

RESERVED COMMODITIES ORDINANCE**(Cap. 296)****Contents**

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To make provision with respect of reserved commodities.

[1 November 1979] *L.N. 253 of 1979*

1. Short title

This Ordinance may be cited as the Reserved Commodities Ordinance.

2. Interpretation and application

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

“aircraft” (飛機) means any machine which can derive support in the atmosphere from reactions of the air;

“article in transit” (過境物品) means an article which—

(a) is brought into 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 42 of 1996 s. 2*)

“authorized officer” (獲授權人員) means a public officer authorized by the Commissioner under section 4; (*Amended L.N. 294 of 1982*)

“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 65 of 2000 s. 3*)

“Director” (署長) means the Director-General of Trade and Industry and 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 in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 24 of 2002 s. 3*)

“export” (出口) means to take or cause to be taken out of Hong Kong any article other than an article in transit;

“import” (進口) means to bring or cause to be brought into Hong Kong any article other than an article in transit;

“information” (資料) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 24 of 2002 s. 3*)

“information system” (資訊系統) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 24 of 2002 s. 3*)

“licence” (許可證) means a licence issued under regulations made under section 3;

“manifest” (艙單) means a record prepared as a manifest containing the particulars prescribed under section 17 of the Import and Export Ordinance (Cap. 60) but does not include any record, containing the same or similar particulars, which is not specifically prepared as a manifest; (*Added 24 of 2002 s. 3*)

“member of the Customs and Excise Service” (香港海關人員) means any person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); (*Amended 13 of 1995 s. 2*)

- “permit” (准許證) means a permit issued under regulations made under section 3;
- “recognized electronic service” (認可電子服務) means a service for the interchange of electronic records that is provided by a specified electronic services provider; (*Added 24 of 2002 s. 3*)
- “registered” (註冊) means registered under regulations made under section 3;
- “reserved commodity” (儲備商品) means any commodity specified as a reserved commodity under regulations made under section 3;
- “sale” (售賣) and “purchase” (購買) include a sale and purchase by barter;
- “sale by retail” (以零售方式售賣) means every sale of an article other than a sale by wholesale;
- “sale by wholesale” (以批發方式售賣) means any sale of an article in whatever quantity for resale in the same form or state or as part of a manufactured product;
- “security device” (保安裝置) means a device issued to a person to be used for authenticating that person as the sender of information using a recognized electronic service; (*Added 24 of 2002 s. 3*)
- “specified electronic services agent” (指明電子服務代理人) means a person specified under Schedule 2; (*Added 24 of 2002 s. 3*)
- “specified electronic services provider” (指明電子服務提供者) means a person specified under Schedule 1; (*Added 24 of 2002 s. 3*)
- “transshipment cargo” (轉運貨物) means any imported article that 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 is or is to be removed from the vessel, vehicle or aircraft in which it was imported and either

returned to the same vessel, vehicle or aircraft or transferred to another vessel, vehicle or aircraft before being exported, whether it is or is to be transferred directly between such vessels, vehicles or aircraft or whether it is to be landed in Hong Kong after its importation and stored pending exportation; (*Added 51 of 1984 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.

(2) This Ordinance shall not apply to—

(a) articles in transit; or

(b) transshipment cargo imported or exported by a person to whom an exemption relating to that transshipment cargo has been granted pursuant to regulations made under section 3(1)(ja). (*Replaced 51 of 1984 s. 2*)

(3) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 1 or 2; and a notice under this subsection is subsidiary legislation. (*Added 24 of 2002 s. 3. Amended L.N. 130 of 2007*)

2A. Presumption regarding information sent using recognized electronic service

(1) Where information received by the Director was sent using a recognized electronic service, 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 Director and sent using a recognized electronic service was sent by a specified electronic services agent who has obtained an authorization in accordance with section 2C—
 - (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 contrary, regarded for the purposes of this Ordinance as the person who made the statement or declaration.

(Added 24 of 2002 s. 3)

2B. Safekeeping of security device

- (1) A person who has been issued with a security device shall not authorize or allow any other person to use the device in connection with the sending of information to the Director under this Ordinance using a recognized electronic service.
- (2) A person who has been issued with a security device shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Director under this Ordinance using a recognized electronic service.

- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

(Added 24 of 2002 s. 3)

2C. Duty of specified electronic services agent

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

(Added 24 of 2002 s. 3)

3. Regulations

- (1) The Chief Executive in Council may make regulations for all or any of the following matters— *(Amended 65 of 2000 s. 3)*
- (a) specifying any article to be a reserved commodity for any purpose;
 - (b) prohibiting or controlling the sale or purchase of any reserved commodity for the purpose of resale in or export from Hong Kong;
 - (c) regulating or controlling the maximum price of any reserved commodity;
 - (d) prohibiting, regulating or controlling the import or export of any reserved commodity;
 - (e) prohibiting, regulating or controlling the movement or distribution of any reserved commodity;
 - (f) prohibiting, regulating or controlling the storage of any reserved commodity;

