or repacking for export

(Adaptation amendments retroactively made-see 12 of 1999 s. 3)

- (1) Where the Commissioner is satisfied that any dutiable goods—
 - (a) were imported solely for the purpose of further processing or repacking for export; or
 - (b) which are beer, are solely for export,he may in writing grant permission for those goods to be delivered to, or stored in, a place approved by him. *(Replaced 16 of 1989 s. 2)*
- (2) The Commissioner may impose conditions in relation to permission granted under subsection (1) and may, in addition, require the owner of such goods to furnish such security, either in cash or by means of a bond, as the Commissioner requires to ensure—
 - (a) the due observance of conditions imposed under this section;
 - (b) the export of the goods; and
 - (c) the safe and secure keeping of the goods in the place.
- (3) Upon any failure to observe any condition imposed under subsection (2), any security furnished under that subsection shall be forfeited to the Government, without prejudice to any other penalty which may be imposed.
- (4) Notwithstanding subsection (3), the Chief Executive in Council may entertain and give effect to any moral claim in respect of any security so forfeited.

(Added 66 of 1986 s. 17. Amended 12 of 1999 s. 3)

29. Liability of licensee of general bonded or licensed warehouse and permittee

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- (1) The licensee of every general and public bonded or licensed warehouse shall be liable for the duty payable in respect of any goods of which he has, or has had, the custody, whether the goods are in his warehouse or not, until the goods are removed from the warehouse in accordance with a permit under this Ordinance and shall in addition be presumed, in the absence of evidence to the contrary, to have unlawfully and in contravention of this Ordinance removed any dutiable goods of which he has had the custody and for which he cannot account; a deficiency shall be deemed not sufficiently accounted for unless it is shown to the satisfaction of the Commissioner to have been caused by natural waste, leakage, breakage or by some other accident or event, other than an error in accounting, which the licensee could not reasonably have foreseen. *(Amended 3 of 1970 s. 17)*
- (1A) A permittee is liable for the duty payable on goods of which he, or a person acting on his behalf, has, or has had, the custody if the goods are found to be deficient and for which he cannot sufficiently account. *(Added 46 of 1996 s. 14)*
- (1B) A person who is allowed to handle dutiable goods without a permit is liable for the duty payable on dutiable goods lost or found deficient while in his custody or in the custody of a person acting on his behalf and for which he cannot sufficiently account. *(Added 46 of 1996 s. 14)*
- (1C) A permittee or other person is, in the absence of evidence to the contrary, presumed to have unlawfully and in contravention of this Ordinance removed any dutiable goods of which he had the custody and for which he cannot sufficiently account. *(Added 46 of 1996 s. 14)*
- (1D) A permittee or other person has not sufficiently accounted for a deficiency unless it is shown to the satisfaction of the Commissioner to have been caused by natural waste, leakage, breakage or by some other accident

or event, other than an error in accounting, which the person could not reasonably have foreseen. (*Added 46 of 1996 s. 14*)

- (2) If when assessing duty under this section it is not possible to ascertain the exact quantity, nature or value of the goods concerned, the Commissioner may assess duty on the basis of the best evidence available or where such evidence does not exist or is not considered to be correct he may decide on the quantity and nature of the goods or he may fix a value which shall be deemed to be the value of the goods for the purposes of calculation of duty.
- (3) Any person who is aggrieved by a decision of the Commissioner made under this section may appeal to the Administrative Appeals Board.

(Amended L.N. 294 of 1982; 46 of 1996 s. 14)

30. Contracts for sale of duty-paid goods when duties are altered or repealed

- (1) When any new duty is imposed and when any duty is increased and any duty-paid goods are delivered on or after the day on which the new or increased duty takes effect, in pursuance of a contract made before that day, and the seller has paid such new or increased duty, he may in the absence of any agreement to the contrary recover as an addition to the contract price a sum equal to the amount paid by him in respect of the goods on account of the new duty or the increase of duty, as the case may be.
- (2) When any duty is repealed or decreased and any duty-paid goods are delivered on or after the day on which the duty ceases or the decrease in duty takes effect, in pursuance of a contract made before that day, the buyer, in the absence of any agreement to the contrary, may, if the seller has had in respect of those goods the benefit of the repeal or decrease in the duty, deduct from the contract price a sum equal to the

amount of the duty or the decrease of duty, as the case may be.

- (3) When any addition to or deduction from the contract price may be made under this section on account of any new or repealed duty, such sum as may be agreed upon, or in default of agreement as may be determined by the Commissioner, as representing in the case of a new duty any expenses incurred and in the case of a repealed duty any expenses saved may be included in the addition to or deduction from the contract price and may be recovered or deducted accordingly. *(Amended L.N. 294 of 1982)*
- (4) This section shall apply although the goods have undergone some process of manufacture since the duty was paid.

31. Execution and distress against licensees

- (1) Where any sum is owing by any person licensed under the provisions of this Ordinance in respect of any duty or of any penalty incurred by him under this Ordinance, all goods on which duty is liable to be paid, whether or not that duty has been paid, and all materials for manufacturing or producing any such goods and all apparatus, equipment, machinery, tools, vessels and utensils for, or for preparing any such materials for, such manufacture or product or by which the trade in respect of which the duty is imposed is carried on, which are in the possession, custody or control of that licensee or of any agent of his or of any other person on his behalf or which, whether or not still in such custody or possession, were in such custody or possession—
 - (a) at the time when the duty was charged or became chargeable or at any time while it was owing; or
 - (b) at the time of the commission of the offence for which the penalty was incurred,

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shall be liable to be taken in execution in default of the payment of that sum. (*Amended 3 of 1970 s. 36*)

- (2) Notwithstanding anything in subsection (1), where the Commissioner or other officer authorized under section 26 or 26A has taken account of and charged any goods chargeable with duty, and those goods are in the ordinary course of trade sold for full and valuable consideration to a bona fide purchaser and delivered into his possession before the issue of any warrant or process for distress or seizure of the goods, those goods shall not be liable to be seized under subsection (1): (*Amended L.N. 294 of 1982; 34 of 1984 s. 7*)

Provided that, where any goods have been so seized, the burden of proof that the goods are by virtue of this subsection not liable to be so seized shall lie upon the person claiming that they are not so liable.

- (3) Where any duty payable by a licensee remains unpaid after the time within which it is payable, the Commissioner may authorize in writing any person to distrain anything liable to be taken in execution under this section and to sell anything so distrained by public auction after giving 7 days' notice of the sale:

Provided that where the licensee is a distiller, brewer, or manufacturer, he may, subject in the case of a distiller to the requirements of this Ordinance as to permits for the removal of spirits, at any time before the date appointed for the sale, remove the whole or part of any product or materials for his manufacture which may have been so distrained upon paying to the Commissioner in or towards payment of the duty the true value of those products or materials. (*Amended 3 of 1970 s. 36; L.N. 294 of 1982*)

- (4) Any notice required by subsection (3) shall be given by the Commissioner in writing to any person, who to his knowledge was at the time of seizure the licensee or the agent or servant

of the licensee, and shall be deemed to have been duly served on the person concerned- (*Amended L.N. 294 of 1982*)

- (a) if delivered to him personally; or
 - (b) if addressed to him and left or forwarded by registered post to him at his usual or last known place of abode or business.
- (5) Where such notice cannot be served as provided in subsection (4) then a notice that anything has been seized in default of an payment in accordance with the provisions of subsection (1) shall be exhibited in a place available to the public at the office of the Commissioner for a period of 7 days, such period to commence 7 days before anything is sold. (*Amended L.N. 294 of 1982*)
- (6) The proceeds of sale of any such distress as aforesaid shall be applied in or towards payment of the cost and expenses of the distress and sale and in or towards payment of the duty due from the licensee, and the surplus, if any, shall be paid to the licensee.

[*cf. 1952 c. 44 s. 253 U.K.*]

32. Recovery of duty, etc.

- (1) Without prejudice to any other mode of recovery provided in this Ordinance, any duty payable or sum forfeited or deemed to be forfeited under this Ordinance shall be deemed to be a debt due to the Government. (*Amended 46 of 1996 s. 15*)
- (2) Any debt due under subsection (1) may be recovered by action in the District Court even though the amount of the debt exceeds the amount prescribed in section 33 of the District Court Ordinance (Cap. 336). (*Added 46 of 1996 s. 15*)
- (3) A certificate purporting to be signed by the Commissioner stating the name and last known residence or place of business of the person in default of payment and particulars

of the duty assessed and any penalties due is sufficient evidence of the matters stated. (*Added 46 of 1996 s. 15*)

33. Search of baggage and goods

- (1) Any person landing from or proposing to embark in any ship or aircraft or entering or leaving Hong Kong by land shall on demand by any member of the Customs and Excise Service or police officer either permit his person, goods and baggage to be searched by such member or officer or together with his goods and baggage accompany such member or officer to a place appointed by the Commissioner or to the office of the Commissioner or to a police station and there permit his person, goods and baggage to be searched by any member of the Customs and Excise Service or police officer in the presence or under the supervision of a member of the Customs and Excise Service not below the rank of inspector or a police officer not below the rank of inspector (*Amended 46 of 1977 s. 17; L.N. 294 of 1982; 68 of 1995 s. 2; 46 of 1996 s. 16*)
 - (1A) A person shall not be searched except by a person of the same sex. (*Added 46 of 1996 s. 16*)
 - (1B) A member of the Customs and Excise Service or a police officer shall not search the goods and baggage of a person who wishes to be present when they are searched except in the person's presence. (*Added 46 of 1996 s. 16*)
- (2) Any member of the Customs and Excise Service or police officer may make the searches authorized by this section and any person who refuses to comply with any lawful demand under this section may be arrested without warrant by the officer making the demand.

