

# **IMPORT AND EXPORT ORDINANCE**

## **(Cap. 60)**

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To provide for the regulation and control of the import of articles into Hong Kong, the export of articles from Hong Kong, the handling and carriage of articles within Hong Kong which have been imported into Hong Kong or which may be exported from Hong Kong, and any matter incidental to or connected with the foregoing.

*(Amended 22 of 1991 s. 2)*

[1 January 1972] *L.N. 180 of 1971*

## **PART I**

### **PRELIMINARY**

#### **1. Short title**

This Ordinance may be cited as the Import and Export Ordinance.

#### **2. Interpretation**

In this Ordinance, unless the context otherwise requires—

“air consignment note” (航空托運單) and “air waybill” (空運提單) mean any document which—

- (a) bears the signature of the owner, operator, charterer, authorized agent or commander of an aircraft; and
- (b) records particulars of a contract for the consignment of cargo in an aircraft;

“air transhipment cargo” (航空轉運貨物) means transhipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transhipment area of Hong Kong International Airport; *(Added 29 of 2000 s. 2)*



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- “aircraft” (飛機) means any machine which can derive support in the atmosphere from reactions of the air;
- “appointed officer” (獲委任人員) means a person appointed by the Director under section 4A; (*Added L.N. 294 of 1982*)
- “article in transit” (過境物品) means an article which—
- (a) is brought in to Hong Kong solely for the purpose of taking it out of Hong Kong; and
  - (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong; (*Amended 40 of 1996 s. 2*)
- “authorized officer” (獲授權人員) means a person authorized by the Commissioner under section 4; (*Amended L.N. 294 of 1982*)
- “bill of lading” (提單) means any document which—
- (a) bears the signature of—
    - (i) the owner, charterer, agent or master of a ship; or
    - (ii) the owner, hirer or person in charge of a vehicle; and
  - (b) records particulars of a contract for the consignment of cargo in a vessel or vehicle;
- “cargo” (貨物) means any article which is imported or exported other than—
- (a) the necessary equipment, stores or fuel of the vessel, aircraft or vehicle in or on which the article is imported or exported;
  - (b) food and other provisions reasonably required for consumption by the crew or passengers of such vessel, aircraft or vehicle;

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- (c) items of personal property reasonably required for the personal use of the crew or passengers of such vessel, aircraft or vehicle;
- (d) any document relating to—
  - (i) the carriage of cargo in or on such vessel, aircraft or vehicle; or
  - (ii) the inter-office business transactions of the owner of such vessel, aircraft or vehicle;
- (e) articles imported or exported by a passenger of such vessel, aircraft or vehicle, in his personal baggage or carried by him; and (*Added 78 of 1979 s. 2*)
- (f) any article in transit unless such article is a prohibited article not falling under paragraphs (a) to (e); (*Added 65 of 1991 s. 2*)

“cargo transshipment area of Hong Kong International Airport” (機場貨物轉運區) means—

- (a) any part of Hong Kong International Airport that is designated under section 35 of the Aviation Security Ordinance (Cap. 494) as a restricted area; and
- (b) any area approved by the Commissioner of Customs and Excise under section 2AA; (*Added 29 of 2000 s. 2*)

“claimant” (聲請人) means a person—

- (a) who claims to be the owner of an article, vessel or vehicle liable to forfeiture under Part VI;
- (b) who is the authorized agent of a person claiming to be the owner of an article, vessel or vehicle liable to forfeiture under Part VI;
- (c) who was in possession of an article, vessel or vehicle at the time of seizure of the article, vessel or vehicle liable to forfeiture under Part VI; or

(d) who claims to have a legal or equitable interest in an article, vessel or vehicle liable to forfeiture under Part VI,

and who makes a claim or petitions under that Part; (*Added 62 of 1993 s. 2*)

“commander” (機長) means, in respect of an aircraft, the member of the flight crew designated as commander of the aircraft by the operator thereof or, if no member of the flight crew is so designated, the person for the time being in command of the aircraft;

“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 66 of 2000 s. 3*)

“consign” (托運) means to deliver or transmit an article into the custody of a person for the purpose of delivery or transmission of the article by that person to another specified person;

“contraband” (違禁品) means an article which is exported, imported or otherwise dealt with contrary to the provisions of this Ordinance or any other law controlling the import or export of any article;

“court” (法庭、法院) includes a magistrate; (*Added 1 of 1994 s. 2*)

“Director” (署長) means the Director-General of Trade and Industry and, except where the expression “Director-General of Trade and Industry” (工業貿易署署長) is used, any Deputy or Assistant Director-General of Trade and Industry; (*Replaced L.N. 294 of 1982. Amended L.N. 292 of 1989; L.N. 173 of 2000*)

“domestic premises” (住用處所) means any premises or place used exclusively for residential purposes and constituting a separate household unit;

- “electronic record” (電子紀錄) has the meaning given to that term by section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 24 of 2002 s. 2*)
- “export” (出口、輸出) means to take, or cause to be taken, out of Hong Kong any article;
- “Hong Kong International Airport” (香港國際機場) means the airport referred to in section 5(1)(a) of the Airport Authority Ordinance (Cap. 483); (*Added 29 of 2000 s. 2*)
- “import” (進口、輸入) means to bring, or cause to be brought, into Hong Kong any article;
- “information” (資料) has the meaning given to that term by section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 24 of 2002 s. 2*)
- “licence” (許可證) means a licence, certificate, authorization or permit issued under the provisions of this Ordinance and includes a licence issued under this Ordinance which is sent to the licensee using services provided by a specified body; (*Amended 30 of 1995 s. 2*)
- “manifest” (艙單) means a record prepared as a manifest containing the particulars prescribed under section 17 but does not include any record, containing the same or similar particulars, which is not specifically prepared as a manifest; (*Replaced 62 of 1993 s. 2. Amended 24 of 2002 s. 2*)
- “master” (船長) means, in respect of a vessel, the person (except a pilot) having for the time being command or charge of the vessel;
- “member of the Customs and Excise Service” (海關人員) means any person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); (*Amended 1 of 1994 s. 2*)
- “owner” (擁有人) means, other than for the purposes of Part VI—

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- (a) in respect of an article, any person being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the article; and
- (b) in respect of a vessel, aircraft or vehicle—
  - (i) the registered owner and any person holding himself out to be the owner thereof;
  - (ii) any person acting as agent for the owner in connexion with the handling of cargo carried in or on the vessel, aircraft or vehicle;
  - (iii) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and
  - (iv) any person having for the time being the control or management of the vessel, aircraft or vehicle;

“production notification” (生產通知書) means a notification required to be lodged under section 6AB(1); (*Added 37 of 1999 s. 2*)

“prohibited article” (禁運物品) means any article—

- (a) the import or export of which is prohibited under the provisions of this Ordinance;
- (b) the import or export of which is permitted subject to the terms and conditions of a licence; or
- (c) the import or export of which is prohibited or controlled under any other law, not being an article in transit which is excluded from such prohibition or control;

“reference number” (編號)—

- (a) in relation to a production notification, means the reference number assigned to the notification under section 6AB(2)(d);

- (b) in relation to a validated production notification, means the reference number assigned to the notification under section 6AC(2); *(Added 37 of 1999 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 services provided by a specified body; *(Added 30 of 1995 s. 2. Amended 24 of 2002 s. 2)*
- “services provided by a specified body” (指明團體所提供的服務) means information technology services for the transmission of information to and from the Commissioner or the Director under this Ordinance, provided by a specified body; *(Added 30 of 1995 s. 2)*
- “smuggling” (走私) means importing, exporting, unshipping, shipping, landing, loading, carrying, conveying or otherwise dealing with any article contrary to the provisions of this Ordinance or any other law controlling the import or export of any article; *(Amended 22 of 1991 s. 3)*
- “specified agent” (指明代理人) means a body specified in Schedule 3; *(Added 30 of 1995 s. 2)*
- “specified body” (指明團體) means a body specified in Schedule 2; *(Added 30 of 1995 s. 2)*
- “transshipment cargo” (轉運貨物) means any imported article that—
- (a) is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong; and
  - (b) is or is to be removed from the vessel, aircraft or vehicle in which it was imported and either returned to the same vessel, aircraft or vehicle or transferred to another vessel, aircraft or vehicle before being exported, whether it is or is to be transferred directly between such vessels, aircraft or vehicles or whether it is to be

landed in Hong Kong after its importation and stored, pending exportation; (*Added 29 of 2000 s. 2*)

“unmanifested cargo” (未列艙單貨物) means any cargo which is not recorded in a manifest;

“validated production notification” (認可生產通知書) means a production notification validated under section 6AC(1); (*Added 37 of 1999 s. 2*)

“vehicle” (車輛) means every means of conveyance or of transit or other mobile apparatus used or capable of being used on land, whether on roads or rails and, in any way whatever, drawn or propelled or carried;

“vessel” (船隻) includes every description of vessel used in navigation for the carriage of persons or articles, whether or not the vessel is mechanically propelled and whether or not the vessel is towed or pushed by another vessel.

(*Amended 65 of 1991 s. 2*)

## **2AA. Approval of part of Airport Area as cargo transshipment area**

- (1) The Commissioner of Customs and Excise may, after consultation with the Airport Authority, by notice published in the Gazette approve any area within the area specified as the Airport Area pursuant to section 37 of the Airport Authority Ordinance (Cap. 483) to be a part of the cargo transshipment area of Hong Kong International Airport.
- (2) A notice published under subsection (1) is not subsidiary legislation for the purposes of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

(*Added 29 of 2000 s. 2*)

## **2A. Application of this Ordinance to Ozone Layer Protection Ordinance**

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In applying the following provisions of this Ordinance to anything in respect of which a licence may be issued or the import or export of which is prohibited, under the Ozone Layer Protection Ordinance (Cap. 403)— (*Amended 26 of 1993 s. 6*)

- (a) in sections 20, 21, 33, 34 and 36 a reference to “licence” is a reference to a licence issued under the Ozone Layer Protection Ordinance (Cap. 403); (*Amended 33 of 2003 s. 2*)
- (aa) in sections 8 and 9 a reference to “import licence” or “licence” is a reference to an import licence or an import and export licence issued under the Ozone Layer Protection Ordinance (Cap. 403); (*Added 33 of 2003 s. 2*)
- (ab) in section 11 a reference to “export licence” or “licence” is a reference to an export licence or an import and export licence issued under the Ozone Layer Protection Ordinance (Cap. 403); (*Added 33 of 2003 s. 2*)
- (b) in sections 8, 9, 11 and 36(1)(b) a reference to “Ordinance” is a reference to the Ozone Layer Protection Ordinance (Cap. 403); and
- (c) in sections 5, 20 (except the first reference in subsection (1)(a)), 20A, 21, 23 to 28, 33, 34, 36(1)(c) and 37 a reference to “Ordinance” includes a reference to the Ozone Layer Protection Ordinance (Cap. 403).

*(Added 24 of 1989 s. 18)*

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## **PART IA**

### **SPECIAL PROVISIONS FOR USING SERVICES PROVIDED BY A SPECIFIED BODY**

*(Part IA added 30 of 1995 s. 3)*

#### **2B. Presumption regarding information sent using services provided by specified body**

- (1) Where information received by the Commissioner or the Director was sent using services provided by a specified body, evidence which 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—
  - (a) proof that the person issued with the security device furnished the information; and
  - (b) proof that the person issued with the security device made a statement or declaration contained in the information.
- (2) Where information received by the Commissioner or the Director and sent using services provided by a specified body was sent by a specified agent who has obtained an authorization in accordance with section 2D—
  - (a) a person named in the information as the person who furnished the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who furnished the information; and
  - (b) a person named in the information as the person who made a statement or declaration contained in the information is, in the absence of evidence to the

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contrary, regarded for the purposes of this Ordinance as the person who made the statement or declaration.

*(Replaced 24 of 2002 s. 2)*

## **2C. Safekeeping of security device**

A person who has been issued with a security device—

- (a) shall not authorize or allow any other person to use the device in connection with the sending of information to the Commissioner or the Director under this Ordinance using services provided by a specified body;
- (b) 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 or the Director under this Ordinance using services provided by a specified body.

*(Amended 24 of 2002 s. 2)*

## **2D. Duty of specified agent**

A specified agent shall not send any information on behalf of a person using services provided by a specified body unless the specified agent has obtained from the person an authorization in writing to do so.

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**PART II****ADMINISTRATIVE DECISIONS AND APPEALS**

- 3. Director's discretion to issue, cancel, revoke or suspend licences**
- (1) The Director may issue any licence required under this Ordinance and may attach thereto such conditions as he may see fit to impose.
  - (2) Subject to subsection (3) the Director may cancel, revoke or suspend any licence issued by him under this Ordinance.
  - (3) The Director shall not cancel, revoke or suspend any such licence where he is satisfied that the holder thereof has entered into an irrevocable commitment pursuant to the issue to him of such licence, unless the article in respect of which the licence was issued is a strategic commodity specified in regulations made under this Ordinance and it is, in the opinion of the Director, necessary for him to cancel, revoke or suspend the licence in the public interest.
  - (4) Notwithstanding subsection (3), if the Director is satisfied that any licence was issued by him as the result of fraudulent misrepresentation of any fact or any other unlawful act by the applicant therefor he may, at any time, cancel, revoke or suspend the licence.
  - (5) Every licence issued on paper which has been cancelled, revoked or suspended by the Director and all copies thereof in the possession of the licensee or any other person shall be surrendered immediately to the Director by the licensee.  
*(Amended 30 of 1995 s. 4)*
  - (6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and to imprisonment for 3 months.