- (g) restricting the sale by wholesale or retail of any reserved commodity to persons registered or holding licences or permits issued under the regulations;
- (h) restricting the sale of any reserved commodity either by an individual or generally by all persons dealing in such reserved commodity;
- (i) prohibiting, regulating or controlling the manufacture, processing or production of any reserved commodity either generally or as regards form, shape, quantity, quality, constituents or otherwise;
- (j) the issue of licences, permits and certificates and the registration of persons and premises for the purposes of this Ordinance;
- (ja) empowering the Director to exempt any person from any requirement to obtain a licence to import or export any reserved commodity; (*Added 51 of 1984 s. 3*)
- (k) the examination of reserved commodities stored or kept in any premises or in or on any vessel, aircraft or vehicle by or on behalf of any person;
- (l) information and particulars to be given in respect of reserved commodities;
- (la) empowering the Director to specify any form or requirement for giving information required to be given in respect of any reserved commodity; (*Added 24 of 2002 s. 3*)
- (m) fees and charges;
- (n) appeal to the Chief Executive against any decision of the Commissioner or the Director; (*Amended L.N. 294 of 1982; 65 of 2000 s. 3*)
- (o) generally for the better carrying out of the provisions and purposes of this Ordinance.

- (2) Regulations under this section may provide that a contravention of any such regulation shall be an offence and shall be punishable on conviction by a fine not exceeding \$100,000 and imprisonment for a term not exceeding 2 years.

4. Authorized officers

The Commissioner may authorize in writing any public officer to exercise all of the powers conferred on an authorized officer by this Ordinance or such of those powers as the Commissioner may specify.

(Amended L.N. 294 of 1982)

5. Commissioner or Director and authorized officers subject to Chief Executive's directions

(Adaptation amendments retroactively made - see 65 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 by the Commissioner or the Director or an authorized officer of any powers, functions or duties under this Ordinance.
- (2) The Commissioner or the Director and every authorized 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; 65 of 2000 s. 3)

6. Production of copy documents

- (1) In any proceedings for an offence under this Ordinance, a copy of any document issued under this Ordinance, certified by the Director to be a true copy of such document, shall be prima facie evidence of the contents of the original document.

- (2) Any such copy purporting to be certified by the Director shall be deemed, until the contrary is proved, to have been certified by him.

6A. Proof of contents of electronic record

- (1) A document purporting—
- (a) to be a reproduction of any information sent in the form of an electronic record and retrieved from an information system operated by the Government or by a person on behalf of the Government; and
 - (b) to be certified by the Director as to the matters mentioned in paragraph (a),
- 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 the document was certified by the Director as provided in subsection (1)(b);
 - (ii) that the document is a true reproduction of the information sent in the form of an electronic record; and
 - (iii) that the reproduction was duly made on the date and at the time referred to in the document; and
 - (b) the document is evidence of the contents of the information sent by the sender in the form of an electronic record.
- (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 24 of 2002 s. 3)

7. Burden of proof that reserved commodity is in transit

In any proceedings for an offence under this Ordinance and in any proceedings for the forfeiture of any article by virtue of section 9, the burden of proving that any reserved commodity is an article in transit shall be upon the defendant in such criminal proceedings and the claimant in such forfeiture proceedings.

8. Time limitation for criminal proceedings

Notwithstanding anything in the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under this Ordinance punishable only on summary conviction within 2 years from the time when the matter of such complaint or information respectively arose.

9. Forfeiture

Any reserved commodity in respect of which an offence under this Ordinance has been committed shall, whether or not any person has been convicted of such offence, be liable to forfeiture under Part VI of the Import and Export Ordinance (Cap. 60) and that Part, in so far as it is applicable, shall apply accordingly.

(Amended 62 of 1993 s. 16)

10. Powers of entry, search and seizure and to examine documents

(1) Subject to subsection (2), any member of the Customs and Excise Service and any authorized officer may, for the purposes of this Ordinance—

- (a) enter and search any premises (other than domestic premises), or stop, board and search any vessel, aircraft or vehicle, if he has reason to suspect that there is therein—
 - (i) any reserved commodity in respect of which an offence under this Ordinance is being or has been committed; or
 - (ii) any thing which is or contains evidence of an offence under this Ordinance;
- (b) stop and search any person if he has reason to suspect that such person is guilty of an offence under this Ordinance;
- (c) seize, remove and detain—
 - (i) any reserved commodity, if he has reason to suspect that an offence under this Ordinance is being or has been committed in respect thereof; and
 - (ii) any thing, if he has reason to suspect that it is or contains evidence of an offence under this Ordinance;
- (d) enter and inspect any registered premises or any premises in which a reserved commodity is stored or kept by a person who is registered or to whom a licence or permit has been issued and enter any premises for the purposes of paragraph (e);
- (e) require the production of and examine any document relating to a reserved commodity in the possession of any person who is registered, or to whom a licence or permit has been issued, in respect of such reserved commodity or to dealings by him in such reserved commodity.