34. Examination of articles (other than baggage) on shore, ship, etc.

Any box, chest, package or other article, other than passenger's baggage accompanied by the owner thereof, which is being landed from or is being embarked on any ship, aircraft, vehicle or train or has been landed therefrom or is in or on board thereof, or which is on or is being removed from or on to any island, landing place, wharf, warehouse, platform or place adjoining thereto or used in connection therewith, or which is being brought into or which is being taken out of or has been brought into Hong Kong by land, sea or air—

- (a) may be examined and searched by any member of the Customs and Excise Service and may be detained until any person in charge thereof has opened the same for such examination and search, and if not so opened may be removed by such member of the Customs and Excise Service to such place as the Commissioner may direct;
- (b) may be broken open by the orders of any member of the Customs and Excise Service authorized by the Commissioner in that behalf either generally or for a particular occasion, or of any police officer not below the rank of inspector, for such examination and search:

Provided that any person in charge or possession of such box, chest, package or other article shall be given every reasonable facility for being present at such breaking, examination and search.

(Amended L.N. 294 of 1982)

34A. Declaration by persons entering Hong Kong

- (1) A person entering Hong Kong at an entry point shall declare to a member of the Customs and Excise Service the quantity

of dutiable goods contained in his personal baggage or carried by him which are in excess of the quantities that the Commissioner has published in the Gazette.

- (2) A person entering Hong Kong at a place other than an entry point shall declare when asked by a member of the Customs and Excise Service in uniform whether or not the quantity of dutiable goods contained in his personal baggage or carried by him are in excess of the quantities that the Commissioner has published in the Gazette.
- (3) A person who fails to declare in accordance with subsection (1) or (2) or makes a false or incomplete declaration for the purpose of subsection (1) or (2) commits an offence.

(Added 46 of 1996 s. 17)

35. *(Repealed 66 of 1986 s. 18)*

36. **Misrepresentation, concealment, removal of goods, and defacement of licence or permit**

- (1) No person shall make any incomplete statement or declaration or furnish any incorrect information, however made or furnished, or apply any incorrect description or supply any incorrect particulars in any document made or furnished for the purposes of this Ordinance or for any licence or permit to be issued under this Ordinance. *(Amended 19 of 2001 s. 11)*
- (2) Any person who—
 - (a) attempts to evade payment of duty on any goods to which this Ordinance applies, embarks or causes to be embarked for exportation on any ship or aircraft, or produces or causes to be produced to any member of the Customs and Excise Service to be so embarked—
 - (i) any goods to which this Ordinance applies and which are not intended for export; or

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- (ii) any goods, matter or thing as goods to which this Ordinance applies, the same not being goods to which this Ordinance applies or which are different in type, nature, quantity or quality from the goods shown on any export permit or statement which is presented and which purports to cover such goods; or
 - (b) with any such intent fraudulently removes, deposits or conceals any goods, matter or thing; or
 - (c) after any goods to which this Ordinance applies have been embarked for exportation on any ship or aircraft, without the consent of the Commissioner opens the packages in which the goods are contained or cancels, or obliterates, or alters the marks, letter or devices thereon,
- shall on summary conviction, in addition to all other penalties which he may thereby incur, pay or forfeit either treble the amount of duty payable on any goods involved or the sum of \$50,000, at the election of the Commissioner (which election shall be certified by the Commissioner in writing under his hand), and all such goods, matters or things shall be forfeited and may be seized by any member of the Customs and Excise Service. (*Amended L.N. 294 of 1982; L.N. 338 of 1995*)
- (3) No person shall without lawful authority alter, deface or make any erasure on a licence or permit, or have in his possession a licence or permit on which such an erasure has been made or which has been so defaced or altered.

(Amended 46 of 1996 s. 18)

[cf. 1840 c. 18 s. 15 U.K.; 1918 c. 15 s. 15(5) U.K.]

37. Forging documents, etc.

- (1) No person shall—

- (a) forge or falsify any document which is required by or under the provisions of this Ordinance or which is used in the transaction of any business relating to any trade involving goods to which this Ordinance applies; or
 - (b) knowingly accept, receive, or use any such document so forged or falsified; or
 - (c) without lawful authority alter or deface any such document after it is officially issued; or (*Amended 66 of 1986 s. 19*)
 - (d) forge any seal, signature, initials or other mark of or used by any officer for the verification of such a document or for the security of goods or for any other purpose relating to the provisions of this Ordinance. (*Amended 3 of 1970 s. 36; 49 of 1992 s. 5*) [*cf. 1952 c. 44 s. 302 U.K.*]
- (2) In this section, “forge” (偽造) has the meaning assigned to that term by Part IX of the Crimes Ordinance (Cap. 200). (*Added 49 of 1992 s. 5*)

38. Restrictions on use and transfer of permits and licences

- (1) No person shall without the consent of the Commissioner or an officer authorized in accordance with section 7—
- (a) transfer; or
 - (b) supply, permit or allow any other person to use, any licence or permit issued under this Ordinance.
- (2) No person shall, without the consent of the Commissioner or an officer authorized in accordance with section 7, receive, obtain or use any permit or licence issued to any other person under this Ordinance.

(Amended 3 of 1970 s. 36; L.N. 294 of 1982)

38A. Duty exempt goods dutiable in certain cases

- (1) If a person sells, offers for sale, exposes for sale or possesses for sale goods that are exempted from duty other than in accordance with the regulations—
 - (a) the person is liable to pay duty as if the exemption had not been granted; and
 - (b) the goods become dutiable goods.
- (2) A person who sells, offers for sale, exposes for sale or possesses for sale goods that are exempted from duty other than in accordance with the regulations commits an offence.

(Added 46 of 1996 s. 19)

39. *(Repealed 66 of 1986 s. 20)*

40. Presumptions

In proceedings under this Ordinance and in proceedings to recover duties imposed under this Ordinance, it is presumed in the absence of evidence to the contrary that—

- (a) if a person is in possession of 500 or more cigarettes that are in packets—
 - (i) bearing the mark HKDNP; or
 - (ii) not bearing a prescribed health warning under the Smoking (Public Health) Ordinance (Cap. 371),
the cigarettes are dutiable goods;
- (b) if a person is in possession of 5 litres or more of liquor—
 - (i) in a container bearing the mark HKDNP; or

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- (ii) in a container bearing a mark indicating that the liquor is for export from Hong Kong or for ships' or aircraft stores,
the liquor is dutiable goods;
- (c) if a person—
 - (i) sells, supplies, buys, receives or otherwise deals in light diesel oil (other than marked oil) or motor spirit; or
 - (ii) transfers light diesel oil (other than marked oil) or motor spirit to or from a vehicle's fuel tank,
and does so—
 - (A) at a location other than premises in respect of which a licence for the storage of diesel oils (being dangerous goods in category 5, class 3) or petrol (being dangerous goods in category 5, class 1) (as the case may be) has been issued under Part VI of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B); and
 - (B) in circumstances that give rise to a reasonable belief that the light diesel oil or motor spirit is dutiable,
the light diesel oil or motor spirit found in or about the location is dutiable goods; (*Replaced 57 of 2000 s. 4*)
- (ca) any light diesel oil found in the fuel tank of a motor vehicle and having a sulphur content in excess of that stipulated in Schedule 1 to the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg. L) is dutiable goods unless the circumstances are such that the exemption under regulation 12(1)(n), (p) or (pa) of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) applies; (*Added 72 of 2000 s. 2*)

- (d) dutiable goods on premises are in the possession of the licensee, tenant, lessee, occupier and person in charge of the premises;
- (e) goods are of the weight and measure described in a bill of lading, air waybill, permit or other document accompanying or relating to the goods; and
- (f) a person employed in or about licensed premises is employed by the licensee or the person in charge of the premises.

(Replaced 46 of 1996 s. 20)

41. Import manifests to be evidence of import

In civil or criminal proceedings connected with this Ordinance, if—

- (a) the owner, charterer or agent of any ship or aircraft;
- (b) the master of a ship;
- (c) the person in charge of an aircraft;
- (d) the driver of a vehicle; or
- (e) the cargo handling agent of a train,

furnishes an import manifest showing cargo, it is presumed in the absence of evidence to the contrary that the cargo was imported into Hong Kong on board the ship, aircraft, vehicle or train.

(Replaced 46 of 1996 s. 20)

42. Certain certificates to be evidence

In all proceedings under this Ordinance and in all proceedings for the recovery of any duty on goods to which this Ordinance applies, copies of or extracts from the records of the Commissioner or the officer authorized to grant any licence or permit, purporting to be

certified by him, shall be prima facie evidence of the facts stated or appearing therein or to be inferred therefrom.

(Amended 31 of 1969 Schedule; L.N. 294 of 1982)

42A. Proof of contents of electronic record

- (1) A document—
 - (a) purporting to be a copy, produced from one of the Government's information systems, of the record of any information sent or received by a Government information system in the form of an electronic record; and
 - (b) purporting to be certified by the Commissioner, shall be admitted in any proceedings under this Ordinance before a court or magistrate on its production without further proof.
- (2) Where a document is produced and admitted as evidence under subsection (1)—
 - (a) the court or magistrate before which it is produced shall, until the contrary is proved, presume that—
 - (i) it was certified by the Commissioner;
 - (ii) the document is a true copy of the record of information so sent; and
 - (iii) the record was duly made at the time referred to in the document; and
 - (b) the document is evidence of the contents of the information sent by the sender.
- (3) Where a document is produced and admitted as evidence under subsection (1), the court or magistrate may, if it or he thinks fit, on its or his own motion or on the application of any party to the proceedings, summon the person who

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certified the document and examine him as to its subject-matter.