- (7) The Director may serve notice of the cancellation, revocation or suspension of any licence on the holder thereof and such person shall be deemed to be served with the notice if it—
- (a) is delivered to the holder or applicant personally; or
  - (b) is addressed to him and left at or forwarded by registered mail to him at his usual or last known place of abode or business; or *(Amended 30 of 1995 s. 4)*
  - (c) is sent to him using services provided by a specified body. *(Added 30 of 1995 s. 4)*
- (8) Except where the form of a licence is, under the provisions of this Ordinance, required to be prescribed, the Director may determine the form of any licence and of any application therefor and may also determine the requirements for making any application for a licence. *(Amended 30 of 1995 s. 4)*
- (9) The Director may delegate any of the powers and duties conferred or imposed on him by this section to any appointed officer. *(Amended L.N. 294 of 1982)*

#### **4. Power of Commissioner to appoint authorized officers**

The Commissioner may authorize in writing any person approved by the Secretary for Security, any police officer and any other public officer to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

*(Amended L.N. 294 of 1982; 22 of 1991 s. 4; 16 of 2009 s. 2)*

#### **4A. Appointed officers**

The Director may appoint in writing any public officer to exercise any of the powers and perform any of the duties conferred or imposed on an appointed officer by this Ordinance.

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

**5. Commissioner or Director and other public officers to be subject to the Chief Executive's directions**

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

- (1) The Chief Executive may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by the Commissioner or the Director or any other public officer, other than a judge, a District Judge or a magistrate, of any powers, functions or duties under this Ordinance.
- (2) The Commissioner or the Director and every public officer shall, in the exercise or performance of any powers, functions or duties under this Ordinance, comply with any directions given by the Chief Executive under subsection (1).

*(Amended L.N. 294 of 1982; 66 of 2000 s. 3)*

**6. Appeals to the Chief Executive**

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

- (1) Any person aggrieved by a decision, act or omission of the Commissioner or the Director or of any other public officer, other than a judge, a District Judge or a magistrate, taken, done or made in the exercise of any powers or the performance of any duties under this Ordinance may, within 14 days from the date when he was informed of the decision, act or omission or when the decision, act or omission became known to him (whichever is the later) or within such further period as the Chief Executive may allow in any particular case, by notice in writing lodge an objection to the decision, act or omission with the Chief Secretary for Administration.  
*(Amended L.N. 294 of 1982; L.N. 362 of 1997)*

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- (2) On consideration of an objection lodged in accordance with subsection (1), the Chief Executive may confirm, vary or reverse the decision, act or omission of the Commissioner or the Director or other public officer, or substitute therefor such other decision or make such other order as he may think fit.  
*(Amended L.N. 294 of 1982)*
- (3) Nothing in this section shall entitle any person to lodge an objection under this section to any decision, act or omission of the Chief Executive or of any court.

*(Amended 66 of 2000 s. 3)*

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## PART IIA

### PRODUCTION NOTIFICATION OF CERTAIN TEXTILES FOR EXPORT

*(Part IIA added 37 of 1999 s. 3)*

#### **6AA. Definitions and application of this Part**

(1) In this Part—

“issue” (發出、發給), in relation to any document, includes issue by using services provided by a specified body;

“material particular” (要項), in relation to a production notification, means a particular—

(a) required under section 6AB(2) to be included in the notification; and

(b) prescribed by the regulations as material for the purposes of this definition;

“permitted period” (准許期間) means the period prescribed by the regulations for the purposes of this definition;

“production” (生產), in relation to any specified textiles, means the process of manufacturing those textiles as prescribed by the regulations for the purposes of this definition;

“the regulations” (規例) means the regulations made under section 31;

“specified textiles” (指明紡織品) means any textiles prescribed by the regulations for the purposes of this definition.

(2) This Part shall not apply to specified textiles except specified textiles that are produced for export to a country or place prescribed by the regulations for the purposes of this section.

- (3) The regulations may make provision for the purposes of exempting from this Part any specified textiles to which this Part would otherwise apply.
- (4) A reference number of a production notification or validated production notification may be assigned by using services provided by a specified body.

**6AB. Lodging of production notification**

- (1) A person shall not commence the production of any specified textiles (whether by himself or through any other person) unless he lodges with the Director a notification in respect of those textiles within the permitted period, or within such other period as the Director may, at his discretion, allow in a particular case.
- (2) A production notification shall—
  - (a) be in such form and include such particulars and declarations as the Director may specify;
  - (b) be lodged with the Director on paper or using services provided by a specified body;
  - (c) be lodged in accordance with such other requirements, and attach or contain such other information, as the Director may determine; and
  - (d) be assigned a reference number by the Director.
- (3) If there is any change in a material particular included in a production notification lodged by a person under subsection (1), the person shall inform the Director of the change by notice in writing or by using the services provided by a specified body—
  - (a) immediately if the notification is not a validated production notification;



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- (b) if the notification is a validated production notification, within 14 days of the change but, in any case, before applying for a licence in respect of the specified textiles to which the notification relates.
- (4) Where but for this subsection a person would be required to comply with subsection (1) in relation to any textiles, then the person is not required to comply with that subsection—
  - (a) if the person complies with an undertaking given—
    - (i) in relation to the textiles; and
    - (ii) under regulation 8(3) of the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg. H) and that is comparable to the requirement of subsection (1); and
  - (b) until the expiration of 30 days after the commencement of this section.
- (5) A person does not have to comply with the undertaking referred to in subsection (4)(a) in relation to any textiles on and after the day on which the person complies or is required to comply with subsection (1) in relation to the textiles, and, accordingly, regulation 12(2)(c) of the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg. H) does not apply to the undertaking to the extent the undertaking relates to the textiles.

### **6AC. Validation of production notification**

- (1) The Director shall validate a production notification if—
  - (a) it complies with section 6AB(2); and
  - (b) the Director is satisfied that the person who lodged the notification—
    - (i) has complied or will comply with the declarations made in the notification; and

- (ii) is or will be capable of complying with the conditions, if any, that the Director is minded to impose under section 6AD(1) on the notification.
- (2) The Director shall validate a production notification by assigning to the notification a reference number and endorsing that number on the notification.
- (3) The Director shall issue a validated production notification to the person who lodged the notification with the Director.
- (4) The Director may require an application for a licence in respect of any specified textiles to be supported by a validated production notification relating to those textiles.

**6AD. Director's discretion in respect of validated production notifications**

- (1) The Director may issue a validated production notification subject to such conditions specified or referred to in the notification as he may see fit to impose.
- (2) The Director may cancel a validated production notification at the request of its holder.
- (3) The Director may revoke or suspend a validated production notification if it appears to him that—
  - (a) a condition imposed on, or a declaration made in, the notification has not been complied with; or
  - (b) false or misleading information has been given in connection with the validated production notification.
- (4) The Director may serve notice of the cancellation, revocation or suspension of a validated production notification on its holder and such holder shall, in the absence of evidence to the contrary, be deemed to be served with the notice if it—
  - (a) is delivered to the holder personally, or in the case of a partnership, to a person apparently concerned with

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- the management of, or apparently employed by, the partnership;
- (b) is addressed to the holder and left at or forwarded by registered mail to him at his usual or last known place of abode or business; or
  - (c) is sent to the holder using services provided by a specified body.
- (5) The holder of a validated production notification that has been cancelled, revoked or suspended shall immediately surrender to the Director the validated production notification and all its copies issued to him by the Director.
  - (6) No person shall use a validated production notification that has been cancelled, revoked or suspended, or quote its reference number, for any purpose in connection with the export of the specified textiles to which the notification relates.
  - (7) A person who contravenes subsection (5) or (6) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.
  - (8) The Director may delegate any of the powers and duties conferred or imposed on him by this Part to any appointed officer.
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## PART III

### PROHIBITED ARTICLES, ETC.\*

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Editorial Note:

\* (Amended 1 of 1994 s. 3)

#### **6A. Restriction on import and export of strategic commodities**

- (1) In this section and section 6B, “Regulations” (規例) means the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G).
- (2) A person who imports or exports an article specified in Schedule 1 to the Regulations except under and in accordance with an import or export licence issued by the Director commits an offence and is liable—
  - (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years; and
  - (b) on conviction on indictment to an unlimited fine and to imprisonment for 7 years.
- (3) Subsection (2) does not apply to—
  - (a) an article in transit except an article specified in Schedule 2 to the Regulations;
  - (b) an article of air transshipment cargo, except an article specified in Schedule 2 to the Regulations, which is imported or exported by a person to whom an exemption has been granted under regulation 2A of the Regulations with respect to the transshipment of that article. (*Amended 29 of 2000 s. 2*)
- (4) A person who imports or exports an article specified in Schedule 3 to the Regulations or any technological document containing information relating to an article specified

in Schedule 3 to the Regulations, except under and in accordance with an import or export licence issued by the Director—

- (a) if he knows that the article or document is intended or likely to be used in an activity specified in Schedule 4 to the Regulations; or
  - (b) if there are reasonable grounds for him to believe that the article or document may be used in such an activity, commits an offence and is liable—
    - (i) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years; and
    - (ii) on conviction on indictment to an unlimited fine and to imprisonment for 7 years.
- (5) It is a defence to a charge under subsection (4)(b) for the person charged to prove that he made all reasonable enquiries as to the intended use of the article or document and satisfied himself that it would not be used for an activity specified in Schedule 4 to the Regulations.

*(Added 62 of 1993 s. 3)*

**6B. Orders made by Director for purposes of section 6A, etc.**

- (1) The Director may by order replace the Schedules to the Regulations or amend them to add or remove an article or class of articles to or from the Schedules or may by order add or remove an activity specified in Schedule 4 to the Regulations.
- (2) The Director shall publish an order under subsection (1) in the Gazette and shall cause it to be laid on the table of the Legislative Council at the next sitting day after it is published.

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- (3) The Legislative Council may, within the period of 28 days after the date it is laid, by resolution, repeal the order. *(Amended 1 of 1994 s. 4)*
- (4) If the period of 28 days would, but for this subsection, expire after the end of a session or a dissolution of the Legislative Council and before the second sitting day in the next session, that period shall be extended and shall expire on the day after the second sitting day.
- (5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to an order specified therein—
  - (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
  - (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session. *(Replaced 8 of 2002 s. 4)*
- (6) A resolution under subsection (3) or (5) shall be published in the Gazette within 14 days after it is passed or such further period as the Chief Executive may allow. *(Amended 66 of 2000 s. 3)*
- (7) An order under subsection (1) shall come into operation, if the Legislative Council does not, by resolution, repeal the order under this section before the expiry of the period to repeal it, on a day to be appointed by the Director by notice published in the Gazette after the expiry of that period. *(Amended 1 of 1994 s. 4)*

- (8) In this section, “sitting” (立法會會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper. (*Added 89 of 1993 s. 30. Amended 66 of 2000 s. 3*)

*(Added 62 of 1993 s. 3)*

#### **6C. Restriction on import of certain prohibited articles**

- (1) Subject to the Import and Export (General) Regulations (Cap. 60 sub. leg. A), no person shall import any article specified in Schedule 1 to those regulations except under and in accordance with an import licence issued under section 3.
- (2) Any person who contravenes subsection (1) in respect of any article specified in Part 1 of Schedule 1 to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.
- (3) Any person who contravenes subsection (1) in respect of any article specified in Part 2 of Schedule 1 to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) shall be guilty of an offence and shall be liable—
- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.

*(Added 1 of 1994 s. 5. Amended E.R. 1 of 2012)*

#### **6D. Restriction on export of certain prohibited articles**

- (1) Subject to the Import and Export (General) Regulations (Cap. 60 sub. leg. A), no person shall export any article specified in the second column of Schedule 2 to those regulations to the country or place specified opposite thereto

in the third column of that Schedule except under and in accordance with an export licence issued under section 3.

- (2) Subject to the Export (Prescribed Articles) Regulations (Cap. 60 sub. leg. D), no person shall export any article prescribed in the Schedule to those regulations on or by a vessel of less than 250 gross tons except under and in accordance with an export licence issued under section 3.
- (3) Any person who contravenes subsection (1) in respect of any article specified in the second column of Part 1 of Schedule 2 to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.
- (4) Any person who contravenes subsection (1) in respect of any article specified in the second column of Part 2 of Schedule 2 to the Import and Export (General) Regulations (Cap. 60 sub. leg. A), or subsection (2), shall be guilty of an offence and shall be liable—
  - (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.

*(Added 1 of 1994 s. 5. Amended E.R. 1 of 2012)*

**6E. Restriction on carriage, etc. of prescribed articles in Hong Kong waters**

- (1) A person shall not, without lawful excuse, place on board, or cause to be placed on board, or possess on board, a vessel within the waters of Hong Kong a prescribed article.
- (2) The owner of a vessel within the waters of Hong Kong shall not permit a prescribed article to be placed on board, or carried on, his vessel without lawful excuse.