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- (2) No domestic premises shall be entered or searched by a member of the Customs and Excise Service or any authorized officer unless—
- (a) a magistrate has issued a warrant under subsection (3); or
 - (b) the Commissioner or a member of the Customs and Excise Service of or above the rank of assistant superintendent has given an authorization under subsection (4). (*Amended L.N. 294 of 1982*)
- (3) 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 reserved commodity or other thing which may be seized under subsection (1)(c), issue a warrant authorizing any member of the Customs and Excise Service or an authorized officer to enter and search the premises.
- (4) The Commissioner or a member of the Customs and Excise Service of or above the rank of assistant superintendent may, if he reasonably suspects— (*Amended L.N. 294 of 1982*)
- (a) that there is in any domestic premises anything which may be seized under subsection (1)(c); 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.
- (5) A member of the Customs and Excise Service or an authorized officer authorized under subsection (3) or (4) to enter and search any domestic premises may call upon any member of the Customs and Excise Service or any authorized officer to assist him in entering and searching the premises.

- (6) Any member of the Customs and Excise Service or any authorized officer may—
- (a) use such force as is reasonably necessary to enter any premises which he is empowered by or under this Ordinance to enter and search;
 - (b) use such force as is reasonably necessary to stop, board and search any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board 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 or under this Ordinance;
 - (d) detain any person found in any premises which he is empowered by or under this Ordinance to search until such premises have 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.
- (7) No person shall be searched under this section except by a person of the same sex or in a public place if he objects to being searched in such a place.

10A. Powers in relation to information in electronic form

- (1) A power conferred under section 10(1)(c)(ii) to seize, remove and detain anything that is suspected to be or to contain evidence of an offence includes, where the evidence consists of information that is stored or capable of being retrieved in the form of an electronic record, the power to require that the information be produced in a form in which it can be removed and in which it is either legible or capable of being retrieved on a computer, and to seize, remove and detain the material so produced.

- (2) A power conferred under section 10(1)(e) to require the production of and examine any document includes the power to require the production in a legible form of information that is stored or capable of being retrieved in the form of an electronic record and to examine the information or material so produced.
- (3) A power conferred by this Ordinance to seize, remove and detain anything found in any premises or place entered under section 10(1)(a) shall be construed as including the power—
 - (a) to require that any information stored in the form of an electronic record and accessible from the premises or place be produced in a form in which it is either legible or capable of being retrieved on a computer and in which it can be removed; and
 - (b) to remove anything produced pursuant to a requirement made under paragraph (a).

(Added 24 of 2002 s. 3)

11. Power of arrest of members of the Customs and Excise Service and authorized officers

- (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, after any necessary inquiries, take the person to a police station, there to be dealt with in accordance with the Police Force Ordinance (Cap. 232).

- (3) In no case shall any person be detained under subsection (1) or (2) for more than 48 hours without being charged and brought before a magistrate.
- (4) If any person forcibly resists or attempts to evade arrest under this section, a member of the Customs and Excise Service or an authorized officer may use such force as is reasonably necessary to effect the arrest.
- (5) 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 and if the person residing in or in charge of such premises fails to allow such member of the Customs and Excise Service or such authorized officer free entry thereto and such reasonable facilities such member of the Customs and Excise Service and such authorized officer may enter such premises or place and search therein for the suspected offender and for the purposes of such entry and search break open any outer or inner door or window of the premises or place.

12. Obstruction of members of Customs and Excise Service etc.

Any person who 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 or authorized officers by 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.

13. Appeal to the Chief Executive

(Adaptation amendments retroactively made - see 65 of 2000 s. 3)

Any person aggrieved by a decision of the Commissioner or the Director under this Ordinance may, within 21 days from the date when he was informed of the decision or within such further period as the Chief Executive may allow in any particular case, appeal by way of petition to the Chief Executive.

(Amended L.N. 294 of 1982; 65 of 2000 s. 3)

14. Provision of information where use of recognized electronic service 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 using a recognized electronic service.
- (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 using a recognized electronic service; 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 using a recognized electronic service,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. 3)

15. 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 Director using a recognized electronic service.
- (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. 3)

SCHEDULE 1

[s. 2]

SPECIFIED ELECTRONIC SERVICES PROVIDERS

1. Tradelink Electronic Commerce Limited
 2. Global e-Trading Services Limited (*Added L.N. 72 of 2006*)
 3. Brio Electronic Commerce Limited (*Added L.N. 191 of 2009*)
(*Schedule 1 added 24 of 2002 s. 3*)
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SCHEDULE 2

[s. 2]

SPECIFIED ELECTRONIC SERVICES AGENTS

1. Tradelink Electronic Commerce Limited
2. Federation of Hong Kong Industries (*Added L.N. 72 of 2006*)
3. The Chinese General Chamber of Commerce (*Added L.N. 72 of 2006*)
4. The Chinese Manufacturers' Association of Hong Kong (*Added L.N. 72 of 2006*)
5. The Hong Kong General Chamber of Commerce (*Added L.N. 72 of 2006*)
6. The Indian Chamber of Commerce Hong Kong (*Added L.N. 72 of 2006*)
7. International Chamber of Commerce-Hong Kong, China (*Added L.N. 72 of 2006*)
8. Global e-Trading Services Limited (*Added L.N. 72 of 2006*)
9. Brio Electronic Commerce Limited (*Added L.N. 191 of 2009*)
(*Schedule 2 added 24 of 2002 s. 3*)