(Added 19 of 2001 s. 12)

43. Magistrate may call in expert

The magistrate hearing any charge under this Ordinance may, at the request of the accused, employ an analyst or other expert to report on any matter of a technical nature.

44. Informers

Save where, in the opinion of the court or magistrate, justice so requires, the name or identity of any informer and the information given by such informer shall not be disclosed in any civil or criminal proceedings and the court or magistrate may make any order and adopt any procedure necessary to prevent any such disclosure.

45. Manner of seizure not to be inquired into by court

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

On any trial before any magistrate and in any proceedings on appeal in the Court of First Instance relating to the seizure of anything under this Ordinance, the magistrate or the court shall proceed to such trial and to the hearing of such appeal on the merits of the case only, without reference to matters of form and without inquiring into the manner or form of making any seizure except in so far as the manner or form of seizure may be evidence on such merits.

(Amended 25 of 1998 s. 2)

46. Offences and penalties

- (1) A person who contravenes a condition, restriction, requirement or direction lawfully imposed, made or given under this Ordinance commits an offence.

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- (2) Where a magistrate is of the opinion that a person committed an offence with intent to avoid payment of duty, he may, in addition to the fine or imprisonment provided for the offence, impose a fine not exceeding 10 times the amount of duty payable on the dutiable goods in respect of which the person committed the offence.
- (3) Except as expressly provided in this Ordinance, any person who contravenes a provision of this Ordinance set out in column 1 of Schedule 2 commits an offence and is liable on conviction to the penalty set out opposite that provision in columns 2 and 3 of that Schedule. *(Replaced 57 of 2000 s. 5)*
(Replaced 46 of 1996 s. 21)

46AA. Disqualification order for hydrocarbon oil offences

- (1) This section applies to any offence—
 - (a) under section 17(1) or (6) in respect of hydrocarbon oil; or
 - (b) under regulation 5A, 5B or 9 of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg. C),if the person concerned commits the offence in respect of hydrocarbon oil in the fuel tank of a vehicle used by the person or if the person concerned uses a vehicle in the course of commission of the offence. An offence to which this section applies is referred to in this section as a “relevant offence”.
- (2) The court or magistrate, on convicting a person of a relevant offence, shall order the person to be disqualified for a period of—
 - (a) 6 months, if the person has one previous conviction of any relevant offence;

- (b) not less than 6 months, if the person has two or more previous convictions of any relevant offences, whether the present and previous convictions relate to offences under the same provision or under two or more different provisions referred to in subsection (1). This subsection does not apply to a previous conviction of an offence that was committed before the commencement of section 6 of the Dutiable Commodities (Amendment) Ordinance 2000 (57 of 2000).
- (3) An order of disqualification under this section may be taken into account in determining any other penalty for the offence.
- (4) The court or magistrate may deal with an offence as a first offence if a period of 5 years has elapsed since the person's last conviction of any relevant offence.
- (5) If satisfied that there are special reasons for doing so, the court or magistrate may order that a person to which subsection (2) applies to be disqualified for a period shorter than 6 months or that the person not be disqualified.
- (6) The following provisions apply to disqualification under this section as they apply to disqualification under the Road Traffic Ordinance (Cap. 374), namely—
- (a) (i) section 44 (offence of obtaining licence, or driving, while disqualified);
- (ii) section 71 (notification and effect of, and appeal against, disqualification);
- (iii) section 72 (removal of disqualification) (except that a reference in subsection (5) of that section to the Commissioner of Police shall be treated as a reference to the Commissioner of Customs and Excise); and
- (iv) section 111 (forgery of documents),

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- of the Road Traffic Ordinance (Cap. 374); and
- (b)
 - (i) regulation 6 (restrictions on issue of driving licences);
 - (ii) regulation 10 (applications for full driving licences);
 - (iii) regulation 12B (application to take a motor cycle driving test);
 - (iv) regulation 31 (application to take a driving test);
 - (v) regulation 35 (procedure on disqualification);
 - (vi) regulation 37 (visiting drivers from abroad);
 - (vii) regulation 38 (application of other provisions to visiting drivers);
 - (viii) regulation 39 (record of driving licences and permits);
 - (ix) regulation 45 (right of review); and (*Amended 23 of 2008 s. 65*)
 - (x) the Seventh Schedule (particulars of record), of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B).
 - (7) The power to order disqualification under this section does not affect the power to order disqualification under any other Ordinance.
 - (8) In any proceedings for a relevant offence, a certificate stating—
 - (a) that the person named in it was convicted of the relevant offence specified in it and whether the person committed the offence in respect of hydrocarbon oil in the fuel tank of a vehicle used by the person or the person concerned used a vehicle in the course of commission of the offence;

- (b) the date on which the person was so convicted; and
 - (c) the date of the commission of that offence,
- and purporting to be signed by or on behalf of the Commissioner shall be admitted in evidence for the purpose of this section on its production without further proof; and—
- (i) until the contrary is proved, the court or magistrate shall presume that the certificate is so signed; and
 - (ii) the certificate shall be prima facie evidence of the facts stated therein.
- (9) In this section—
- “disqualified” (取消駕駛資格) means disqualified from holding or obtaining a driving licence;
- “driving licence” (駕駛執照) means a driving licence issued under the Road Traffic Ordinance (Cap. 374);
- “special reasons” (特別理由) means—
- (a) special reasons that relate to the offence; or
 - (b) in exceptional circumstances, special reasons that relate to the offender or to such other circumstance as the court or magistrate may consider relevant.

(Added 57 of 2000 s. 6)

46A. Liability for acts of servants

- (1) Where an offence against this Ordinance is committed by a servant of a licensee, the licensee shall, without prejudice to the liability of any other person, also be guilty of that offence but shall not be liable to any term of imprisonment.
- (2) Where a prosecution is brought against a licensee by virtue of this section in respect of an offence committed by a servant, it shall be a defence—

- (a) in the case of an offence against section 61, 71, 72 or 73, if the licensee shows that he exercised such control over the servant as would ensure that the servant was not likely to act in contravention of that section; or (*Amended 40 of 1974 s. 8; 34 of 1976 s. 6*)
 - (b) in the case of any other offence, if the licensee shows that he took all practicable steps to prevent the commission of the offence.
- (3) Where a licence is granted to any person wholly or partly for the benefit of a company reference to “licensee” in this section shall be read as including references to the company.

(Added 3 of 1970 s. 20)

47. Commencement of prosecution

Any prosecution of any person for any offence against the provisions of this Ordinance shall be commenced within 12 months from the date of such offence or 6 months from the discovery of the offence whichever is the later.

(Amended 3 of 1970 s. 36)

47A. Power of Commissioner to compound

- (1) The Commissioner may, if he has reason to believe that a person has committed an offence, compound an offence listed in column 2 of Schedule 3 in the circumstances, if any, prescribed in column 3.
- (2) In compounding an offence, the person reasonably believed to have committed the offence shall pay the sum of money listed in column 4 of Schedule 3 as a penalty. (*Amended 4 of 2003 s. 5*)
- (3) On acceptance of a payment under subsection (2) in a case where dutiable goods are seized in connection with the offence— (*Amended 4 of 2003 s. 5*)

- (a) the Commissioner shall release the goods and further proceedings on the offence shall not be taken against the person or goods; and (*Amended 4 of 2003 s. 5*)
 - (b) the full duty payable on the goods is taken to have been paid.
- (4) A magistrate or court may refer to a record of a previous conviction and compounding maintained by the Commissioner under section 47B for the purpose of determining the sentence to be passed on a person convicted of another subsequent offence.

(Added 46 of 1996 s. 22)

47B. Register of offences

- (1) The Commissioner shall maintain a register of—
- (a) persons convicted of offences under this Ordinance; and
 - (b) persons whom the Commissioner has reason to believe have committed an offence and the offence has been compounded under section 47A.
- (2) The Commissioner shall keep in the register—
- (a) the name and travel document details;
 - (b) the date of conviction for offences;
 - (c) the date of compounding for compounded offences; and
 - (d) such other relevant information as the Commissioner thinks fit.

(Added 46 of 1996 s. 22)

47C. Certificate of conviction or compounding

A certificate purporting to be signed by the Commissioner stating that according to the record of convictions for offences or the record of compounded offences maintained under section 47B, a

person of the name and holding the travel document specified in the certificate was convicted of the offences or had the offences compounded on the date as set out in the certificate is sufficient evidence of the matters stated.