- (3) A person shall not, without lawful excuse, use a vessel to carry on board the vessel, or use a vessel to tow on board another vessel, a prescribed article within the waters of Hong Kong.
- (4) A person shall not, without lawful excuse, use a vessel to tow otherwise than on board another vessel a prescribed article within the waters of Hong Kong.
- (5) For the purposes of subsections (1), (2) and (3), “lawful excuse” (合法辯解) means the article is placed on board, or carried on, or carried or towed by use of, a vessel—
- (a) which vessel is of or more than 250 gross tons and the article is for bona fide import or export;
  - (b) for delivery to a vessel of or more than 250 gross tons within Hong Kong and the article is for bona fide import or export purposes and is accompanied by a shipping document;
  - (c) from another vessel within Hong Kong which is of or more than 250 gross tons and the article is for bona fide import or export purposes and is accompanied by a shipping document;
  - (d) which is a passenger vessel of or more than 250 gross tons other than a ferry vessel;
  - (e) which is a ferry vessel as defined in regulation 2 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H), or as defined in section 2 of the Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Cap. 548 sub. leg. B), operating between— (*Amended 24 of 2005 s. 55*)
    - (i) a terminal in Hong Kong and a place in Macau; or
    - (ii) a terminal in Hong Kong and another place in China; (*Amended 64 of 1999 s. 3; 66 of 2000 s. 3*)

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- (f) which is a ferry vessel—
  - (i) *(Repealed 24 of 2005 s. 55)*
  - (ii) permitted by the Commissioner for Transport under the Ferry Services Ordinance (Cap. 104) to ply between 2 or more points within the waters of Hong Kong; and
  - (iii) travelling on a permitted route except a route which includes a stopping point on an island other than Hong Kong Island;
- (g) by a passenger, or as part of his baggage, for his own use other than for trade or business, which vessel is a ferry vessel—
  - (i) *(Repealed 24 of 2005 s. 55)*
  - (ii) permitted by the Commissioner for Transport under the Ferry Services Ordinance (Cap. 104) to ply between 2 or more points within the waters of Hong Kong; and
  - (iii) travelling on a permitted route;
- (h) by a passenger, or as part of his baggage, for his own use other than for trade or business, which vessel is certificated by the Director of Marine for—
  - (i) Class I vessel under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D); or
  - (ii) Class II vessel under that Regulation and is permitted to carry passengers under a licence issued under section 15 or 19 of that Regulation;  
*(Replaced 24 of 2005 s. 55)*
- (i) under an export licence issued for the purposes of section 6D(2);

- (j) for the personal use of a crew member or a passenger while he is on board the vessel;
- (k) under a carriage licence issued by the Commissioner under the Import and Export (Carriage of Articles) Regulations (Cap. 60 sub. leg. I),  
and includes possessing a prescribed article on board the vessel in any of the circumstances set out in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k).
- (6) For the purposes of subsection (4), “lawful excuse” (合法辯解) means the article is towed by use of a vessel, under a carriage licence issued by the Commissioner under the Import and Export (Carriage of Articles) Regulations (Cap. 60 sub. leg. I).
- (7) Any person who contravenes subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable—
- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.
- (8) In this section, unless the context otherwise requires—
- “ferry vessel” (渡輪船隻) means a vessel which plies regularly for the carriage of passengers and articles between 2 or more points within the waters of Hong Kong;
- “prescribed article” (訂明物品) means an article prescribed in the Schedule to the Import and Export (Carriage of Articles) Regulations (Cap. 60 sub. leg. I);
- “shipping company” (航運公司) means a company that carries on the business of transporting articles or arranging transport of articles for import or export purposes;
- “shipping document” (裝運單據) means a document issued by a shipping company or its agent in Hong Kong—

- (a) authorizing the delivery in Hong Kong of imported articles; or
- (b) instructing the master of a vessel in Hong Kong to accept and export articles out of Hong Kong.

*(Added 1 of 1994 s. 5)*

**6F. Orders made by Director for purposes of sections 6C to 6E, etc.**

- (1) The Director may by order amend—
  - (a) Part 2 of Schedule 1 or 2 to the Import and Export (General) Regulations (Cap. 60 sub. leg. A);
  - (b) the Schedule to the Export (Prescribed Articles) Regulations (Cap. 60 sub. leg. D);
  - (c) the Schedule to the Import and Export (Carriage of Articles) Regulations (Cap. 60 sub. leg. I).
- (2) The Director shall publish an order under subsection (1) in the Gazette and shall cause it to be laid on the table of the Legislative Council at the next sitting day after it is published.
- (3) The Legislative Council may, within the period of 28 days after the date an order under subsection (1) is laid, by resolution, amend the order in any manner consistent with this section.
- (4) If the period of 28 days would, but for this subsection, expire after the end of a session or a dissolution of the Legislative Council and before the second sitting day in the next session, that period shall be extended and shall expire on the day after the second sitting day.
- (5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to an order specified therein—

- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session. *(Replaced 8 of 2002 s. 5)*
- (6) A resolution under subsection (3) or (5) shall be published in the Gazette within 14 days after it is passed or such further period as the Chief Executive may allow. *(Amended 66 of 2000 s. 3)*
- (7) An order under subsection (1) shall come into operation—
- (a) if the Legislative Council does not, by resolution, amend the order under this section before the expiry of the period to amend it, on a day to be appointed by the Director by notice published in the Gazette after the expiry of that period;
- (b) if the Legislative Council, by resolution, amends the order under this section, as from the date of publication in the Gazette under subsection (6) of the resolution.
- (8) In this section, “sitting” (立法會會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper. *(Amended 66 of 2000 s. 3)*
- (Added 1 of 1994 s. 5. Amended E.R. 1 of 2012)*

## 7. Possession of prohibited article after import

- (1) The owner of any vessel, aircraft or vehicle in or on which any prohibited article is imported shall retain possession of

the prohibited article until—

- (a) in the case where the import of the prohibited article is permitted subject to the terms and conditions of a licence, there is produced to him a valid import licence issued under this Ordinance or under some other law in respect of the prohibited article; or
  - (b) in any other case, the Commissioner gives to the owner of the vessel, aircraft or vehicle written directions in respect of the removal or storage of the prohibited article. (*Amended L.N. 294 of 1982*)
- (2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for 1 year. (*Amended 60 of 1980 s. 2*)
  - (3) It shall be a defence to a charge under subsection (1)(a) if the defendant proves that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

#### **8. Delivery of import licence and manifest to the Director**

- (1) Subject to section 9, a person to whom an import licence has been issued under this Ordinance shall present the licence to the owner of the vessel, aircraft or vehicle in or on which the article is imported within 7 days after the article was imported.
- (2) On presentation of an import licence pursuant to subsection (1), the owner of the vessel, aircraft or vehicle in or on which the article has been imported—
  - (a) may release the article to the consignee, if he is satisfied that he is not prohibited from doing so under any condition of the import licence; and
  - (b) shall, within 7 days after receiving the import licence—

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- (i) deliver the import licence to the Director; and
  - (ii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported. *(Replaced 24 of 2002 s. 2)*
- (2A) The requirement under subsection (2)(b)(ii) is deemed to have been complied with if at the time of delivering the import licence under subsection (2)(b)(i) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg. E) and was so lodged using services provided by a specified body. *(Added 24 of 2002 s. 2)*
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

### **9. Delivery of import licence and manifest in the case of part shipments**

- (1) If an article which is imported forms part only of a consignment of articles in respect of which an import licence has been issued under this Ordinance, the person to whom the licence was issued shall present—
- (a) the import licence endorsed by him to this effect; and
  - (b) a written declaration signed by him stating that the article which has been imported forms part only of a consignment of articles in respect of which the licence was issued,

to the owner of the vessel, aircraft or vehicle in or on which the article was imported within 7 days after the article was imported.

- (2) The owner of the vessel, aircraft or vehicle, on receiving from a licensee an endorsed import licence and written declaration pursuant to subsection (1)—
- (a) may release the article to the consignee, if he is satisfied that he is not prohibited from doing so under any condition of the import licence; and
  - (b) shall, within 7 days after receiving the import licence and written declaration—
    - (i) endorse the licence and return it to the person to whom it was issued; *(Replaced 24 of 2002 s. 2)*
    - (ii) deliver the declaration to the Director; and *(Replaced 24 of 2002 s. 2)*
    - (iii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported. *(Added 24 of 2002 s. 2)*
- (2A) The requirement under subsection (2)(b)(iii) is deemed to have been complied with if at the time of delivering the declaration under subsection (2)(b)(ii) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg. E) and was so lodged using services provided by a specified body. *(Added 24 of 2002 s. 2)*
- (3) The written declaration referred to in subsections (1) and (2) shall be made in such form as the Director may specify from time to time.
- (4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

## 10. Carriers prohibited from accepting prohibited articles for



**export without licence**

- (1) The owner of a vessel, aircraft or vehicle shall not accept any prohibited article for export on the vessel, aircraft or vehicle until—
  - (a) there is produced to him an export licence issued on paper under this Ordinance or some other law in respect of the prohibited article; or
  - (b) he has obtained a notification sent by the Director using services provided by a specified body notifying him that an export licence has been issued under this Ordinance in respect of the prohibited articles. (*Amended 30 of 1995 s. 5*)
- (2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for 1 year. (*Amended 60 of 1980 s. 3*)
- (3) It shall be a defence to a charge under this section if the defendant proves that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

**11. Delivery of export licence and manifest to the Director**

- (1) When a licence has been issued under this Ordinance for the export of an article, the owner of the article shall, before it is exported—
  - (a) where the licence has been issued on paper, deliver the licence to the owner of the vessel, aircraft or vehicle in or on which he intends to export it; or
  - (b) where the licence has not been issued on paper, inform the owner of the vessel, aircraft or vehicle in or on which he intends to export it—
    - (i) the licence number; and

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- (ii) the reference number used to identify the application for the licence when the application was sent to the Director using services provided by a specified body.
- (2) The owner of the vessel, aircraft or vehicle in or on which an article in respect of which an export licence has been issued under this Ordinance is exported shall— (*Amended 24 of 2002 s. 2*)
- (a) where he has obtained a notification sent by the Director under section 10(1)(b) that is still in force, within 14 days after the day on which the article is exported—
- (i) inform the Director of the export licence number; and
- (ii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article has been exported; or
- (b) in any other case, within 14 days after the day on which the article is exported—
- (i) deliver the export licence to the Director; and
- (ii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article has been exported. (*Amended 24 of 2002 s. 2*)
- (2A) The requirements under subsection (2)(a)(ii) and (b)(ii) are deemed to have been complied with if, at the time of informing the Director of the export licence number under subsection (2)(a)(i) or delivering the export licence under subsection (2)(b)(i), the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 12 of the Import and Export

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(Registration) Regulations (Cap. 60 sub. leg. E) and was so lodged using services provided by a specified body. *(Added 24 of 2002 s. 2)*

- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

*(Amended 30 of 1995 s. 6)*

### **11A. Director to have access to manifests lodged with Commissioner**

The Director shall have access to any information contained in a manifest of cargo that has been lodged under this Ordinance with the Commissioner or with an officer appointed by the Commissioner.

*(Added 24 of 2002 s. 2)*

### **12. Inspection and storage of prohibited articles**

- (1) For the purpose of determining whether or not an article which—
- (a) has been imported within the period of 6 months preceding the date when a request is made under this subsection for the production of the same; or
  - (b) is intended to be exported,
- is a prohibited article, the person in possession or control of article shall, if required to do so by the Commissioner, an authorized officer or member of the Customs and Excise Service of or above the rank of Inspector, produce it for inspection by the Commissioner, an authorized officer or such member of the Customs and Excise Service. *(Amended 46 of 1977 s. 17; 62 of 1993 s. 4)*
- (2) The Commissioner, any authorized officer or a member of the Customs and Excise Service of or above the rank of Inspector

shall determine whether or not any article produced to him for inspection under subsection (1) is a prohibited article.  
*(Amended 46 of 1977 s. 17; 62 of 1993 s. 4)*

- (3) The person in possession or control of a prohibited article shall, if required to do so by the Commissioner or an authorized officer, cause such article to be stored in a place specified by the Commissioner or authorized officer under such conditions as he may impose.
- (4) An article stored in a specified place in accordance with the directions of the Commissioner or authorized officer under subsection (3) shall not be removed from that place unless the Commissioner or an authorized officer has authorized in writing the removal of the article.
- (5) Any person authorized in writing under subsection (4) to remove an article from a specified place shall comply with such conditions as may be imposed by the Commissioner or authorized officer on the removal of the article.
- (6) Any person who contravenes subsection (1), (3), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

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

### **13. Claim and disposal of prohibited articles found without owner**

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

- (1) The Commissioner or any authorized officer may order that any prohibited article which is found without an apparent owner shall be stored in a place specified by him subject to such conditions as he may impose.
- (2) Any person who, being in possession of a prohibited article which is found without an apparent owner, fails to comply with an order given by the Commissioner or an authorized officer under subsection (1) shall be guilty of an offence

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and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