(Added 46 of 1996 s. 22)

48. Forfeiture

- (1) Wherever there occurs a contravention or an attempted contravention of any provision of this Ordinance in respect of any goods, such goods shall be liable to forfeiture whether or not any person is convicted of any offence. *(Amended 3 of 1970 s. 36)*
- (2) Wherever there occurs a contravention or an attempted contravention of any provision of this Ordinance, any things which are mentioned in section 15(1)(a), (b), (c) and (d) and which are made use of in such contravention or attempted contravention shall be liable to forfeiture whether or not any person is convicted of any offence. *(Amended 3 of 1970 s. 36)*

(2A) The Commissioner may, on payment of any duty payable on the goods and on complying with any conditions imposed under directions given by the Commissioner under this Ordinance, within 30 days of the seizure of the goods or things liable to forfeiture restore any goods or things liable to forfeiture to the person who appears to him to be the owner or the authorized agent of the owner and, on restoration, this section and sections 48A, 48B, 48C, 52 and 52A shall cease to apply to the goods and things. *(Added 70 of 1993 s. 4)*
- (3) The Commissioner shall, subject to subsection (3A) and not later than 30 days beginning on the date of seizure of goods or things liable to forfeiture, serve notice of the seizure on a person who was to the knowledge of the Commissioner at the time of, or immediately after, seizure, an owner of the goods or things liable to forfeiture. *(Replaced 70 of 1993 s. 4)*

- (3A) Subsection (3) shall not apply—
- (a) if the goods or things liable to forfeiture were seized in the presence of—
- (i) an owner, or an employee or agent of the owner, of the goods or things;
 - (ii) the person whose offence or suspected offence gave rise to the seizure; or
 - (iii) in the case of a ship, vehicle or aircraft, the master or person in charge; or
- (b) in relation to an owner who does not have a permanent address in Hong Kong at the time of seizure. (*Added 70 of 1993 s. 4*)
- (3B) Notwithstanding anything in subsection (3A)(a), where the Commissioner believes that the goods or things liable to forfeiture are stolen, he shall serve notice of the seizure within the period specified in subsection (3), on a person whom he believed at the time of, or immediately after, seizure, to be an owner of the goods or things. (*Added 70 of 1993 s. 4*)
- (4) Notice under subsection (3) or (3B) shall be given in writing and shall be deemed to have been duly served on the person concerned—
- (a) if delivered to him personally; or
 - (b) if sent by registered post addressed to him at his usual or last known place of abode or business.
- (5) Where a notice under subsection (3) or (3B) cannot be given, then a notice of the seizure together with the date and place thereof shall be exhibited in a place available to the public at the Customs and Excise Department for a period of 7 days, such period to commence within 30 days after the seizure. (*Amended L.N. 294 of 1982*)

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- (6) If goods or things are liable to forfeiture under this section, a claimant may, within 30 days beginning—
- (a) on the date of the seizure; or
 - (b) where notice under subsection (3) or (3B) is—
 - (i) served by delivery to the person to be served, on the date of service;
 - (ii) sent by registered post, 2 days after the date of posting; or
 - (iii) exhibited as described in subsection (5), on the first day it is so exhibited,

give notice in writing to the Commissioner claiming that the goods or things are not liable to forfeiture and of his full name and address for service in Hong Kong. *(Replaced 70 of 1993 s. 4)*

(6A) Where a claimant does not have a permanent address in Hong Kong, the notice to the Commissioner under subsection (6) shall nominate a solicitor qualified to practise under the Legal Practitioners Ordinance (Cap. 159), by including the name and address of the solicitor, who is authorized to accept service on his behalf in relation to any forfeiture proceedings. *(Added 70 of 1993 s. 4)*

(6B) If a notice referred to in subsection (6A) does not include the name and address of a solicitor as required under that subsection, it shall be regarded as if no notice had been given. *(Added 70 of 1993 s. 4)*

(6C) Service of notice, a summons issued by a magistrate or other process in relation to forfeiture under this Ordinance at an address given under subsection (6) or on a solicitor nominated under subsection (6A), shall be good service on the claimant. *(Added 70 of 1993 s. 4)*

(6D) A claimant may withdraw a notice of claim at any time by writing to the Commissioner. *(Added 70 of 1993 s. 4)*

- (7) If on the expiration of the relevant period aforesaid for the giving of notice of claim in respect of any goods or things liable to forfeiture no such notice has been given to the Commissioner, the goods or things liable to forfeiture in question shall be deemed to have been duly condemned as forfeited. (*Amended L.N. 294 of 1982; 70 of 1993 s. 4*)
- (8)-(12) (*Repealed 70 of 1993 s. 4*)
- (Amended 70 of 1993 s. 4)*

48A. Proceedings for forfeiture

- (1) When a claimant gives notice under section 48(6), the Commissioner shall apply to a magistrate for the forfeiture of the goods or things liable to forfeiture and shall state in the application the name and address of the claimant or in the case of a claimant who does not have a permanent address in Hong Kong, the name and address of the solicitor authorized to accept service.
- (2) When an application is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of the summons to be served on the Commissioner.
- (3) Where a claimant is the defendant in criminal proceedings before a magistrate and there is no other claimant, on an application made in that behalf by the Commissioner, the magistrate may hear the forfeiture application immediately following the hearing of criminal proceedings and subsection (2) shall not apply.
- (4) A magistrate may, at the time and place of hearing for forfeiture application, or at an adjourned hearing, hear a person—

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- (a) who has not been served with a notice of seizure and was not present when goods or things liable to forfeiture were seized; or
- (b) whose identity was not known to the Commissioner at the time of, or immediately after, seizure; and
- (c) who appears to the magistrate to have a right to claim ownership of, or a legal or equitable interest in, the goods or things liable to forfeiture,

on his claim as to why the goods or things liable to forfeiture should not be forfeited.

- (5) If, at the time and place appointed in a summons, neither the claimant nor another person who may have been entitled to make a claim appears and the magistrate is satisfied—

- (a) that the summons was served;
- (b) that a person at the address for service, including a solicitor nominated to accept service on behalf of a claimant, has refused to accept the service of summons; or
- (c) that the address for service given to the Commissioner is inadequate to effect service of the summons,

the magistrate shall hear the application without further inquiry as to the whereabouts of the claimant.

- (6) Upon the hearing of an application under this section a magistrate shall order that the goods or things, as the case may be, be forfeited to the Government where- (*Amended 46 of 1996 s. 23*)

- (a) the person who appears in answer to the summons fails to satisfy the magistrate that he was, or would have been, entitled to make a claim under section 48(6) in respect of the seized goods or things; and

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- (b) no other person appears before the magistrate and satisfies him that he was, or would have been, entitled to make a claim; and
 - (c) the magistrate is satisfied that the goods or things are liable to forfeiture.
- (7) Upon the hearing of an application under this section, in any case other than a case referred to in subsection (6), a magistrate may if he is satisfied that the goods or things are liable to forfeiture and that a person is, or would have been, entitled to make a claim under section 48(6) in respect of the seized goods or things order that the goods or things—
 - (a) be forfeited to the Government; (*Amended 46 of 1996 s. 23*)
 - (b) be delivered to the claimant subject to any condition which he may specify in the order, including a condition—
 - (i) that the duty payable under this Ordinance be paid; and
 - (ii) that the claimant discharge the obligations imposed on him under this Ordinance; or
 - (c) be disposed of in the manner and subject to the conditions as he may specify in the order.
- (8) If, after a magistrate has ordered that goods or things liable to forfeiture be delivered to a person, that person cannot be found or refuses to accept the goods or things, the Commissioner may apply to a magistrate who may—
 - (a) order that the goods or things liable to forfeiture be forfeited; or
 - (b) make any other order as he considers fit in the circumstances.
- (9) On the hearing of an application—

- (a) a certified copy of the record of proceedings, including the decision of the court or magistrate, in proceedings for the contravention of this Ordinance is admissible in evidence; and
- (b) a certificate issued by the Director of Marine or a person authorized by him as a Certifying Authority under the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C) certifying the gross tonnage of a ship, shall without proof of the signature, be admissible as evidence of the facts stated in the certificate.

(Added 70 of 1993 s. 5)

48B. Power to release seized ships, vehicles and aircraft prior to hearing

- (1) Where an application for forfeiture has been made under section 48A in respect of a ship, vehicle or aircraft which is liable to forfeiture, a magistrate may, on payment into court by way of security of a sum of money not less in amount than the value of the seized ship, vehicle or aircraft, as assessed by the Commissioner, order that the ship, vehicle or aircraft be delivered to the claimant on condition that the ship, vehicle or aircraft be redelivered into the custody of the Commissioner before the date of the hearing of the application.
- (2) A claimant who applies for the release of a ship, vehicle or aircraft shall, prior to the release of the ship, vehicle or aircraft, pay the reasonable cost of assessing the value of the ship, vehicle or aircraft as the magistrate orders.
- (3) If—
 - (a) a magistrate has ordered under subsection (1) that a seized ship, vehicle or aircraft be delivered to the claimant; and

- (b) the ship, vehicle or aircraft is not redelivered into the custody of the Commissioner before the date of the hearing,

the magistrate hearing the application may, in lieu of ordering under section 48A(6) or (7) that the ship, vehicle or aircraft be forfeited to the Government, order that the money paid into court under subsection (1) be forfeited to the Government or returned to the person who paid it into court or the claimant. (*Amended 46 of 1996 s. 24*)

(*Added 70 of 1993 s. 5*)

48C. Claims for return of forfeited goods, etc.

(Adaptation amendments retroactively made—see 12 of 1999 s. 3)

- (1) A claimant may within 6 weeks after—

- (a) goods or things have been forfeited to the Government under section 48(7) or 48A(6) or (7); or (*Amended 46 of 1996 s. 25*)
- (b) the determination of an appeal against an order for forfeiture of goods or things made by a magistrate under section 48A(6) or (7),

give notice in writing to the Commissioner of his intention to submit to the Chief Executive a petition in respect of the forfeited goods or things.

- (2) Where a claimant has submitted a petition to the Chief Executive by lodging it in triplicate with the Chief Secretary for Administration within 1 month of giving notice under subsection (1), the Chief Executive may after considering the petition— (*Amended L.N. 362 of 1997*)

- (a) order the return of the forfeited goods or things to the claimant;
- (b) stipulate conditions upon which the delivery and transfer of ownership of the forfeited or disposed of goods or

things, or the proceeds of any disposal, to the claimant is to be effected; or

- (c) reject the petition.

(Added 70 of 1993 s. 5. Amended 12 of 1999 s. 3)

49. Evidence of forfeiture

Forfeiture by order of a magistrate under this Ordinance may be proved in any court, or before any competent tribunal, by the production of a certificate of such forfeiture purporting to be signed by the magistrate or by an examined copy of the record of such forfeiture certified by the magistrate's clerk.