- (3) Where a prohibited article is stored in a specified place pursuant to an order given under subsection (1), the Commissioner or an authorized officer shall, within the period of 72 hours after the prohibited article has been stored in that place, cause a notice to be exhibited at the Customs and Excise Department in a place to which the public have access—
  - (a) stating that the prohibited article has been stored in that place;
  - (b) calling upon the owner of the prohibited article to submit to the Commissioner a claim in respect of it within 30 days; and
  - (c) stating his intention to apply to a magistrate at the expiration of 30 days from the date of the notice for an order that the prohibited article be forfeited to the Government. (*Amended 66 of 2000 s. 3*)
- (4) When a claim to ownership of a prohibited article is submitted to the Commissioner pursuant to a notice given under subsection (3), the person who has made a claim shall produce to the Commissioner or an authorized officer such evidence as to his ownership as may be required by the Commissioner or authorized officer. (*Amended 62 of 1993 s. 5*)
- (5) Without prejudice to any provision of this Ordinance relating to the seizure of any article which is liable to forfeiture, the Commissioner or an authorized officer may, if he is satisfied of the validity of a claim made under subsection (4), authorize in writing the person who has made a claim to remove the prohibited article from the place in which it was stored, subject to the prior payment by the person who has made a claim of all storage and other charges which have

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accrued in respect of the storage of the article in the specified place. *(Amended 62 of 1993 s. 5)*

- (6) A magistrate shall, if satisfied that the provisions of this section have been complied with and that no claim to ownership has been established, on the application of the Commissioner or an authorized officer, order that a prohibited article be forfeited to the Government. *(Amended 66 of 2000 s. 3)*

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

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**PART IV****UNMANIFESTED CARGO AND SMUGGLING****14. Alteration of vessel, aircraft or vehicle for the purpose of smuggling**

- (1) Any person who alters the fittings, fabric or structure, or makes use of the altered fittings, fabric or structure, of any vessel, aircraft or vehicle for the purpose of smuggling any article into or out of Hong Kong shall be guilty of an offence and shall be liable—
- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years. (*Amended 1 of 1994 s. 6*)
- (2) If—
- (a) the Commissioner, any authorized officer or any member of the Customs and Excise Service reasonably suspects that any vessel, aircraft or vehicle has been used or is intended to be used for the purpose of smuggling; and
  - (b) the vessel, aircraft or vehicle is found in Hong Kong to have—
    - (i) any false bulkhead, bow, side or bottom;
    - (ii) any secret or disguised place adapted for the purpose of concealing any article; or
    - (iii) any hole, pipe or other device adapted for the purpose of smuggling,

the fittings, fabric or structure of the vessel, aircraft or vehicle shall be presumed to have been altered for the purpose of

smuggling an article into or out of Hong Kong in the absence of evidence to the contrary. (*Amended L.N. 294 of 1982*)

(*Amended 22 of 1991 s. 5*)

**14A. Construction, etc., of vessels for the purpose of smuggling**

- (1) Any person who constructs a vessel of less than 250 gross tons for the purpose of smuggling is guilty of an offence and liable—
  - (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years. (*Amended 1 of 1994 s. 7*)
- (2) Any person who repairs or maintains a vessel of less than 250 gross tons constructed for the purpose of smuggling is guilty of an offence and liable—
  - (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years. (*Amended 1 of 1994 s. 7*)
- (3) Any person found on board a vessel of less than 250 gross tons knowing that the vessel is being used for the purpose of smuggling is guilty of an offence and liable—
  - (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years. (*Amended 1 of 1994 s. 7*)
- (4) The master or other person in charge of a vessel of less than 250 gross tons used for the purpose of smuggling is guilty of an offence and liable—



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- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years. (*Amended 1 of 1994 s. 7*)
- (5) Any vessel of less than of 250 gross tons that is under construction for the purpose of smuggling is deemed to be a vessel constructed or used for the purpose of smuggling.
- (6) In subsection (1), (2), (3), (4) and (5), where—
  - (a) the Commissioner, and authorized officer or any member of the Customs and Excise Service reasonably suspects that a vessel has been used or is intended to be used for the purpose of smuggling; and
  - (b) it is a vessel that has—
    - (i) any false bulkhead, bow, side or bottom;
    - (ii) any secret or disguised place adapted for the purpose of concealing any article;
    - (iii) any hole, pipe or other device adapted for the purpose of smuggling;
    - (iv) a facility to mount one or more than one outboard engine where the total power of the engine or engines could exceed 168 kilowatts; (*Replaced 16 of 2009 s. 3*)
    - (v) fuel tanks or other on board fuel capacity exceeding 817 litres, such tanks or other capacity holding or suitable for holding fuel for outboard motors; or
    - (vi) metal plating fitted on the hull of the vessel that could be used for ramming other vessels or for armour protection,

the vessel, or vessel under construction, shall be presumed to have been under construction, constructed or used for the purpose of smuggling in the absence of evidence to the contrary.

- (7) It shall be a defence to a charge under subsection (4) for the master or other person in charge of a vessel to prove that he did not know and could not with reasonable diligence have known that the vessel was used for smuggling.

*(Added 22 of 1991 s. 6)*

### **15. Duty to provide particulars of all cargo**

- (1) A person specified in subsection (1A) in relation to a vessel, aircraft or vehicle shall, on any occasion that the vessel, aircraft or vehicle is entering or leaving Hong Kong— *(Amended 36 of 1983 s. 3; 24 of 2002 s. 2)*
- (a) furnish any member of the Customs and Excise Service of or above the rank of Inspector a manifest in respect of the cargo being imported or exported in or on the vessel, aircraft or vehicle if he is requested to do so by any such member of the Customs and Excise Service; and *(Amended 46 of 1977 s. 17; 36 of 1983 s. 3; 62 of 1993 s. 6)*
- (b) allow any member of the Customs and Excise Service to board the vessel, aircraft or vehicle, inspect the cargo and search the vessel for contraband.
- (1A) The following persons are specified for the purposes of subsection (1)—
- (a) in the case of a vessel, the master or agent of the vessel;
- (b) in the case of an aircraft, the commander or the owner of the aircraft;

- (c) in the case of a vehicle other than a train, the person in charge of the vehicle;
  - (d) in the case of a train, the handling agent in Hong Kong for the cargo carried by the train. *(Added 24 of 2002 s. 2)*
- (1B) For the purpose of any requirement under subsection (1)(a) to furnish a member of the Customs and Excise Service with a manifest, the manifest may—
- (a) be given to the member of the Customs and Excise Service in paper form;
  - (b) be given or sent to the member of the Customs and Excise Service in the form of an electronic record, but only if the manner and format in which the information is given or sent comply with any requirements specified under section 11(2) of the Electronic Transactions Ordinance (Cap. 553) in relation to this Ordinance; or
  - (c) be sent to the member of the Customs and Excise Service using services provided by a specified body. *(Added 24 of 2002 s. 2)*
- (1C) In this section, “manifest” (艙單) means a record prepared as a manifest and containing such of the particulars prescribed under section 17 as the member of the Customs and Excise Service considers sufficient for his purposes. *(Added 24 of 2002 s. 2)*
- (2) Any person who contravenes subsection (1)(a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 1 month.

**16. Prohibition against unauthorized placing of cargo on vessels, etc.**

- (1) No person shall place any cargo in or on any vessel or aircraft without the consent of the owner of the vessel or aircraft.

- (2) No person shall place any cargo in or on any vehicle which may leave Hong Kong without the consent of the owner of the vehicle.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

**17. All cargo to be recorded in manifest**

- (1) All cargo which is imported or exported shall be recorded in a manifest which shall contain such particulars as the Commissioner may prescribe.
- (2) For the purposes of subsection (1) the Commissioner may, by notice published in the Gazette, prescribe the particulars of the cargo and the particulars of the consignment of cargo to be recorded.

*(Replaced 36 of 1983 s. 4)*

**18. Offence of importing or exporting unmanifested cargo**

- (1) Any person who—
  - (a) imports any unmanifested cargo; or
  - (b) exports any unmanifested cargo,
 shall be guilty of an offence and shall be liable—
  - (i) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (ii) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years. *(Amended 60 of 1980 s. 4; 3 of 1984 s. 2; 22 of 1991 s. 7)*
- (2) It shall be a defence to a charge under this section if the defendant proves that he did not know and could not with reasonable diligence have known that the cargo was unmanifested.

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*(Amended 1 of 1994 s. 8)*

**18A. Assisting, etc., in export of unmanifested cargo**

- (1) Any person who knowingly—
  - (a) has possession of any cargo;
  - (b) assists with the carrying, removing, depositing, harbouring, keeping or concealing of any cargo; or
  - (c) otherwise deals with any cargo,with intent to export the cargo without a manifest or with intent to assist another person to export the cargo without a manifest is guilty of an offence and liable—
  - (i) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (ii) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years. *(Amended 1 of 1994 s. 9)*
- (2) Any person who—
  - (a) has possession of any cargo;
  - (b) assists with the carrying, removing, depositing, harbouring, keeping or concealing of any cargo; or
  - (c) otherwise deals with any cargo,in circumstances that give rise to a reasonable suspicion that there is intent on the part of that person to export the cargo without a manifest or to assist another person to export the cargo without a manifest, the first mentioned person will be presumed to have such intent in the absence of evidence to the contrary.

*(Added 22 of 1991 s. 8)*

**19. Written list showing ports of call to be furnished to the Commissioner**

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- (1) The owner of any vessel shall, if required to do so by the Commissioner, an authorized officer or a member of the Customs and Excise Service, furnish forthwith to the Commissioner or to the authorized officer or member of the Customs and Excise Service, a written list showing, so far as the owner is aware, every port or place at which the vessel has called during the period of 3 months immediately preceding the date of its arrival in Hong Kong. (*Amended L.N. 294 of 1982*)
  - (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$200.
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## PART V

### POWERS OF INVESTIGATION

#### 20. General powers of members of Customs and Excise Service, etc.

- (1) Without prejudice to the powers conferred by section 21, any member of the Customs and Excise Service and any authorized officer may, for the purposes of this Ordinance—
  - (a) enter at any reasonable time and search any premises (other than domestic premises) or place registered under this Ordinance or occupied by a person who—
    - (i) has been registered under this Ordinance;
    - (ii) has lodged a production notification with the Director;
    - (iii) has been issued with a validated production notification; or
    - (iv) is the holder of a licence; (*Amended 3 of 1973 s. 2; 37 of 1999 s. 4*)
  - (b) stop, board and search any vessel, aircraft or vehicle;
  - (c) require the production or furnishing of— (*Amended 30 of 1995 s. 7*)
    - (i) any licence, production notification or validated production notification; (*Amended 37 of 1999 s. 4*)
    - (ia) the licence number of any licence where the licence has been issued and sent using services provided by a specified body; (*Added 30 of 1995 s. 7*)

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- (ib) any document or information relating to any licence or validated production notification, or to any production notification, declaration or other document required to be lodged, delivered or provided to the Commissioner or Director in connection with the requirements of this Ordinance; *(Added 37 of 1999 s. 4)*
- (ic) the reference number of any production notification or validated production notification; *(Added 37 of 1999 s. 4)*
- (ii) any document which relates to the origin or nature of any article or which he suspects to be relevant to an offence under this Ordinance; or
- (iii) any record or other document required to be kept by this Ordinance; *(Replaced 3 of 1973 s. 2)*
- (d) examine and take copies of any licence, production notification or validated production notification, or of any record, document or information referred to in paragraph (c); *(Replaced 3 of 1973 s. 2. Amended 37 of 1999 s. 4)*
- (da) require any information relating to any licence, production notification or validated production notification, or to any record, document or information referred to in paragraph (c), that is— *(Amended 37 of 1999 s. 4)*
  - (i) contained in a computer in, on or accessible from the premises, place, vessel, aircraft or vehicle entered or boarded under this section; or
  - (ii) contained in any device found in or on the premises, place, vessel, aircraft or vehicle entered or boarded under this section and which is capable of being retrieved on a computer,



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to be produced on a computer in or on the premises, place, vessel, aircraft or vehicle in a visible and legible form, and examine the information; (*Added 30 of 1995 s. 7*)

- (db) require any information described in paragraph (da) to be produced in a form in which it can be taken away and in which it is either visible and legible or capable of being retrieved on a computer; (*Added 30 of 1995 s. 7*)
- (dc) take away the copy so produced under paragraph (db); (*Added 30 of 1995 s. 7*)
- (e) take, without payment but subject to the issue of an official receipt for it, such sample of any article in respect of which any licence or validated production notification may be issued or any production notification has been lodged under this Ordinance as may be required by the Commissioner for the purpose of examination and investigation; (*Amended L.N. 294 of 1982; 37 of 1999 s. 4*)
- (f) examine any article if he considers it necessary to do so to ascertain whether or not the provisions of this Ordinance are being, or have been, complied with by any person in respect of that article; or
- (g) stop and search any person entering or leaving Hong Kong:

Provided that no person shall be searched except by a person of the same sex or be searched in a public place if he objects to being so searched.

- (2) Any member of the Customs and Excise Service and any authorized officer may require—
  - (a) any person to whom a licence or validated production notification has been issued; (*Amended 37 of 1999 s. 4*)

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(b) any person who has been registered under this Ordinance; and

(c) any servant, employee or agent of any person referred to in paragraph (a) or (b),

to furnish such information or take such action as may be necessary to enable the member of the Customs and Excise Service or the authorized officer to exercise the powers conferred on him under this Ordinance.

- (3) When a sample of any article has been taken by a member of the Customs and Excise Service or an authorized officer pursuant to subsection (1)(e) the Commissioner may, after examination and investigation of it, direct that the sample be returned to the owner thereof or disposed of in such manner as the Commissioner thinks fit. (*Amended L.N. 294 of 1982*)

### **20A. Removal of articles may be prohibited until importer known**

- (1) In this section and section 20B—

“article” (物品) means article of cargo;

“consignee” (收貨人) includes the agent of the consignee and any person entitled to the delivery of an article;

“officer” (人員) means any member of the Customs and Excise Service or any authorized officer.

- (2) Where any article is upon any vessel, aircraft or vehicle for importation into Hong Kong and an officer, for the purpose of carrying out his functions under this Ordinance, requires to know the identity of the consignee of the article or to verify the particulars supplied to him by any person, or in any document, relating to the identity of the consignee, the officer may give notice to the owner of the vessel, aircraft or vehicle prohibiting such owner from removing, or permitting the removal of, the article—

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- (a) from the vessel, aircraft or vehicle except to a place specified in the notice, being a place designated by such owner; and
  - (b) from such place,  
save in accordance with permission therefor granted under subsection (4).
- (3) A copy of any notice given under subsection (2) shall, where the goods are to be stored in premises occupied by a person other than the owner of the vessel, aircraft or vehicle, be given also to the person occupying such premises and such person shall not remove, or permit the removal of, the article from his premises save in accordance with permission therefor granted under subsection (4).
- (4) The officer giving notice under subsection (2) shall, as soon as reasonably practicable, after he knows of the identity, or he verifies the particulars, of the consignee of the article to which the notice relates, permit the person upon whom the notice is served to remove, or permit the removal of, the article from the place where, by virtue of the notice, it may lawfully be kept either—
  - (a) unconditionally, in which case he shall notify the person on whom the notice is served in writing; or
  - (b) after examination of the article in accordance with the powers vested in such officer under section 20.
- (5) It shall be the duty of the person upon whom a notice is served under subsection (2) or (3), at any time prior to the grant of permission under subsection (4), upon obtaining information as to the identity or particulars of the consignee of the article to which the notice relates, being information not previously supplied by such person to the officer giving the notice, to supply such information to the officer specified in the notice.

*(Added 36 of 1983 s. 5)*

**20B. Requirement that articles may be removed from vessel etc. for examination**

- (1) Where any article is upon any vessel, aircraft or vehicle for importation into Hong Kong and an officer desires, in the exercise of his functions under section 20, to examine such article, but he is of the opinion that such article can be more conveniently examined after it has been removed from such vessel, aircraft or vehicle, he may give notice to the consignee of the article, or, in the case of an article in transit being a prohibited article, to the owner of the vessel, aircraft or vehicle, requiring the article to be removed for examination to premises specified in the notice, being premises nominated by the consignee or such owner, as the case may be.
- (2) A copy of any notice given under subsection (1) shall, where the goods are to be removed to premises occupied by a person other than the consignee or such owner, as the case may be, be given also to the person occupying such premises.
- (3) The consignee or such owner, as the case may be, and, in the event of a copy of the notice being served upon any occupier under subsection (2), the occupier, shall not remove, or permit the removal of, the article from the premises specified in the notice given under subsection (1) until—
  - (a) the article has been examined by an officer in accordance with the powers vested in such officer under section 20; or
  - (b) an officer has informed such consignee, owner or occupier in writing that such examination is unnecessary.
- (4) Where an article is removed to any premises pursuant to a notice given under subsection (1), it shall be the duty of—

- (a) every person in control of such premises to permit an officer to have access to the article and to examine it in accordance with the powers vested in such officer under section 20; and
  - (b) the Commissioner to ensure that such examination is made as soon as reasonably practicable.
- (5) It may be the condition of any notice given under subsection (1) that the article shall, at all times until it is examined by an officer under section 20, be guarded by an officer and if there is such a condition, an officer may enter upon any place where the article is and take such measures as are reasonably necessary to protect the article from interference.
- (6) Any notice, notification or information of any kind under this section or section 20A shall contain or include such information and be given in such manner as may be prescribed. *(Replaced 24 of 2002 s. 2)*

*(Added 36 of 1983 s. 5. Amended 65 of 1991 s. 3)*

**21. Special powers of the members of the Customs and Excise Service, etc.**

- (1) Subject to section 22, any member of the Customs and Excise Service and any authorized officer may, if he reasonably suspects that there is, in or on any premises or place, vessel, aircraft or vehicle, any article in respect of which an offence has been committed under this Ordinance or which is, or contains, evidence of the commission of such offence—
- (a) enter and search any such premises or place;
  - (b) stop, board, remove, detain and search any vessel, aircraft or vehicle.
- (2) Any member of the Customs and Excise Service and any authorized officer may- (Amended 30 1995 s. 8)

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- (a) seize any article—
  - (i) in respect of which he reasonably suspects that an offence has been committed under this Ordinance; or
  - (ii) which he reasonably suspects to be, or to contain, evidence of the commission of such an offence;
- (b) seize any vessel which has a tonnage not exceeding 250 gross tons and any vehicle, if he reasonably suspects such vessel or vehicle to have been used in connexion with the commission of an offence under this Ordinance; (Amended 30 1995 s. 8)
- (c) require any information which he reasonably suspects relates to an offence which has been, or may have been, committed under this Ordinance that is—
  - (i) contained in a computer in, on or accessible from the premises, place, vessel, aircraft or vehicle entered or boarded under this section; or
  - (ii) contained in any device found in or on the premises, place, vessel, aircraft or vehicle entered or boarded under this section and which is capable of being retrieved on a computer,to be produced on a computer in or on the premises, place, vessel, aircraft or vehicle in a visible and legible form, and examine the information; (*Added 30 of 1995 s. 8*)
- (d) require any information described in paragraph (c) to be produced in a form in which it can be taken away and in which it is either visible and legible or capable of being retrieved on a computer; and (*Added 30 of 1995 s. 8*)
- (e) take away the copy so produced under paragraph (d). (*Added 30 of 1995 s. 8*)

- (3) Subject to section 22, any member of the Customs and Excise Service or any authorized officer may enter and search any premises or place connected with the manufacture, processing, production, storage, distribution or sale of any article in respect of which a licence or validated production notification has been issued or a production notification has been lodged under this Ordinance. (*Amended 37 of 1999 s. 5*)
- (4) The owner of any article, licence, production notification, validated production notification or other document seized by a member of the Customs and Excise Service or an authorized officer under this section may, on application to the Commissioner and subject to such conditions as the Commissioner may impose, photograph or make any other form of copy of the seized article, licence, production notification, validated production notification or document. (*Amended L.N. 294 of 1982; 37 of 1999 s. 5*)

**22. Restrictions upon exercise of special powers of members of the Customs and Excise Service, etc.**

- (1) No domestic premises shall be entered and searched by a member of the Customs and Excise Service or an authorized officer unless—
  - (a) a magistrate has issued a warrant under subsection (2); or
  - (b) a member of the Customs and Excise Service of or above the rank of Assistant Superintendent has given an authorization under subsection (3). (*Amended 46 of 1977 s. 17; L.N. 294 of 1982*)
- (2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any thing which may be seized under section 21, issue a warrant authorizing a member of the

Customs and Excise Service or an authorized officer to enter and search the premises.

- (3) A member of the Customs and Excise Service of or above the rank of Assistant Superintendent may, if he reasonably suspects— (*Amended 46 of 1977 s. 17; L.N. 294 of 1982*)
- (a) that there is in any domestic premises any thing which may be seized under section 21; and
  - (b) that unless the premises are entered and searched immediately such thing is likely to be removed from the premises,

authorize in writing a member of the Customs and Excise Service or an authorized officer to enter and search the premises.

- (4) A member of the Customs and Excise Service or an authorized officer authorized under subsection (2) or (3) to enter and search any domestic premises may call upon any member of the Customs and Excise Service and any authorized officer to assist him in entering and searching the premises.
- (5) No vessel which has a tonnage exceeding 250 gross tons shall be detained under section 21(1) for more than 12 hours without the consent of the Chief Secretary for Administration, who may, by order in writing under his hand, detain such a vessel for further periods of not more than 12 hours each. (*Amended L.N. 362 of 1997*)
- (6) No aircraft shall be detained under section 21(1) for more than 6 hours without the consent of the Chief Secretary for Administration, who may, by order in writing under his hand, detain an aircraft for further periods of not more than 6 hours each. (*Amended L.N. 362 of 1997*)
- (7) Any order made by the Chief Secretary for Administration under subsection (5) or (6) shall state the times from which



and for which the order shall be effective. (*Amended L.N. 362 of 1997*)

**23. Powers of arrest of authorized officers and members of the Customs and Excise Service**

- (1) Any member of the Customs and Excise Service and any authorized officer may, subject to subsection (2), arrest or detain for further inquiries without warrant any person whom he reasonably suspects of having committed any offence under this Ordinance.
- (2) Any member of the Customs and Excise Service and any authorized officer who arrests any person under subsection (1) shall take the person to a police station or, if further inquiries are necessary, first to the office of the Customs and Excise Service or the office of an authorized officer and then to a police station, there to be dealt with in accordance with the provisions of the Police Force Ordinance (Cap. 232): (*Amended 62 of 1993 s. 7*)

Provided that in no case shall any person be detained for more than 48 hours without being charged and brought before a magistrate.

- (3) If any person forcibly resists or attempts to evade arrest under this section, the member of the Customs and Excise Service or the authorized officer may use such force as is reasonably necessary to effect the arrest.
- (4) If any member of the Customs and Excise Service or any authorized officer has reason to believe that a person whom he intends to arrest (hereinafter in this section referred to as the suspected offender) has entered into or is in any place or premises, any person residing in or in charge of such place or premises shall, on demand by the member or authorized officer, allow him free entry thereto and afford all reasonable facilities to search for the suspected offender therein.

- (5) If entry to such premises or place cannot be obtained under subsection (4) a member of the Customs and Excise Service or an authorized officer, in any case in which a warrant to enter and search such premises or place may issue but cannot be obtained without affording the suspected offender an opportunity to escape, may enter the premises or place and therein search for the suspected offender and for the purpose of entry or search may break open any outer or inner door or window of the premises or place.

#### **24. Ancillary powers of investigation of suspected offence**

Any member of the Customs and Excise Service and any authorized officer may—

- (a) use such force as is reasonably necessary to enter any place or premises which he is empowered by this Ordinance to enter and search;
- (b) use such force as is reasonably necessary to stop, board, remove, detain and search any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board, remove, detain and search;
- (c) use such force as is reasonably necessary to remove any person or thing obstructing him in the exercise of any power conferred on him by this Ordinance;
- (d) detain any person found in any premises or place which he is empowered by this Ordinance to search until such premises or place has been searched;
- (e) prevent any person from approaching, boarding or leaving any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board and search until it has been searched;

- (f) search the person and property and effects of any person whom he reasonably suspects of being guilty of an offence under this Ordinance:

Provided that no person shall be searched except by a person of the same sex or be searched in a public place if he objects to being so searched.

**25. Locks and seals on premises, vessels, etc.**

- (1) Any member of the Customs and Excise Service and any authorized officer may, for the purpose of exercising the powers conferred on him by this Ordinance, place a lock or seal on any premises or place, or on any vessel, aircraft, vehicle or article.
- (2) If a member of the Customs and Excise Service or an authorized officer has placed a lock or seal on any premises, or on any vessel, aircraft, vehicle or article, any person who breaks or interferes with such a lock or seal shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and to imprisonment for 3 months:

Provided that if—

- (a) any person breaks or interferes with any such lock or seal in the bona fide belief that it is necessary immediately to break or interfere with the lock or seal in order to prevent—
- (i) injury being suffered by any person; or
  - (ii) damage being incurred to any premises, article, vessel, aircraft or vehicle; or
- (b) any public officer breaks or interferes with any such lock or seal in the exercise of his lawful duties,

such person or public officer shall be deemed not to have contravened this subsection.

**26. Obstruction of members of the Customs and Excise Service,**

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**etc.**

- (1) Any person who—
  - (a) obstructs a member of the Customs and Excise Service or an authorized officer in the exercise of any power or the performance of any duty conferred or imposed on members of the Customs and Excise Service and authorized officers by this Ordinance; (*Amended 36 of 1983 s. 6*)
  - (b) fails to comply with any requirement, direction or demand given or made by a member of the Customs and Excise Service or an authorized officer in the exercise or performance of any such power or duty; or (*Amended 36 of 1983 s. 6*)
  - (c) fails to comply with a notice given him under sections 20A and 20B; (*Added 36 of 1983 s. 6*)
  - (d) contravenes section 20A(3) or 20B(3); (*Added 36 of 1983 s. 6*)
  - (e) fails to supply information which it is his duty to supply under section 20A(5), (*Added 36 of 1983 s. 6*)

shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

- (2) Any person who knowingly makes a false report, or furnishes any false or misleading information, to any member of the Customs and Excise Service or any authorized officer in performing his duties under this Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

## PART VI

### FORFEITURE

#### 27. Seized articles, etc. liable to forfeiture

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

- (1) There shall be liable to forfeiture—
  - (a) any article which has been seized by a member of the Customs and Excise Service or an authorized officer in connexion with the contravention of any provision of this Ordinance;
  - (b) any vessel not exceeding 250 gross tons and any vehicle so seized and which has been used in connexion with, or is the subject of, the contravention of any provision of this Ordinance, (*Amended 22 of 1991 s. 9*)

whether or not any person has been convicted of an offence in respect of such contravention.