50. Protection of members of Customs and Excise Service in forfeiture proceedings

- (1) Where in any proceedings which may involve the condemnation of anything seized as liable to forfeiture judgment is given for the claimant the magistrate may certify that there were reasonable grounds for the seizure.
- (2) Where any proceedings, civil or criminal, are brought against the Commissioner, any member of the Customs and Excise Service or other public officer in respect of anything seized or forfeited which has subsequently been restored to any person under the provisions of this Ordinance, then if the court is satisfied that there were reasonable grounds for the seizure and for the restoration of such thing, the plaintiff or the prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment.
(Amended 3 of 1970 s. 22; L.N. 294 of 1982)

51. Goods abandoned as not worth the duty

- (1) Dutiable goods abandoned by the importer or proprietor as not worth the duty may be destroyed or disposed of within

such time and in such manner as the Commissioner may direct.

- (2) Dutiable goods unclaimed by the importer or proprietor after a period of 7 days from the time of notice being given by the Commissioner that the goods had been received into his custody shall be deemed to have been abandoned as not worth the duty and may be disposed of in the manner prescribed in subsection (1).

(Amended L.N. 294 of 1982)

52. Power to dispose, etc. of perishables, etc.

(Adaptation amendments retroactively made-see 12 of 1999 s. 3)

- (1) If goods or things liable to forfeiture under section 48(1) or (2) are, in the opinion of the Commissioner, of a perishable nature or of such a nature that they are difficult to store or are likely to deteriorate before the conclusion of any proceedings relating to them, the Commissioner may—
 - (a) release the goods or things to the owner or a person entitled to make a claim upon payment by way of security to the Commissioner of an amount of money of not less than the value of the seized goods or things as assessed by the Commissioner;
 - (b) for perishable goods or things, order that the goods or things—
 - (i) be sold and the proceeds of the sale be retained by the Commissioner; or
 - (ii) be destroyed; or
 - (c) for goods or things that are difficult to store or are likely to deteriorate before the conclusion of any proceedings relating to them, apply to a magistrate for an order that the goods or things be sold and the proceeds of the sale be retained by the Commissioner.

- (2) A magistrate shall not make an order under subsection (1)(c) unless he is satisfied, in the case where the application is made—
- (a) before the expiry of the period for making a claim under section 48(6), the persons referred to in section 48(3), (3A) and (3B); or
 - (b) after the expiry of the period referred to in paragraph (a), the persons who have given notice to the Commissioner, have been given notice of the application for an order to sell the goods or things.
- (3) Where an application is made under section 48A with respect to goods or things which are liable to forfeiture under section 48(1) or (2), the magistrate may, in lieu of ordering under section 48A(6) or (7) that the goods or things be forfeited to the Government or be delivered to the claimant, order that the money paid to the Commissioner as security under subsection (1)(a) or retained by the Commissioner under subsection (1)(b) or (c) be forfeited to the Government or paid to the person giving the security or the claimant. *(Amended 12 of 1999 s. 3)*
(Replaced 70 of 1993 s. 6)

52A. Stay of order on appeal

- (1) Subject to subsection (2), an order by a magistrate for the delivery of goods or things to a claimant shall be stayed if the Commissioner or the Secretary for Justice lodges an appeal against the order to deliver the goods or things or an application by way of case stated against the order to deliver the goods or things until those proceedings are dealt with by the higher court. *(Amended L.N. 362 of 1997)*
- (2) The Commissioner may, notwithstanding subsection (1), consent to the delivery of the goods or things.

(Added 70 of 1993 s. 6)

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52B. General indemnity

The Commissioner and members of the Customs and Excise Service are indemnified by the owner of goods or things from liability for damages to the goods or things arising out of the seizure, storage and delivery of the goods or things.

(Added 70 of 1993 s. 6)

PART III

LIQUORS

53. Interpretation

(1) In the application of this Ordinance to liquor- (*Amended 66 of 1986 s. 23*)

“adulterated liquor” (攙雜酒) means—

(a) liquor mixed or coloured with a substance so as to—

- (i) increase the bulk and measure of the liquor;
- (ii) impair its quality; or
- (iii) conceal its inferior quality,

whether the effect of the adulteration is injurious to health or not; and

(b) liquor which is in nature and quality not as labelled,

but does not include—

- (i) whisky mixed with water only so as not to reduce the strength below 40% of ethyl alcohol by volume at 20°C;
- (ii) gin, rum or vodka mixed with water only so as not to reduce the strength below 37.5% of ethyl alcohol by volume at 20°C;
- (iii) brandy mixed with water only so as not to reduce the strength below 36% of ethyl alcohol by volume at 20°C;
- (iv) brandy which in the opinion of the Commissioner is very old liqueur brandy;
- (v) alcoholic liquor prepared for immediate consumption at the order of the purchaser at

premises licensed for the sale or supply of liquor for consumption in the premises;

- (vi) alcoholic liquor prepared for self consumption; or
- (vii) beer mixed with water in the course of its manufacture by a person licensed to brew the beer; *(Replaced 46 of 1996 s. 26)*

“alcoholic strength” (酒精濃度) in relation to—

- (a) any liquor means the volume of ethyl alcohol (also known as ethanol) contained in the liquor in percentage proportion to the volume of the liquor at the standard temperature of 20°C as determined by a method approved by the Government Chemist; and
- (b) a mixture containing methyl alcohol (also known as methanol) means the volume of methyl alcohol contained in the mixture in percentage proportion to the volume of the mixture at the standard temperature of 20°C as determined by a method approved by the Government Chemist; *(Added 34 of 1982 s. 2)*

“beer” (啤酒) includes ale, porter, stout, spruce beer, black beer and any other kind of beer and extends to any liquor made or sold as beer or as a substitute for beer; *(Amended 66 of 1986 s. 23)*

“cider” (蘋果酒) means any intoxicating liquor obtained from the fermentation of apple juice; *(Added 66 of 1986 s. 23)*

“denatured spirits” (變性酒精) means—

- (a) liquor to which has been added crude pyridine, of a quality approved by the Government Chemist, in the proportion of half a litre of such pyridine to each 100L of liquor, and which has been coloured to the satisfaction of the Government Chemist with methyl violet; *(Amended L.N. 189 of 1982)*

- (b) liquor which has been mixed with an equal volume of Chinese vinegar, if such vinegar contains not less than 2% by weight of acetic acid;
- (ba) liquor which has been mixed with a substance or substances approved by the Government Chemist and which the Commissioner is satisfied is for industrial use; and (*Added 61 of 1972 s. 2. Amended L.N. 294 of 1982*)
- (c) any other liquor which the Government Chemist certifies cannot practicably be converted to an intoxicating liquor by dilution, distillation, flavouring, or any other process or processes; (*Replaced 3 of 1970 s. 23. Amended 61 of 1972 s. 2; 20 of 1985 s. 8*)

“industrial type liquor” (工業用酒) means a liquor not intended for use as a beverage; (*Added 66 of 1986 s. 23*)

“intoxicating liquors” (令人醺醉的酒類) includes spirits, liqueurs, wines, beer and all other liquors fit or intended for use as a beverage; (*Amended 46 of 1996 s. 26*)

“liquor” (酒類), “alcoholic liquor” (飲用酒類), “spirituous liquor” (烈酒) or “spirit” (酒精) means any liquid which contains more than 1.2% of ethyl alcohol by volume except—

- (a) denatured spirits;
- (b) any such liquid that is an ingredient in any goods, if that liquid cannot be converted to pure ethyl alcohol or to an intoxicating liquor or if such a conversion would not be economical; (*Replaced 29 of 1989 s. 4*)

“perry” (梨酒) means any intoxicating liquor obtained from the fermentation of pear juice; (*Added 66 of 1986 s. 23*)

“sparkling wine” (有氣葡萄酒) means wine which, when the receptacle containing the beverage is opened, releases carbon dioxide and having, when contained in the receptacle prior to such opening, an excess pressure of not less than 300 kPa at a temperature of 20°C; (*Added 66 of 1986 s. 23*)

“still wine” (無氣葡萄酒) means wine other than sparkling wine;
(*Added 66 of 1986 s. 23*)

“wine” (葡萄酒) means a liquor with an alcoholic strength of not more than 30% by volume measured at a temperature of 20°C, which is obtained from the fermentation of fresh grapes or of the must of fresh grapes, whether or not that liquor is fortified with spirits or flavoured with aromatic extracts.
(*Replaced 45 of 1994 s. 3*)

(*Amended 46 of 1996 s. 26*)

(2) (*Repealed 45 of 1994 s. 3*)

54. Provision for case of death or insolvency of licensee

In case of the death or insolvency of the holder of a licence issued under this Ordinance, his executor or administrator or trustee may carry on the business on the licensed premises until the expiration of the licence, subject in every respect to the same regulations and conditions as the licensee.

(*Amended 66 of 1986 s. 24*)

55. (*Repealed 46 of 1996 s. 27*)

56. Measures or weights for sale of liquor

Every person licensed under this Ordinance to sell liquor shall sell and dispose of his liquors by measures or weights of the standards in use in Hong Kong and not otherwise, except when the quantity is less than 250 mL, or except when the liquor is sold in bottles; he shall also measure or weigh such liquors in the presence of any customer who may require him to do so.

(*Amended L.N. 189 of 1982*)

57. (*Repealed 66 of 1986 s. 25*)

58. Illegal possession of still or fermented material, etc.

- (1) No person shall, except under and in accordance with a licence, or except with the written permission of the Commissioner, or except as provided in section 64A— (*Amended L.N. 294 of 1982; 46 of 1996 s. 28; 57 of 2000 s. 7*)
 - (a) knowingly keep or have in his possession, custody or control any still or part of a still or other utensil or apparatus suitable and intended for manufacturing, making, purifying, refining, distilling, rectifying or processing spirits; (*Amended 29 of 1989 s. 6*)
 - (b) have in his possession, custody or control any fermenting or fermented material. (*Amended 3 of 1970 s. 25*)
- (2) No person shall remove any denaturants from any denatured spirits without the specific authority in writing of the Commissioner. (*Amended L.N. 294 of 1982*)
- (3) Where there is insufficient evidence to convict a person of an offence under subsections (1) and (2), but it is proved that such an offence has been committed on some part of the premises belonging to or occupied by that person in such circumstances that it could not have been committed without his knowledge, that person shall be liable on summary conviction to a penalty at level 3. (*Amended L.N. 338 of 1995*) [*cf. 1952 c. 44 s. 106(2)-(5) U.K.*]
- (4) Any person found on premises on which spirits are being unlawfully manufactured, made, distilled, rectified, purified, refined or processed may be detained if a member of the Customs and Excise Service has reason to believe that the person is aware that spirits are being unlawfully

manufactured, purified, refined or processed. (*Amended 3 of 1970 s. 25; 46 of 1996 s. 28*)

- (5) All spirits and all stills, apparatus, vessels, utensils, fermenting or fermented materials or other materials for manufacturing, making, distilling, rectifying, purifying, refining or processing spirits— (*Amended 3 of 1970 s. 25*)
 - (a) found in the possession of any person who commits an offence under subsection (1); or
 - (b) found on any premises on which such offence has been committed,shall be liable to forfeiture.
- (6) Notwithstanding any other provisions of this Ordinance relating to goods seized as liable to forfeiture, any member of the Customs and Excise Service by whom anything is seized as liable to forfeiture under this section may at his discretion forthwith spill, break up or destroy that thing.

59. Presumptions in proceedings for illicit distillation, etc.

- (1) In any proceedings under this Ordinance relating to illicit distillation, all spirits and all stills, apparatus suitable for distilling, vessels, utensils, fermenting and fermented materials or any chattels or things, whether fixed to the premises or not, found in or upon any land or other premises shall be deemed to have been in the possession, custody or control of the occupier of the premises unless he proves that he did not know, and could not with reasonable diligence have known, that such spirits, stills, apparatus, vessels, utensils, materials or other such chattels or things were in or upon the premises. (*Amended 3 of 1970 s. 26*) [*cf. 1923 c. 14 s. 13(5) U.K.*]
- (2) Every person found in or escaping from any room or place where, in contravention of this Ordinance, materials are being

fermented or fermenting materials or intoxicating liquors are being made or prepared or in which any stills, apparatus suitable for distilling, vessels, utensils or other materials for manufacturing, distilling, rectifying, purifying, refining or processing spirits are found or are being made or prepared shall, in the absence of evidence to the contrary, be presumed to have been unlawfully making, distilling, rectifying, purifying, refining or processing spirits. *(Amended 3 of 1970 ss. 26 & 36; 66 of 1986 s. 26; 46 of 1996 s. 29) [cf. 1831 c. 55 s. 19 U.K.]*

60. Free licences for small stills for registered doctors and pharmacists

The Commissioner may in his discretion issue a licence free of charge to any practitioner registered under the Medical Registration Ordinance (Cap. 161), or to any pharmacist registered under the Pharmacy and Poisons Ordinance (Cap. 138), to keep and use on any specified premises a still of not more than 40 L capacity for the purposes only of his profession or business.

(Amended L.N. 189 of 1982; L.N. 294 of 1982)

61. Distilling, etc. adulterated liquor

- (1) Any person who imports, distils, makes, manufactures, sells, exposes for sale or has in his possession for sale, supplies or deals in, or puts in any container for any such purpose, any adulterated liquor shall be guilty of an offence and shall, if such adulterated liquor is proved to the satisfaction of a magistrate to be injurious to health, be liable to imprisonment for 2 years, in addition to any other penalty to which he may be liable under this Ordinance. *(Amended 3 of 1970 s. 27; 34 of 1976 s. 7)*
- (1A) Where a person is convicted under this section and it is proved to the satisfaction of a magistrate that an adulterant

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in any adulterated liquor in respect of which that person has been convicted is a denaturant which is present in such quantities as not to render the liquor being a denatured spirit within the meaning of this Ordinance, that person shall, in addition to any other penalty to which he is liable under this Ordinance, be liable to imprisonment for 2 years. *(Added 34 of 1976 s. 7)*

(1B) For the purposes of subsection (1), any adulterated liquor found in licensed premises shall be presumed, in the absence of evidence to the contrary, to be in the possession of the licensee for the purpose of sale. *(Added 34 of 1976 s. 7. Amended 46 of 1996 s. 30)*

(2) In the case of any conviction under this section the magistrate may order that any liquor to which the conviction relates and any similar liquor, whether the same be proved to have been adulterated or not, which was on the defendant's premises or in his possession or under his control at the time of the commission of the offence, or which has been seized under this Ordinance, shall be forfeited:

Provided that no such liquor shall be forfeited if it is proved to the satisfaction of the magistrate by the defendant, or by any person into whose possession such liquor may have come, that the same has not been adulterated or was not for sale.

(3) Any liquor forfeited under this section shall be disposed of as the Commissioner directs. *(Amended L.N. 294 of 1982)*

62. *(Repealed 66 of 1986 s. 27)*

63. *(Repealed 16 of 1989 s. 4)*

64. **Denatured spirits to be dutiable goods until certified to the contrary**

(Adaptation amendments retroactively made-see 12 of 1999 s. 3)

- (1) All the provisions of this Ordinance relating to dutiable goods shall apply to any denatured spirits unless and until the Government Chemist has certified in writing in each case that such spirits are denatured spirits, and upon the issue of such certificate the liquor to which it relates shall be deemed to be not dutiable. (*Amended 3 of 1970 s. 28*)
- (2) Any fee prescribed by the Chief Executive in Council for such certificate may be proportionate to the duty which would have been payable had the liquor not been denatured: but no such fee (except a minimum fee) shall exceed one-tenth of the duty. (*Amended 12 of 1999 s. 3*)

64A. Licence not required for home brewing

- (1) A licence is not required for the manufacture of alcoholic liquor, other than by distillation and other than for sale, by a person aged 18 or over in premises which are used by the person exclusively as his place of residence and which constitute a separate household unit.
- (2) Subsection (1) does not apply—
 - (a) if the person who manufactures the liquor is in possession, anywhere in Hong Kong, of alcoholic liquor purported to be manufactured under subsection (1) of a total quantity exceeding 50 litres;
 - (b) if there is kept in the premises in which the liquor is manufactured alcoholic liquor purported to be manufactured under subsection (1) of a quantity exceeding 50 litres;
 - (c) unless the alcoholic liquor so manufactured—
 - (i) is stored in sealed containers marked legibly the words “Home Brewed, Not for Sale” or “家中自釀，不得售賣” or words to the same effect; or

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- (ii) is for immediate consumption.
- (3) For the purpose of manufacture of alcoholic liquor under subsection (1) in any premises, a person may without a licence possess in those premises—
- (a) any utensil or apparatus, other than a still or part of a still, for manufacturing alcoholic liquor;
 - (b) fermenting or fermented materials not exceeding 60 litres.
- (4) In any prosecution for an offence under this Ordinance, the onus of proving the circumstances are such that subsection (1) applies shall be upon the accused.

(Added 57 of 2000 s. 8)

PART IV

TOBACCO

65. Definition of tobacco

In the application of this Ordinance to tobacco—

“Chinese prepared tobacco” (中國熟煙) (Suk Yin 熟煙) is tobacco prepared in the traditional Chinese manner from tobacco leaf grown in China, and comprises 7 main types, namely—

Sang Chit (生切)

Ting Sook (丁熟)

Yee Sook (二熟)

Chai See (齊絲)

Kan Yip (揀葉)

Sheung Sook (上熟)

and Jing Chit (正切)

and may include any other traditional Chinese prepared tobacco which, in the opinion of the Commissioner, is of a type and quality approximate to any of the 7 types of Chinese prepared tobacco specified above; (*Amended 3 of 1970 s. 29; L.N. 294 of 1982; L.N. 254 of 1997*)

“cigar” (雪茄) means any roll of tobacco capable of being smoked by itself and which—

- (a) has an outer wrapper of natural tobacco; or
- (b) predominately contains broken or threshed leaf and has a binder of reconstituted tobacco and an outer wrapper of reconstituted tobacco fitted spirally; (*Added 66 of 1986 s. 29*)

“cigarette” (香煙) means any roll of tobacco capable of being smoked by itself not being a cigar; (*Added 66 of 1986 s. 29*)

“manufacture” (製造) means the conversion of tobacco into manufactured tobacco;

“manufactured tobacco” (製成煙草) includes cigarettes, cigars, snuff, hand-rolling tobacco, smoking tobacco, cigar cuttings, reconstituted tobacco and Chinese prepared tobacco; (*Added 66 of 1986 s. 29*)

“manufacturer” (製造商) includes any person who owns or controls any factory or other place wherein tobacco is manufactured;

“tobacco” (煙草) includes manufactured and unmanufactured tobacco of every description and tobacco stalks, tobacco refuse, tobacco seedlings and tobacco plants;

“unmanufactured tobacco” (未製成煙草) means tobacco which has undergone no process of manufacture except curing, stripping or drying or any of them.