- (2) The Commissioner may, within 30 days of the seizure of an article, vessel or vehicle, restore any article (other than an article referred to in Schedule 1) or any vessel or vehicle which is liable to forfeiture to the person who appears to him to be the owner thereof or the authorized agent of the owner; and upon such restoration sections 28, 29, 29A, 29B and 30 shall cease to apply to the article, vessel or vehicle. (*Amended 30 of 1995 s. 9*)
- (3) The Commissioner shall, subject to subsection (3A) and not later than 30 days beginning on the date of the seizure of an article, vessel or vehicle, 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 article, vessel or vehicle. (*Replaced 62 of 1993 s. 8*)

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- (3A) Subsection (3) shall not apply—
- (a) if the article, vessel or vehicle was seized in the presence of—
    - (i) an owner, or an employee or agent of the owner, of the article, vessel or vehicle;
    - (ii) the person whose offence or suspected offence gave rise to the seizure; or
    - (iii) in the case of a vessel or vehicle, 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 62 of 1993 s. 8*)
- (3B) Notwithstanding anything in subsection (3A)(a), where the Commissioner believes that the article, vessel or vehicle is a stolen article, vessel or vehicle, 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 article, vessel or vehicle. (*Added 62 of 1993 s. 8*)
- (4) A notice given under subsection (3) or (3B) shall be deemed to have been duly served if—
- (a) it is delivered to the person on whom it is to be served;
  - (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Commissioner; or
  - (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the Customs and Excise Department, in a place to which the public have access, for a period of not less than 7 days commencing within 30 days from the date of the seizure of the article, vessel or vehicle.

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- (5) If an article, vessel or vehicle is liable to forfeiture under subsection (1), the owner or the authorized agent of the owner of the article, vessel or vehicle or a person who was in possession of the article, vessel or vehicle at the time of seizure, or a person who has a legal or equitable interest in the article, vessel or vehicle, 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 describe in subsection (4)(c), on the first day it is so exhibited,

give notice in writing to the Commissioner claiming that the article, vessel or vehicle is not liable to forfeiture and of his full name and address for service in Hong Kong. (*Replaced 62 of 1993 s. 8*)

- (5A) Where a claimant does not have a permanent address in Hong Kong, the notice to the Commissioner under subsection (5) 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 62 of 1993 s. 8*)
- (5B) If a notice referred to in subsection (5A) 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 62 of 1993 s. 8*)
- (5C) Service of process in relation to forfeiture under this Ordinance at an address given under subsection (5) or on

a solicitor nominated under subsection (5A), shall be good service on the claimant. *(Added 62 of 1993 s. 8. Amended 1 of 1994 s. 10)*

- (5D) A claimant may withdraw a notice of a claim at any time in writing to the Commissioner. *(Added 62 of 1993 s. 8)*
- (6) If, on the date of expiration of the appropriate period of time specified in subsection (5) for the giving of a notice of claim, under that subsection, no such notice has been given in writing to the Commissioner the article, vessel or vehicle shall be forfeited forthwith to the Government. *(Amended 66 of 2000 s. 3)*

*(Amended L.N. 294 of 1982; 62 of 1993 s. 8)*

## **28. Determination of applications for forfeiture**

*(Adaptation amendments retroactively made - see 25 of 1998 s. 2; 66 of 2000 s. 3)*

- (1) When a notice of claim is given under section 27(5), the Commissioner or an authorized officer shall apply to a magistrate, the District Court or the Court of First Instance for the forfeiture of the article, vessel or vehicle 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 as specified in the notice of the claim. *(Amended L.N. 294 of 1982; 62 of 1993 s. 9; 25 of 1998 s. 2)*
- (2) When an application under subsection (1) 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 such summons to be served upon the Commissioner. *(Amended L.N. 294 of 1982)*



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- (2AA) When an application under subsection (1) is made to the District Court or the Court of First Instance, it shall be made and proceeded with in accordance with rules of court, and may be begun by motion. *(Added 1 of 1994 s. 11. Amended 25 of 1998 s. 2)*
- (2A) Where the claimant is the defendant in criminal proceedings before a court and there is no other claimant, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings and for the purposes of a hearing under this subsection, any requirement in respect of the issue or service of a summons or any notice of the hearing under or by virtue of subsection (2) or (2AA), as the case may be, shall not apply. *(Added 62 of 1993 s. 9)*
- (3) If, upon the hearing of an application under subsection (1), the claimant or some other person who, though not the claimant, was, or would have been, entitled to make a claim under section 27(5), appears before a court, the court shall hear the application.
- (3A) A court may, at the hearing of a forfeiture application, or at an adjourned hearing, hear a person—
- (a) who has not been served with a notice of seizure and was not present when an article, vessel or vehicle was 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 court to have a right to claim ownership of, or a legal or equitable interest in, the article, vessel or vehicle,
- on his claim as to why the article, vessel or vehicle should not be forfeited. *(Added 62 of 1993 s. 9)*

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- (4) If, upon the hearing of an application under subsection (1), neither the claimant nor any other person who, though not the claimant, was, or would have been, entitled to make a claim under section 27(5), appears before a court and the court is satisfied—
- (a) that the summons or the notice of the hearing (if any) required to be served under or by virtue of subsection (2) or (2AA), as the case may be, 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 service of the summons or the notice of the hearing referred to in paragraph (a); or
  - (c) that the address for service given to the Commissioner is inadequate to effect service of the summons or the notice of the hearing referred to in paragraph (a),
- the court shall hear and determine the application without requiring further inquiry as to the whereabouts of the claimant. *(Replaced 1 of 1994 s. 11)*
- (5) Subject to the provisions of this Ordinance, an application under subsection (1) to a magistrate shall be deemed to be a complaint for the purposes of section 8 of the Magistrates Ordinance (Cap. 227).
- (6) Upon the hearing of an application under subsection (1) a court shall order that the article, vessel or vehicle, as the case may be, be forfeited to the Government— *(Amended 66 of 2000 s. 3)*
- (a) in the case where—
    - (i) the person who appears before the court fails to satisfy the court that he was, or would have been, entitled to make a claim under section 27(5) in respect of the seized article, vessel or vehicle; and

- (ii) no other person appears before the court and satisfies it that he was, or would have been, entitled to make such claim; and
    - (iii) the court is satisfied that the article, vessel or vehicle is liable to forfeiture; or
  - (b) in the case where the court is satisfied that the article—
    - (i) is liable to forfeiture; and
    - (ii) is such an article as is referred to in Schedule 1.  
*(Amended 30 of 1995 s. 10)*
- (7) Upon the hearing of the application under subsection (1), in any case other than a case referred to in subsection (6)(a) or (b) a court may, if it is satisfied—
  - (a) that a person is, or would have been, entitled to make a claim under section 27(5) in respect of the seized article, vessel or vehicle; and
  - (b) that the article (not being such an article as is referred to in Schedule 1), vessel or vehicle is liable to forfeiture,  
*(Amended 30 of 1995 s. 10)*order that the article, vessel or vehicle—
  - (i) be forfeited to the Government; *(Amended 66 of 2000 s. 3)*
  - (ii) be delivered to the claimant subject to any condition which it may specify in the order; or *(Amended 62 of 1993 s. 9)*
  - (iii) be disposed of in such manner and subject to any such condition as it may specify in the order.
- (8) Upon the hearing of the application—
  - (a) a certified true copy of the record of the proceedings, including the decision of the court, in any proceedings

in respect of the contravention of any provision of this Ordinance shall be admissible in evidence; and

- (b) a certificate issued by a Certifying Authority certifying the gross tonnage of any vessel shall, upon production of the certificate and without proof of the signature thereon, be admissible as prima facie evidence of the facts stated therein. *(Amended 22 of 1991 s. 10)*
- (9) In subsection (8), “Certifying Authority” (核准當局) means the Director of Marine or any person authorized by him as a certifying authority under the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C). *(Added 22 of 1991 s. 10)*
- (10) If, after a court has ordered that an article, vessel or vehicle be delivered to a person, that person cannot be found or refuses to accept the article, vessel or vehicle, the Commissioner may apply to a court which may—
  - (a) order that the article, vessel or vehicle be forfeited; or
  - (b) make any other order as it considers fit in the circumstances. *(Added 62 of 1993 s. 9)*

*(Amended 1 of 1994 s. 11)*

## **29. Power to release seized vessels and vehicles prior to the hearing**

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

- (1) Where an application has been made under section 28(1) in respect of a vessel or vehicle which is liable to forfeiture, a court may, upon payment into court by way of security of a sum of money not less in amount than the value of the seized vessel or vehicle, as assessed by the Commissioner or an authorized officer, order that the vessel or vehicle be delivered to the claimant thereof upon the condition that the vessel or vehicle be re-delivered into the custody of the Commissioner before the date of hearing of the application.

- (2) If—
- (a) a court has ordered under subsection (1) that a seized vessel or vehicle be delivered to the claimant thereof; and
  - (b) the vessel or vehicle is not delivered into the custody of the Commissioner before the date of the hearing of the application,

the court hearing the application may, in lieu of ordering under section 28(6) or (7) that the vessel or vehicle be forfeited to the Government, order that the money paid into court under subsection (1) of this section be forfeited to the Government or returned to the person who paid it into court. *(Amended 66 of 2000 s. 3)*

- (3) A claimant who applies for the release of a vessel or vehicle shall prior to the release of the vessel or vehicle pay to the Commissioner the reasonable cost of assessing the value of the vessel or vehicle as the court orders. *(Added 62 of 1993 s. 10)*

*(Amended L.N. 294 of 1982; 1 of 1994 s. 12)*

**29A. Power to dispose, etc. of perishables, etc.**

(Adaptation amendments retroactively made - see 25 of 1998 s. 2; 66 of 2000 s. 3)

- (1) If an article liable to forfeiture under section 27(1) is, in the opinion of the Commissioner, of a perishable nature or of such a nature that it is difficult to store or is likely to deteriorate before the conclusion of any proceedings relating to it, the Commissioner may—
- (a) release the article 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 article as assessed by the Commissioner or an authorized officer;
- (b) for a perishable article, order that the article—
    - (i) be sold and the proceeds of the sale be retained by the Commissioner; or
    - (ii) be destroyed; or
  - (c) for an article that is difficult to store or an article that is likely to deteriorate before the conclusion of any proceedings relating to it, apply to a magistrate, the District Court or the Court of First Instance for an order that the article be sold and the proceeds of the sale be retained by the Commissioner. (*Amended 25 of 1998 s. 2*)
- (2) The court to which an application has been made under subsection (1)(c) shall not make an order under that subsection unless it is satisfied, in the case where the application is made—
- (a) before the expiry of the period for making a claim under section 27(5), the persons referred to in section 27(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 article.
- (3) Where an application is made under section 28(1) with respect to an article which is liable to forfeiture under section 27(1), the court may, in lieu of ordering under section 28(6) or (7) that article 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 66 of 2000 s. 3)*

*(Added 62 of 1993 s. 11. Amended 1 of 1994 s. 13)*

### **29B. Stay of order on appeal**

- (1) Subject to subsection (2), an order by a court for the delivery of an article, vessel or vehicle to a claimant shall be stayed if the Commissioner or the Secretary for Justice lodges an appeal against the order to deliver the article, vessel or vehicle or an application by way of case stated in relation to the order of the court until those proceedings are dealt with by the higher court. *(Amended 1 of 1994 s. 14; L.N. 362 of 1997)*
- (2) The Commissioner may, notwithstanding subsection (1), consent to the delivery of the article, vessel or vehicle.