66. (*Repealed 10 of 1988 s. 2*)

67. Manufacture, etc. of adulterated tobacco

(1) A tobacco manufacturer shall not in manufacturing tobacco use any substance other than water or steam, except to such extent as may be permitted by the Commissioner and subject to such conditions as the Commissioner may impose. (*Amended L.N. 294 of 1982*)

(2) Save where their use by him is permitted by or under this section, a tobacco manufacturer shall not receive or have in his possession any of the following substances, namely—

(a) sugar or any other saccharine substance or extract, except such as he proves to be for domestic use;

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- (b) leaves or plants of any description other than tobacco leaves or plants;
 - (c) any substance for use, or capable of being used, as a substitute for or to increase the weight of tobacco.
- (3) Any tobacco manufacturer who contravenes any of the provisions of this section shall be liable to a fine at level 5 and the tobacco or other substance in respect of which the offence was committed shall be liable to forfeiture. *(Amended L.N. 338 of 1995)*

68. Restriction on tobacco growing

No person shall plant or cultivate tobacco (on any land of any category) without the written approval of the Commissioner or other officer deputed by him in that behalf.

(Amended 3 of 1970 s. 30; 29 of 1989 s. 7)

PART V**HYDROCARBON OIL***

Editorial Note:

* (Amended 66 of 1986 s. 30)

69. Definition of hydrocarbon oil

In the application of this Ordinance to hydrocarbon oil—

“aircraft spirit” (飛機燃油) means any hydrocarbon oil suitable and intended for use as fuel in any aircraft; (Amended 84 of 1991 s. 2)

“heavy oil” (重質油) means any hydrocarbon oil other than light oil; (Replaced 66 of 1986 s. 31)

“hydrocarbon oil” (碳氫油) means petroleum oil, coal tar, and oil produced from coal, shale, peat, or any other bituminous substances, and all hydrocarbons that are in a liquid form at a temperature of 15°C and under a pressure of 101 kPa, except any such hydrocarbons that are an ingredient in any goods that do not have the usual characteristics of hydrocarbon oil; (Replaced 29 of 1989 s. 8)

“kerosene” (火水) means heavy oil of which more than 50% by volume distils at a temperature not exceeding 240°C; (Added 66 of 1986 s. 31)

“leaded petrol” (含鉛汽油) has the same meaning as in section 2 of the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg. L); (Added 2 of 1991 s. 10. Amended 19 of 1994 s. 12)

“light diesel oil” (輕質柴油), commonly known as “gas oil” (氣油), means a heavy oil of which not more than 50% by volume distils at a temperature not exceeding 240°C and of

which more than 50% by volume distils at a temperature not exceeding 340°C; (*Added 44 of 1978 s. 2. Amended L.N. 189 of 1982*)

“light oil” (輕質油) means hydrocarbon oil of which not less than 50% by volume distils at a temperature not exceeding 185°C, or of which not less than 95% by volume distils at a temperature not exceeding 240°C, or which gives off an inflammable vapour at a temperature of less than 23°C when tested in the manner prescribed by the Government Chemist; (*Amended L.N. 189 of 1982; 46 of 1996 s. 31*)

“marked oil” (有標記油類) means light diesel oil to which a prescribed marker and a prescribed colouring substance have been added; (*Replaced 46 of 1996 s. 31*)

“motor spirit” or “petrol” (汽油) means any light oil suitable for use as fuel in any internal combustion engine, but does not include aircraft spirit; (*Replaced 2 of 1991 s. 10*)

“unleaded petrol” (無鉛汽油) has the same meaning as in section 2 of the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg. L). (*Added 2 of 1991 s. 10. Amended 19 of 1994 s. 12*)

(*Amended 66 of 1986 s. 31*)

69A. (*Repealed 66 of 1986 s. 32*)

PART VI**METHYL ALCOHOL**

(Part VI added 34 of 1976 s. 9)

70. Interpretation

In the application of this Ordinance to methyl alcohol—

“denatured methyl alcohol” (變性甲醇) means methyl alcohol certified by the Government Chemist to have been mixed with a substance or substances approved by the Government Chemist, in such manner that it cannot practicably be returned to its original form; *(Added 66 of 1986 s. 33)*

“methyl alcohol” (甲醇) means the substance also known as methanol, but does not include methyl alcohol that is an ingredient in any goods, if that methyl alcohol cannot be converted to pure methyl alcohol or if such a conversion would not be economical. *(Amended 29 of 1989 s. 9)*

71. Marking of containers

No person shall place or cause to be placed or keep or cause to be kept in any container any methyl alcohol unless such container is conspicuously marked with the words “poison” and “毒藥”.

(Amended 80 of 1997 s. 112)

72. Colouring, flavouring or other substance

The Commissioner may direct an importer to add such colouring, flavouring or other substances, and in such quantities, as the Commissioner may from time to time specify, to any methyl alcohol in his possession.

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(Amended L.N. 294 of 1982; 29 of 1989 s. 10)

73. Storage

A distiller or importer of intoxicating liquor shall not bring onto or have in any premises used for holding intoxicating liquor any methyl alcohol.

(Amended 29 of 1989 s. 11)

74. Exemptions

No duty shall be payable on denatured methyl alcohol.

(Replaced 66 of 1986 s. 34)

Part VII

(Repealed 35 of 1992 s. 5)

Part VIII

(Repealed 32 of 1993 s. 4)

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SCHEDULE 1A

S1A-2

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SCHEDULE 1A

[s. 2]

SPECIFIED ELECTRONIC SERVICE PROVIDERS

1. Tradelink Electronic Commerce Limited
 2. Global e-Trading Services Limited (*Added L.N. 222 of 2003*)
 3. Brio Electronic Commerce Limited (*Added L.N. 189 of 2009*)
(*Schedule 1A added 19 of 2001 s. 13*)
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SCHEDULE 1B

[s. 2]

SPECIFIED ELIGIBLE AGENTS

1. Tradelink Electronic Commerce Limited
 2. International Chamber of Commerce-Hong Kong, China Business Council. *(Added L.N. 38 of 2003)*
 3. Global e-Trading Services Limited *(Added L.N. 222 of 2003)*
 4. Brio Electronic Commerce Limited *(Added L.N. 189 of 2009)*
(Schedule 1B added 19 of 2001 s. 13)
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DUTIABLE COMMODITIES ORDINANCE

Schedule 1

[ss. 3AA & 4]

(Amended 46 of 1996 s. 32; 16 of 2008 s. 5)

PART I

DUTY ON LIQUOR

1. Duty shall be payable on the following types of liquor at the rates, expressed as a percentage of the value (calculated in accordance with section 26A), set out opposite each type of liquor— *(Amended L.N. 204 of 1999; 57 of 2000 s. 9)*

Type of Liquor	Rate
Liquor with an alcoholic strength of more than 30% by volume measured at a temperature of 20°C	100%
Liquor, other than wine, with an alcoholic strength of not more than 30% by volume measured at a temperature of 20°C	0%
Wine	0%

(Amended 67 of 1997 s. 3; L.N. 61 of 2001 and 14 of 2001 s. 2; L.N. 28 of 2002 and 17 of 2002 s. 2; L.N. 32 of 2007 and 13 of 2007 s. 2; L.N. 33 of 2008 and 15 of 2008 s. 3)

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2. Where there is no or insufficient information available from which the Commissioner (or any officer authorized by him in that behalf) is able to determine the value of any quantity of liquor of less than 12 litres, imported at any time in one consignment, he may assess the duty payable on such liquor at the rate of \$160 per litre.

3. *(Repealed 57 of 2000 s. 9)*

(Part I replaced 45 of 1994 s. 4)

PART II

DUTY ON TOBACCO

1. Duty shall be payable on tobacco at the following rates— *(Amended L.N. 204 of 1999; 57 of 2000 s. 9)*

	\$
(a) for each 1000 cigarettes	1906
(b) cigars	2455/kg
(c) Chinese prepared tobacco	468/kg
(d) all other manufactured tobacco except tobacco intended for the manufacture of cigarettes	2309/kg

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(Amended L.N. 158 of 1988; 16 of 1989 s. 5; L.N. 218 of 1990; L.N. 194 of 1991; L.N. 195 of 1991; 35 of 1992 s. 6; 32 of 1993 s. 5; 42 of 1995 s. 2; 32 of 1996 s. 2; 67 of 1997 s. 3; 21 of 1998 s. 2; L.N. 61 of 2001 and 14 of 2001 s. 2; L.N. 27 of 2009 and 5 of 2009 s. 3; L.N. 32 of 2011 and 10 of 2011 s. 3; L.N. 25 of 2014 and 9 of 2014 s. 3)

2. For the purpose of applying the duty under paragraph 1(a) a cigarette more than 90 mm long, excluding any filter or mouthpiece, shall be treated as if each additional 90 mm or portion of 90 mm were a separate cigarette.

3. *(Repealed 57 of 2000 s. 9)*

(Part II replaced 10 of 1988 s. 3)

PART III

DUTY ON HYDROCARBON OIL

1. Duty shall be payable on hydrocarbon oil (other than ultra low sulphur diesel and Euro V diesel) at the following rates per litre— *(Amended L.N. 233 of 2000; L.N. 220 of 2007)*

	\$
(a) aircraft spirit	6.51
(b) light diesel oil	2.89

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(c) motor spirit (leaded petrol) (*Added 2 of 1991 s. 10*) 6.82

(d) motor spirit (unleaded petrol) (*Added 2 of 1991 s. 10*)..... 6.06

(Amended L.N. 128 of 1987; L.N. 158 of 1988; 16 of 1989 s. 5; L.N. 218 of 1990; 2 of 1991 s. 10; L.N. 99 of 1991; L.N. 194 of 1991; 35 of 1992 s. 6; 32 of 1993 s. 5; 45 of 1994 s. 4; 42 of 1995 s. 2; 32 of 1996 s. 2; L.N. 89 of 1997; 67 of 1997 s. 3; 21 of 1998 s. 2; L.N. 249 of 1998 and L.N. 288 of 1998; L.N. 90 of 1999 and 44 of 1999 s. 8; L.N. 70 of 2000 and 27 of 2000 s. 2)

1A. Duty shall be payable on ultra low sulphur diesel at the following rates—

(a) from 7 July 2000 to 31 December 2008 (both dates inclusive), at \$1.11 per litre; and (*Amended L.N. 150 of 2001*)

(b) from 1 January 2009, at \$2.89 per litre. (*Replaced L.N. 150 of 2001*)

(c) (*Repealed L.N. 150 of 2001*)

(Added L.N. 233 of 2000. Amended L.N. 364 of 2000; L.N. 39 of 2002; L.N. 76 of 2003; L.N. 50 of 2004; L.N. 199 of 2004; L.N. 234 of 2005; L.N. 274 of 2006)

1B. Duty shall be payable on Euro V diesel at the following rates—

(a) from 1 December 2007 to 13 July 2008 (both dates inclusive), at \$0.56 per litre; and (*Amended L.N. 204 of 2008*)

(b) from 14 July 2008, at \$0 per litre. (*Replaced L.N. 204 of 2008*)

(Added L.N. 220 of 2007)

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2. Where it is proved to the satisfaction of the Commissioner that light diesel oil on which duty has been paid under paragraph 1(b) has been used in road vehicles operated by the grantee of a franchise under section 5 of the Public Bus Services Ordinance (Cap. 230) in maintaining public bus services on specified routes as defined by section 2 of that Ordinance, a refund of duty paid on the light diesel oil so used may be granted by the Commissioner and subject to such conditions as the Commissioner may specify.

(Amended 35 of 1992 s. 6; 21 of 1998 s. 2)

3. Where it is proved to the satisfaction of the Commissioner that light diesel oil on which duty has been paid under paragraph 1(b) has been used in road vehicles owned and operated by the Kowloon-Canton Railway Corporation under section 4(1)(d) of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) in maintaining bus services within the North-west Transit Service Area, a refund of duty paid on the light diesel oil so used may be granted by the Commissioner and subject to such conditions as the Commissioner may specify.

(Amended 35 of 1992 s. 6)

- 3A. Where it is proved to the satisfaction of the Commissioner that light diesel oil on which duty has been paid under paragraph 1(b) has been used in road vehicles operated by the MTR Corporation Limited in maintaining bus services within the North-west Transit Service Area referred to in paragraph 3 during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), a refund of duty paid on the light diesel oil so used may be granted by the Commissioner and subject to such conditions as the Commissioner may specify.

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(Added 11 of 2007 s. 36)

4. Subject to such conditions as the Commissioner may impose for the protection of the revenue, duty payable on hydrocarbon oil for use by a disabled person within the meaning of section 2 of the Road Traffic Ordinance (Cap. 374) in a private car, invalid carriage, motor cycle or motor tricycle owned and driven by him shall be waived, such waiver to be subject—
- (a) in the case of a private car or an invalid carriage, to a limit of 200 litres per month; and
 - (b) in the case of a motor cycle or motor tricycle, to a limit of 100 litres per month,

for each such person.

(Replaced 32 of 1993 s. 5)

5. For the purposes of paragraph 1A, “ultra low sulphur diesel” (超低含硫量柴油) means a light diesel oil which—
- (a) contains not more than 0.005% by weight of sulphur as determined by ISO 14596;
 - (b) has a cetane number of not less than 51.0 as determined by ISO 5165;
 - (c) has a viscosity at 40°C of not less than 2.00 mm²/s and not more than 4.50 mm²/s as determined by ISO 3104;
 - (d) has a 95% distillation temperature of not more than 345°C as determined by ISO 3405;
 - (e) has a specific gravity at 15°C of not more than 0.835 as determined by ISO 3675; and
 - (f) has a distillation percentage recovered at 250°C not more than 65% by volume as determined by ISO 3405.

(Added L.N. 203 of 1987. Amended L.N. 220 of 2007)

6. For the purposes of paragraph 1B, “Euro V diesel” (歐盟V期柴油) means a light diesel oil which—
- (a) contains not more than 10.0 mg/kg of sulphur as determined by ISO 20884;
 - (b) has a cetane number of not less than 51.0 as determined by ISO 5165;
 - (c) has a cetane index of not lower than 46.0 as determined by ISO 4264;
 - (d) has a viscosity at 40°C of not lower than 2.00 mm²/s and not higher than 4.50 mm²/s as determined by ISO 3104;
 - (e) contains not more than 11% by mass of polycyclic aromatic hydrocarbons as determined by IP 391;
 - (f) has a 95% distillation temperature of not higher than 360°C as determined by ISO 3405;
 - (g) has a distillation percentage recovered at 250°C of lower than 65% by volume as determined by ISO 3405;
 - (h) has a distillation percentage recovered at 350°C of not lower than 85% by volume as determined by ISO 3405;
 - (i) has a density at 15°C of not lower than 0.820 kg/L and not higher than 0.845 kg/L as determined by ISO 3675;
 - (j) has a flash point of above 55°C as determined by ISO 2719;
 - (k) contains not more than 0.30% by mass of carbon residue (on 10% distillation residue) as determined by ISO 10370;
 - (l) contains not more than 0.01% by mass of ash as determined by ISO 6245;

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- (m) contains not more than 200 mg/kg of water as determined by ISO 12937;
- (n) contains total contamination of not more than 24 mg/kg as determined by ISO 12662;
- (o) has a copper strip corrosion (3h at 50°C) rating of Class 1 as determined by ISO 2160;
- (p) has an oxidation stability of not higher than 25 g/m³ as determined by ISO 12205; and
- (q) has a lubricity, corrected wear scar diameter (wsd 1.4) at 60°C, of not higher than 460µm as determined by ISO 12156-1.

Note: In this Part-

”IP” followed by a numerical symbol (“IP number”) means the test procedures of the Institute of Petroleum commonly known by that IP number;

”ISO” followed by a numerical symbol (“ISO number”) means the test procedures of the International Organization for Standardization commonly known by that ISO number;

“viscosity” (黏度) means the viscosity of diesel as determined by ISO 3104.

(Added L.N. 220 of 2007)

PART IV

DUTY ON METHYL ALCOHOL

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1. Duty shall be payable on methyl alcohol and any admixture containing methyl alcohol at the rate of \$840 per hectolitre measured at a temperature of 20°C and in addition, for every 1% by which the alcoholic strength by volume exceeds 30%, \$28.1 per hectolitre.

(Amended L. N. 128 of 1987; L.N. 158 of 1988; 16 of 1989 s. 5; L.N. 218 of 1990; L.N. 194 of 1991; 35 of 1992 s. 6; 32 of 1993 s. 5; 67 of 1997 s. 3; 21 of 1998 s. 2)

PART V

(Repealed 35 of 1992 s. 6)

PART VI

(Repealed 32 of 1993 s. 5)

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SCHEDULE 2

[s. 46]

OFFENCES AND PENALTIES

Section	Fine	Imprisonment
16	\$1,000,000	2 years
17	\$1,000,000	2 years
19	\$1,000,000	2 years
20	\$1,000,000	2 years
22	\$1,000,000	2 years
23	\$1,000,000	2 years
24	\$1,000,000	2 years
34A	level 1	-
36	\$1,000,000	2 years
37	\$1,000,000	2 years
38	\$1,000,000	2 years
38A	\$1,000,000	2 years
46(1)	level 6	1 year
56	\$1,000,000	2 years
58	\$1,000,000	2 years
61	\$1,000,000	2 years
68	\$1,000,000	2 years
71	\$1,000,000	2 years
73	\$1,000,000	2 years

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(Added 46 of 1996 s. 33)

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SCHEDULE 3

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SCHEDULE 3

[s. 47A]

COMPOUNDING OF OFFENCES

Dutiable Commodities Ordinance

Column 1	Column 2	Column 3	Column 4
Section	Offence	When compoundable <i>(Amended 4 of 2003 s. 6)</i>	Penalty
17(1), (2) and (6)	Possession of dutiable goods not under and in accordance with this Ordinance	(a) if the dutiable goods are carried by the person at an entry point to Hong Kong or on board any ship, vehicle, train or aircraft which has arrived in Hong Kong and boarded by a member of the Customs and Excise Service; and (b) if the person fails to declare or makes a false or incomplete declaration; and (c) if the duty value of the goods does not exceed \$10,000 as assessed by the Commissioner	5 times the duty payable on the dutiable goods concerned
34A	Failing to declare or making a false or incomplete declaration for the purpose of section 34A(1) or (2)	in circumstance as prescribed under section 34A(1) and (2)	a fine at level 1

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SCHEDULE 3

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Dutiable Commodities Regulations

Column 1	Column 2	Column 3	Column 4
Regulation	Offence	When compoundable	Penalty
99(1)	Failing to enter in stock account or record deficiency or surplus in dutiable goods stored in a warehouse, or failing to report such deficiency or surplus to the Commissioner within 24 hours	if the duty value of the deficient or surplus goods (as the case may be) does not exceed \$10,000 as assessed by the Commissioner	a fine at level 1

(Added 4 of 2003 s. 6)

(Schedule 3 added 46 of 1996 s. 33)

SCHEDULE 4

[s. 3AA]

PROVISIONS THAT DO NOT APPLY TO ZERO-RATED SPECIFIED GOODS

1. Section 17(1), (3), (3A), (3AA), (3AB) and (4).
2. Section 19.
3. Section 20.
4. Section 22.
5. Section 23.
6. Section 24.
7. Section 36(2)(c).
8. Section 40(b).
9. Section 58.
10. Section 60.

(Schedule 4 added 16 of 2008 s. 6)