*(Added 62 of 1993 s. 11)*

### **30. Claims for the return of forfeited articles, etc.**

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

- (1) A claimant may, within 6 weeks after—
  - (a) the article, vessel or vehicle has been forfeited to the Government under section 27(6) or has been forfeited to the Government by order of a court under section 28(6) or (7); or
  - (b) the determination of any appeal against an order for forfeiture of the article, vessel or vehicle made by a court under section 28(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 article, vessel or vehicle. *(Amended L.N. 294 of 1982; 62 of 1993 s. 12; 1 of 1994 s. 15; 66 of 2000 s. 3)*

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- (2) Where a claimant has submitted a petition to the Chief Executive by lodging it in triplicate with the Chief Secretary for Administration within 30 days of giving notice under subsection (1), the Chief Executive may after considering the petition— (*Amended L.N. 362 of 1997; 66 of 2000 s. 3*)
- (a) order the return of the forfeited article, vessel or vehicle to the claimant;
  - (b) stipulate conditions upon which the delivery and transfer of ownership of the forfeited or disposed of article, vessel or vehicle, or the proceeds of any disposal, to the claimant is to be effected; or
  - (c) reject the petition. (*Replaced 62 of 1993 s. 12*)
- (3) (*Repealed 62 of 1993 s. 12*)
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## PART VII

### REGULATIONS

#### 31. Power to make regulations

- (1) The Chief Executive in Council may make regulations for all or any of the following purposes— (*Amended 66 of 2000 s. 3*)
  - (a) prohibiting the import and export of any article;
  - (b) prohibiting the import and export of any article except under and in accordance with the terms and conditions of a licence;
  - (c) providing for the issue of licences to import or export any article;
  - (ca) empowering the Director to exempt any person from any requirement to obtain a licence to import or export any prohibited article; (*Added 50 of 1984 s. 2*)
  - (cb) prescribing any article or a class or description of an article the import or export of which except under and in accordance with a licence is prohibited under this Ordinance; (*Added 62 of 1993 s. 13*)
  - (d) prescribing conditions to be observed by any person before or after the issue of an import licence or an export licence;
  - (e) imposing upon owners of ships, aircraft and vehicles, masters of ships, commanders of aircraft and persons in charge of vehicles such obligations in respect of manifests, bills of lading, air waybills, air consignment notes and such other similar matters as may be necessary for carrying into effect the provisions of this Ordinance;

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- (f) imposing other conditions or restrictions on the import or export of any article;
- (g) imposing conditions or restrictions on any cargo placed in or on any vessel, aircraft or vehicle for the purpose of import or export;
- (h) controlling the examination and storage of articles imported or exported or about to be imported or exported;
- (ha) requiring any person in charge of a vehicle entering or leaving Hong Kong to give such information in respect of the vehicle as may be necessary for giving effect to this Ordinance; (*Added 8 of 2007 s. 3*)
- (i) requiring any person importing or exporting any article or any person involved in the importing or exporting of any article to give any specified information in respect of the article before or after it has been imported or exported; (*Amended 8 of 2007 s. 3*)
- (ia) empowering the Commissioner or the Director to specify any form or requirement for giving information required to be given to the Commissioner or the Director under this Ordinance; (*Added 30 of 1995 s. 11. Amended 24 of 2002 s. 2; 8 of 2007 s. 3*)
- (j) regulating the movement within Hong Kong of any article which has been or is intended to be imported or exported or otherwise dealt with under the provisions of this Ordinance;
- (ja) providing for the imposition of conditions in the discretion of the Commissioner on the carriage of articles prescribed by the regulations or by the Director in accordance with the requirements of this Ordinance on or by vessels in the waters of Hong Kong including activities incidental to the transportation on land of

the articles to the vessels and loading of such articles on to such vessels and for the issue of licences by the Commissioner to regulate all such activities; (*Added 22 of 1991 s. 11. Amended 1 of 1994 s. 16*)

- (k) providing for the issue of certificates in respect of the importing, exporting, producing, processing, manufacturing and composition of any article and for conditions which may be attached to such certificate;
- (l) providing for the issue of certificates in respect of preferential customs tariffs and for conditions which may be attached to such certificate;
- (m) providing for the registration of any person applying for the issue of any licence or validated production notification, or any person required to lodge a production notification or any other document under this Ordinance, or any combination thereof, and for conditions which may be attached to such registration; (*Amended 37 of 1999 s. 6*)
- (n) providing for the registration of any person importing, exporting, manufacturing, processing, storing, distributing, selling or dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof, and for the conditions which may be attached to the registration of any such person; (*Amended 37 of 1999 s. 6*)
- (o) providing for the registration of any premises—
  - (i) in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or

other document is required to be lodged under this Ordinance, or any combination thereof; or

- (ii) connected with the importing, exporting, manufacture, processing, storage, distribution, sale or other dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof,

and prescribing any condition upon the registration of such premises; (*Amended 37 of 1999 s. 6*)

- (p) providing for the cancellation, revocation or suspension for any period of the registration of any person where the Director is satisfied that the person so registered has contravened any condition of any licence, validated production notification or other document issued under this Ordinance; (*Amended 37 of 1999 s. 6*)
- (q) providing for the imposition and administration of quota controls in respect of the import or export of any article;
- (r) providing for the sale or transfer of any quota and for the conditions under which any quota may be sold or transferred;
- (s) providing for the registration of any person involved in any dealing with an article on which any quota control is imposed and the transfer of any such registration from one person to another;
- (t) requiring importers, exporters, carriers, owners and manufacturers to furnish to the Director or any other specified public officer information for the purpose of compiling statistics of trade with any person or body of persons, corporate or unincorporate, carrying on business

or other activities outside Hong Kong; (*Amended 23 of 1998 s. 2*)

- (u) prohibiting or controlling the publication or disclosure of information or particulars furnished to the Commissioner or the Director, an authorized officer, an appointed officer or a member of the Customs and Excise Service under this Ordinance;
- (ua) controlling the use of a security device issued by a specified body for authenticating information to be sent for the purposes of this Ordinance using services provided by a specified body; (*Added 30 of 1995 s. 11*)
- (ub) prohibiting the unauthorized sending of information for the purposes of this Ordinance by a specified agent on behalf of a person using services provided by a specified body; (*Added 30 of 1995 s. 11*)
- (v) providing for the verification of any particulars or information required to be furnished by any person under this Ordinance;
- (w) providing that any person who fails to submit any document or furnish any information to the Commissioner or the Director or other specified public officer within a prescribed period of time shall be liable to pay a prescribed sum of money, which sum shall be a civil debt due to and recoverable by the Government; (*Amended 66 of 2000 s. 3*)
- (wa) empowering the Commissioner to grant exemptions from any requirements of the regulations respecting the furnishing of information to the Commissioner; (*Added 8 of 2007 s. 3*)
- (x) prescribing fees to be collected by the Commissioner or the Director in respect of any matter arising under this

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- Ordinance and generally to prescribe the mode and time of payment of such fees;
- (y) empowering the Director to determine the form of any licence and any undertaking required under this Ordinance;
  - (z) providing that the Director-General of Trade and Industry may, by notice published in the Gazette, amend the Schedule to any regulation made under this Ordinance, other than a Schedule or a part of a Schedule referred to in section 6B(1) or 6F; (*Amended L.N. 292 of 1989; 1 of 1994 s. 16; L.N. 173 of 2000*)
  - (za) requiring any person to whom a licence has been issued to keep such records or documents as may be prescribed or as the Director may determine; (*Added 3 of 1973 s. 3*)
  - (zb) providing for any matter required or permitted by Part IIA to be prescribed by or provided for in the regulations; (*Added 37 of 1999 s. 6*)
  - (zc) without prejudice to the generality of paragraph (z), specifying any matter referred to in paragraph (zb) in a Schedule to any regulation made under this Ordinance, and providing that the Director-General of Trade and Industry may, by order published in the Gazette, amend that Schedule; (*Added 37 of 1999 s. 6. Amended L.N. 173 of 2000*)
  - (zd) empowering the Director to determine a process to be the process of manufacturing any specified textiles for the purposes of the definition of “production” in section 6AA(1); (*Added 37 of 1999 s. 6*)
  - (ze) empowering the Director to specify a particular as material for the purposes of the definition of “material particular” in section 6AA(1); (*Added 37 of 1999 s. 6*)

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- \*(aa) levying, with or without exception or exemption, a charge on persons or any category of persons who furnish particulars pursuant to any regulation made under this section, and prescribing the amount or method of ascertaining the amount of such charge and the mode and time of payment thereof; (*Amended 30 of 1995 s. 11; 24 of 2002 s. 2*)
  - (ab) imposing or providing for the imposition of a pecuniary penalty, recoverable civilly, on any person who, being required under any regulation made under this Ordinance to lodge a declaration with the Commissioner in connexion with the import or export of any article, fails to lodge such a declaration or fails to lodge such a declaration within a prescribed period of time;
  - (ac) empowering the Commissioner to waive the payment of any pecuniary penalty imposed under regulations made under paragraph (ab) and to refund any such pecuniary penalty which has been paid;
  - (ad) empowering the Director to require an applicant for a licence to deposit with him, before the issue of a licence, such sum of money as the Director may specify;
  - (ae) providing for the forfeiture to the Government by a magistrate of all or any of the sum of money deposited under regulations made under paragraph (ad); (*Amended 66 of 2000 s. 3*)
  - (af) prescribing any thing which is to be or may be prescribed under this Ordinance; and
  - (ag) generally for the better carrying out of the provisions and purposes of this Ordinance. (*Amended L.N. 294 of 1982*)
- (1A) Regulations made for the purposes of subsection (1)(x) or (aa) may provide that any fee or charge payable in connection

with information that is sent using services provided by a specified body shall be paid in such manner as may be agreed between the Government and the specified body. (*Added 24 of 2002 s. 2*)

- (2) Subject to subsection (3), regulations made under this section may provide that a contravention of any such regulation shall be an offence and may prescribe penalties therefor.
- (3) Regulations made under this section may prescribe that a contravention or breach thereof shall be punishable by a fine not exceeding \$500,000 and imprisonment for a term not exceeding 2 years. (*Amended 60 of 1980 s. 5*)
- (4) No regulation made under subsection (1)(aa), (ab), (ac), (ad) or (ae) shall come into operation until it has been approved by resolution of the Legislative Council. (*Amended L.N. 150 of 2014*)

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Editorial Note:

\* The amendment to paragraph (aa), as introduced by section 11 of the Import and Export (Amendment) Ordinance 1995 (30 of 1995), was repealed by section 2 of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) before the commencement of the amendment.

### **32. Power to levy by resolution of Legislative Council**

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

The Legislative Council may by resolution provide for the imposition of a levy upon any person required under this Ordinance to furnish information for the purpose of compiling statistics of trade with any person or body of persons, corporate or unincorporate, carrying on business or other activities outside Hong Kong and to provide for the method of determination of the levy and the mode and time of payment thereof.



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*(Amended 23 of 1998 s. 2)*

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## PART VIII

### MISCELLANEOUS

#### **32A. Provision of information where use of services provided by specified body is not practicable**

- (1) This section applies to any information that under a provision of this Ordinance (a “relevant provision”) is required to be given to another person by using services provided by a specified body.
- (2) Where the Commissioner considers that—
  - (a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given by using services provided by a specified body; or
  - (b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the information shall be given either in paper form or by using services provided by a specified body,and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.
- (3) Notice of a determination made under subsection (2) shall be published in the Gazette within 14 days of the determination having been made.
- (4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be

certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

- (5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

*(Added 24 of 2002 s. 2)*

**32B. Provision of manifest information relating to cargo carried in a road vehicle**

- (1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Commissioner or the Director, or to an officer appointed by the Commissioner, by using services provided by a specified body.
- (2) The Commissioner may, by notice published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.
- (3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.
- (4) A notice published under subsection (2) is not subsidiary legislation.

*(Added 24 of 2002 s. 2)*

**33. Evidentiary provisions**

- (1) In any proceedings under this Ordinance it shall, in the

absence of evidence to the contrary, be presumed that any cargo recorded in an import manifest furnished by— (*Amended 1 of 1994 s. 17*)

- (a) the master of a vessel;
  - (b) the commander of an aircraft;
  - (c) the person in charge of a vehicle (other than a train) and for cargo carried by train, the handling agent in Hong Kong for the cargo; or (*Amended 62 of 1993 s. 14*)
  - (d) the owner of such vessel, aircraft or vehicle,
- has been imported in or on such vessel, aircraft or vehicle.

(2) In any proceedings under this Ordinance it shall, in the absence of evidence to the contrary, be presumed that any cargo recorded in an export manifest furnished by— (*Amended 1 of 1994 s. 17*)

- (a) the master of a vessel;
- (b) the commander of an aircraft;
- (c) the person in charge of a vehicle (other than a train) and for cargo carried by train, the handling agent in Hong Kong for the cargo; or (*Amended 62 of 1993 s. 14*)
- (d) the owner of such vessel, aircraft or vehicle,

at any time before or after the departure from Hong Kong of the vessel, aircraft or vehicle, has been exported, or is intended to be exported, in or on such vessel, aircraft or vehicle.

(3) Any copy of an import manifest or an export manifest produced to the Director, an authorized officer or a member of the Customs and Excise Service under any provision of this Ordinance shall be admissible as evidence of the contents of the import manifest or export manifest of which it is a copy in any proceedings under this Ordinance; and the cargo

referred to in the copy of such manifest shall be presumed in the absence of evidence to the contrary, to have been imported or exported as the case may be in or on the vessel, aircraft or vehicle to which the copy of the manifest relates.  
*(Amended 1 of 1994 s. 17)*

- (4) Any copy of a licence or other document produced to the Director, an authorized officer or a member of the Customs and Excise Service under any provision of this Ordinance shall be admissible as evidence of the contents of the licence or other document of which it is a copy in any proceedings under this Ordinance before a court or magistrate.

**33A. Certificate of record of information sent using services provided by specified body**

- (1) A document purporting—
- (a) to be a copy of the record of any information sent using services provided by a specified body and produced from one of the Government's computer systems; and
  - (b) to be certified by the Commissioner or the Director,
- 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—
    - (i) that it was certified under subsection (1)(b);
    - (ii) that the document is a true copy of the record of information so sent; and
    - (iii) that 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 using the services provided by the specified body.
- (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 certified the document and examine him as to its subject-matter.

*(Added 30 of 1995 s. 12)*

#### **34. Onus of proof in court proceedings**

- (1) In any proceedings under this Ordinance the onus of proving—
  - (a) the place—
    - (i) from which an article has been imported; or
    - (ii) to which an article is intended to be exported; or
  - (b) that an article—
    - (i) has been imported in accordance with the terms of a licence;
    - (ii) is intended to be exported in accordance with the terms of a licence;
    - (iii) has been imported for the sole purpose of exporting the article;
    - (iv) has been lawfully placed in or on any vessel, aircraft or vehicle for the purpose of exporting the article;
    - (v) has been lawfully removed from any vessel, aircraft or vehicle in or on which it was imported;

- (vi) has been lawfully delivered to or placed in any premises or place after it has been imported; or
- (vii) has been recorded in the manifest of the vessel, aircraft or vehicle in or on which it has been imported or is intended to be exported,

shall lie upon the defendant in any such criminal proceedings and the claimant in any forfeiture proceedings.

- (2) For the purposes of this section, the provisions of Part IV of the Evidence Ordinance (Cap. 8) (which relates to the admissibility of hearsay evidence in civil proceedings) shall apply as if proceedings under this Ordinance were civil proceedings.

### **35. Application of Ordinance to postal packets**

- (1) The provisions of this Ordinance shall apply to any article contained in a postal packet.
- (2) Notwithstanding the provisions of subsection (1), a postal packet contained in a sealed mail bag shall, if the mail bag is listed in the manifest of the vessel, aircraft or vehicle in or on which it is imported or exported, not be construed as cargo for the purposes of this Ordinance.
- (3) Any authorized officer or any member of the Customs and Excise Service may, in the presence of and under the directions of an officer of the Post Office, open and examine any postal packet held in the custody of the Post Office.
- (4) For the purposes of this section, the terms “mail bag” (郵袋), “Post Office” (郵政署), “officer of the Post Office” (郵政署人員) and “postal packet” (郵包) shall have the meanings assigned to such terms, respectively, under section 2 of the Post Office Ordinance (Cap. 98).

### **35A. Assisting, etc., in carriage of prohibited, etc., articles**

- (1) Any person who knowingly—
- (a) has possession of any article, the carriage of which is restricted under this Ordinance;
  - (b) has possession of any article, the export of which is prohibited under any law in force in Hong Kong or is prohibited other than in accordance with a licence issued under this Ordinance;
  - (c) assists with the carrying, removing, depositing, harbouring, keeping or concealing of any article, the carriage of which is restricted under this Ordinance;
  - (d) assists with the carrying, removing, depositing, harbouring, keeping or concealing of any article, the export of which is prohibited under any law in force in Hong Kong or is prohibited other than in accordance with a licence issued under this Ordinance;
  - (e) otherwise deals with any article, the carriage of which is restricted under this Ordinance; or
  - (f) otherwise deals with any article, the export of which is prohibited under any law in force in Hong Kong or is prohibited other than in accordance with a licence issued under this Ordinance,

with intent to evade the restriction or prohibition or to assist another person to evade the restriction or prohibition is guilty of an offence and liable—

- (i) in the case where contravention of the restriction or prohibition is punishable otherwise than as an indictable offence, on conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (ii) in the case where contravention of the restriction or prohibition is punishable as an indictable offence—



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- (A) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
  - (B) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.
- (2) Any person who—
- (a) has possession of any article, the carriage of which is restricted under this Ordinance;
  - (b) has possession of any article, the export of which is prohibited under any law in force in Hong Kong or is prohibited other than in accordance with a licence issued under this Ordinance;
  - (c) assists with the carrying, removing, depositing, harbouring, keeping or concealing of any article, the carriage of which is restricted under this Ordinance;
  - (d) assists with the carrying, removing, depositing, harbouring, keeping or concealing of any article, the export of which is prohibited under any law in force in Hong Kong or is prohibited other than in accordance with a licence issued under this Ordinance;
  - (e) otherwise deals with any article, the carriage of which is restricted under this Ordinance; or
  - (f) otherwise deals with any article, the export of which is prohibited under any law in force in Hong Kong or is prohibited other than in accordance with a licence issued under this Ordinance,

in circumstances that give rise to a reasonable suspicion that there is intent on the part of that person to evade a restriction or prohibition or to assist another person to evade a restriction or prohibition, the first mentioned person will be presumed to have such intent in the absence of evidence to the contrary.

*(Added 22 of 1991 s. 12. Amended 1 of 1994 s. 18)*

**36. Offences in respect of licences, production notifications, etc.**

- (1) Any person, who, in respect of—
- (a) an application for the issue of a licence;
  - (b) an application for registration under this Ordinance;
  - (c) any production notification, declaration, document or article required to be lodged with the Director, an authorized officer or member of the Customs and Excise Service pursuant to the provisions of this Ordinance; or
  - (d) any particulars or information provided to the Director, an authorized officer or member of the Customs and Excise Service in connection with the requirements of this Ordinance, (*Added 37 of 1999 s. 7*)

makes or causes to be made any statement or furnishes or causes to be furnished any information which is false or misleading in a material particular or omits any material particular shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for 2 years, unless he satisfies the court or magistrate that he did not know and had no reason to believe the statement or information to be false or misleading or the omission to be material. (*Amended 3 of 1984 s. 3; 30 of 1995 s. 13*)

- (1A) A person who fails to comply with—
- (a) any provision of section 6AB; or
  - (b) any condition imposed on a validated production notification,

commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years. (*Added 37 of 1999 s. 7*)

- (2) Any person who—

- (a) forges any licence or validated production notification;
- (b) without the authority of the Director makes any alteration to any licence or validated production notification; or
- (c) knowingly utters or makes use of any licence or validated production notification that has been forged or, without the authority of the Director, altered,

commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years. (*Replaced 3 of 1984 s. 3*)

- (3) Any person who furnishes or causes to be furnished to another person a production notification that—
  - (a) he knows or has reason to believe may be lodged with the Director for validation; and
  - (b) has been signed by him in blank or with the material particulars incomplete,

commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years. (*Added 37 of 1999 s. 7*)

- (4) For the purpose of this section, “material particular” (要項), in relation to a production notification, means material particular as defined in section 6AA(1). (*Added 37 of 1999 s. 7*)

*(Amended 37 of 1999 s. 7)*

### **36A. Offences by directors, partners, etc.**

- (1) Where an offence under section 36 is committed by a body corporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, shall be guilty of the

like offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. (*Amended 37 of 1999 s. 8*)

- (2) Where an offence under section 36 committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any other partner of the partnership or any person concerned in the management of the partnership, that other partner or the person concerned in the management of the partnership commits the like offence. (*Added 37 of 1999 s. 8*)

*(Added 3 of 1984 s. 4)*

**36B. Consent of Chief Executive not required for institution of criminal proceedings**

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

Notwithstanding subsection (2) of section 23C of the Crimes Ordinance (Cap. 200), that section shall not apply to any proceedings for an indictable offence under this Ordinance.

*(Added 1 of 1994 s. 19)*

**36C. Offence relating to the use or keeping of a security device**

Where a person who has been issued with a security device contravenes section 2C(a) or (b), he commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

*(Added 30 of 1995 s. 14)*

**36D. Offence by specified agent**

A specified agent who contravenes section 2D commits an offence and is liable to a fine at level 3.

*(Added 30 of 1995 s. 14)*

**37. Time limitation for criminal proceedings**

In any case of an offence, other than an indictable offence, under this Ordinance, a complaint shall be made or an information laid in respect of such offence within 2 years from the time when the matter of such complaint or information respectively arose.

*(Amended 1 of 1994 s. 20)*

**38. Informers**

Save where, in the opinion of the court, 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 may make any order and adopt any procedure necessary to prevent any such disclosure.

**39. Amendment of Schedules**

(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 may amend Schedule 1 by notice published in the Gazette. *(Amended 30 of 1995 s. 15; 66 of 2000 s. 3)*
- (2) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 2 or 3. *(Added 30 of 1995 s. 15. Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007)*

**40. General indemnity**

The Commissioner, members of the Customs and Excise Service and authorized officers are indemnified by the owner of an article, vessel or vehicle from liability for damages to the article, vessel or vehicle arising out of the seizure, storage and delivery of the article, vessel or vehicle.

*(Added 62 of 1993 s. 15)*

**41. Articles not dealt with under this Ordinance before commencement of Import and Export (Amendment) Ordinance 1993**

(Adaptation amendments retroactively made - see 66 of 2000 s. 3)

- (1) Where any article, vessel or vehicle has been seized under this Ordinance before the commencement\* of the Import and Export (Amendment) Ordinance 1993 (62 of 1993) and—
- (a) the Commissioner is unable to restore the article, vessel or vehicle to the owner as—
    - (i) the owner cannot be found; or
    - (ii) the owner does not have an address in Hong Kong to which the article, vessel or vehicle can be restored;
  - (b) a summons issued under this Ordinance has not been served on a claimant as the Commissioner has insufficient information to arrange service of the summons in Hong Kong; or
  - (c) a magistrate has ordered the delivery of the article, vessel or vehicle to a person who cannot be found or who refuses to accept the article, vessel or vehicle,
- the Commissioner may within a period of 6 months beginning on the commencement date, publish in the Gazette, a notice containing the information as he considers necessary inviting any person who has a claim to the article, vessel or vehicle to give notice of claim to the Commissioner within a period specified in the notice.
- (2) Where notice is given to the Commissioner under subsection (1), section 28 as amended by the Import and Export (Amendment) Ordinance 1993 (62 of 1993) shall apply to the notice of claim as if it were a claim under section 27(5).

- (3) If no notice of claim is given to the Commissioner within the period specified in the notice in the Gazette, the article, vessel or vehicle shall be forfeited to the Government. (*Amended 66 of 2000 s. 3*)

(*Added 62 of 1993 s. 15*)

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Editorial Note:

\* Commencement date: 6 August 1993.

#### **42. Transitional**

- (1) Any provision of section 8, 9 or 11 requiring that information given under those sections be given by using services provided by a specified body shall, in respect of the period specified in subsection (2), but subject to any determination made under section 32A(2)(a) or notice published under section 32B(2), be construed as requiring that the information be given either in paper form or by using services provided by a specified body.
- (2) The period specified for the purposes of subsection (1) is the period beginning with the commencement\* of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) and ending at midnight on a date to be specified by the Commissioner for the purposes of this subsection by notice published in the Gazette\*\*.
- (3) A notice under subsection (2) may specify different dates in relation to different classes of persons or information.
- (4) A notice published under subsection (2) is subsidiary legislation.

(*Added 24 of 2002 s. 2*)

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Editorial Note:

\* Commencement date: 11 April 2003.

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- \*\* 1. L.N. 96 of 2004 was made by the Commissioner for the purposes of section 42(2) and its text is reproduced as follows—

“For the purposes of section 42(2) of the Import and Export Ordinance (Cap. 60), I specify 16 July 2004 as the date on which the period specified for the purposes of section 42(1) (in so far as it relates to any provision of section 8, 9 or 11 of the Ordinance requiring the delivery of a copy or extract of the manifest of an aircraft or a train) of the Ordinance shall end.”.

2. L.N. 29 of 2006 was made by the Commissioner for the purposes of section 42(2) and its text is reproduced as follows—

“For the purposes of section 42(2) of the Import and Export Ordinance (Cap. 60), I specify 15 June 2006 as the date on which the period specified for the purposes of section 42(1) (in so far as it relates to any provision of section 8, 9 or 11 of the Ordinance requiring the delivery of a copy or extract of the manifest of a vessel) of the Ordinance shall end.”.

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## SCHEDULE 1

[ss. 27, 28 & 39]

*(Amended 30 of 1995 s. 16)*

### **ARTICLES IN RESPECT OF WHICH, IF THEY ARE LIABLE TO FORFEITURE, AN ORDER FOR THEIR FORFEITURE IS MANDATORY**

1. *(Repealed L.N. 257 of 1973)*
  
  2. *(Repealed L.N. 210 of 1975)*
  
  3. Any article prescribed in Schedules 1, 2 and 3 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G).  
*(Amended 65 of 1991 s. 4; L.N. 28 of 1993)*
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SCHEDULE 2

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**SCHEDULE 2**

[ss. 2 & 39]

**SPECIFIED BODIES**

1. Tradelink Electronic Commerce Limited
  2. Global e-Trading Services Limited (*Added L.N. 223 of 2003*)
  3. Brio Electronic Commerce Limited (*Added L.N. 190 of 2009*)  
(*Added 30 of 1995 s. 17. Amended L.N. 586 of 1997*)
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## SCHEDULE 3

[ss. 2 & 39]

### SPECIFIED AGENTS

1. Tradelink Electronic Commerce Limited
2. Federation of Hong Kong Industries (*Added L.N. 380 of 1998*)
3. The Chinese General Chamber of Commerce (*Added L.N. 380 of 1998*)
4. The Chinese Manufacturers' Association of Hong Kong (*Added L.N. 380 of 1998*)
5. The Hong Kong General Chamber of Commerce (*Added L.N. 380 of 1998*)
6. The Indian Chamber of Commerce Hong Kong (*Added L.N. 380 of 1998*)
7. Dah Sing Bank, Limited (*Added L.N. 71 of 2000*)
8. International Chamber of Commerce-Hong Kong, China Business Council (*Added L.N. 71 of 2000*)
9. Global e-Trading Services Limited (*Added L.N. 223 of 2003*)
10. Brio Electronic Commerce Limited (*Added L.N. 190 of 2009*)  
(*Added 30 of 1995 s. 17. Amended L.N. 587 of 1997*)