

of the receipt of the application under section 10, and the Commissioner shall, when issuing the certificate, endorse thereon a notice of the date when the increase in rent takes effect, regard being paid to section 8.

Appeal to
District Court.

12. (1) Where—

- (a) a certificate under subsection (4) of section 11 specifies an increase exceeding fifteen *per cent* of the existing rent, the landlord or the tenant may appeal against such increase to the court; and in the case of an appeal by the tenant, he may dispute any fact set out in the application under section 10;
- (b) a certificate under subsection (4) of section 11 confirms the refusal to award any increase in rent or specifies an increase not exceeding fifteen *per cent*, the landlord may appeal against such refusal or increase to the court.

(2) Where a landlord appeals under subsection (1), the tenant shall be made the respondent in the appeal and where a tenant appeals under subsection (1) the landlord shall be made the respondent in the appeal.

(3) A certificate issued by the Commissioner under subsection (4) of section 11 shall be *prima facie* evidence that the increase stated therein is reasonable in the circumstances of the tenancy, or that no increase is justified, as the case may be.

(4) On the hearing of an appeal under subsection (1) the court shall determine any facts in dispute and may—

- (a) confirm the certificate; or
- (b) if satisfied that the increase in rent specified in the certificate is manifestly unfair or unreasonable, having regard to the matters set out in subsection (5) and to any determination it makes in a dispute as to facts relevant to the assessment, vary or set aside the increase; or
- (c) if the certificate confirms the refusal to award any increase in rent, order such increase in rent as it considers fair, having regard to the matters set out in subsection (5) and to any determination it makes in a dispute as to facts relevant to the assessment:

Provided that no increase shall exceed that specified in the application under section 10.

(5) In proceedings under this section and under section 13 the court, in assessing a fair increase in rent—

- (a) shall have regard to the circumstances of the particular tenancy or sub-tenancy, other than the personal circum-

stances of the landlord or tenant, or principal tenant or sub-tenant as the case may be; and

- (b) for such purposes may consider increases in rent in tenancies and sub-tenancies of premises of a similar nature; and
- (c) where the court is of the opinion that insufficient guidance is afforded thereby, may in addition consider the actual rents of such tenancies and sub-tenancies in such premises.

(6) Any increase in rent ordered by the court shall take effect as provided in subsection (5) of section 11.

13. (1) Where the Commissioner receives comments from a tenant under section 10 which indicate that the tenant disputes any fact set out in the application of the landlord he may—

Facts in
dispute.

- (a) consult with one or more members of the panel; and
- (b) if satisfied that an increase in rent would be reasonable in the circumstances of the tenancy,

serve on the landlord and on the tenant provisional certificates stating what he considers to be fair increase; and the Commissioner may endorse on such certificates such comments as he may think proper relating to the application.

(2) Any provisional certificate issued by the Commissioner shall be *prima facie* evidence that the increase specified therein is reasonable in the circumstances of the tenancy.

(3) Within fourteen days of service on him of a provisional certificate under subsection (1) the tenant may serve on the landlord a notice of objection in the specified form, stating which facts he disputes.

(4) Within fourteen days of service on him of a notice of objection under subsection (3), the landlord may apply to the court for a determination of the facts in dispute and may appeal against the increase specified in the provisional certificate; and the tenant shall be made the respondent in the application or appeal.

(5) Where a notice of objection is served on him under subsection (3) and the landlord fails to make an application to the court under subsection (4), the increase specified in the provisional certificate shall not have effect.

- (6) On the hearing of an application under subsection (4)—
 - (a) the court shall determine the facts in dispute relevant to the assessment of the increase specified in the provisional certificate; and

- (b) where the facts relevant to such assessment are found by the court to differ in any material respect from the facts set out in the application under section 10, or where the landlord appeals under subsection (4), the court may—

(i) confirm the provisional certificate; or

(ii) if satisfied that the increase in rent specified in the provisional certificate is manifestly unfair or unreasonable, having regard to the matters set out in subsection (5) of section 12 and to any determination it makes under paragraph (a) of this subsection, vary or set aside the increase in rent.

(7) The increase in rent specified in a provisional certificate or, where there has been an objection under subsection (3), ordered by the court shall take effect three months from the date of the receipt of the application under section 10; and the Commissioner shall, when issuing the certificate, endorse thereon a notice of the date when the increase in rent takes effect, regard being paid to section 8.

(8) Nothing in this section shall affect any defence or remedy available to the tenant but for the enactment of this Ordinance.

14. (1) No increase in rent in any tenancy, except by agreement, shall take effect within a period of one year from—

(a) the date on which the rent of the tenancy was last increased before the commencement of this Ordinance, whether or not such last increase was by agreement; or

(b) the date of any tenancy entered into before the commencement of this Ordinance,

whichever is the later.

(2) Subject to subsection (3), no application under section 10 for an increase in rent of any tenancy shall be made earlier than three months before the expiration of the period of one year referred to in subsection (1).

(3) No application under section 10 for an increase in rent of any tenancy shall be made during the continuance in force of this Ordinance where the rent of the tenancy has been increased under this Ordinance whether or not such increase was by agreement.

(4) Where—

(a) the rent of any tenancy was increased before the commencement of this Ordinance; or

(b) the tenancy was entered into before the commencement of this Ordinance,

Limitation on increases.

and the rent of such tenancy has been increased under this Ordinance, no order shall be made for the recovery of any increased rent or for the recovery of possession for non-payment thereof unless the landlord satisfies the court that one year has or will have elapsed between the commencement of the tenancy or the last increase in rent, as the case may be, and the date on which the increase takes effect.

(5) For the purposes of this section rent shall be deemed to have been increased if the tenant has made any payments to the landlord other than the regular payments of rent, and such additional payments have been made as a condition of the right to the occupation of the premises.

15. (1) Where the rent of a tenancy is increased under the provisions of this Ordinance the principal tenant may apply by notice in the specified form to the Commissioner for a certificate to be issued under subsection (2) or (3).

Increase in rents of sub-tenancies.

(2) On receipt of an application under subsection (1) the Commissioner may, save where the increase took effect under section 9, serve on the principal tenant and on the sub-tenant certificates specifying the percentage by which the rent of the tenancy has been increased and the date on which such increase took effect.

(3) On receipt of an application under subsection (1) in respect of an increase in rent under section 9 the Commissioner may serve on the principal tenant and on the sub-tenant certificates specifying what increase in rent of the sub-tenancy would in his opinion be reasonable in the circumstances of the sub-tenancy.

(4) The rent of a sub-tenancy shall be increased—

(a) by the percentage by which the rent of the tenancy is increased as specified in a certificate issued under subsection (2); or

(b) by the amount specified in a certificate issued under subsection (3).

(5) The increase in rent of a sub-tenancy shall take effect—

(a) three months from the date of the receipt of the application under section 10; or

(b) three months from the date of the endorsement of the Commissioner on a notice under section 9,

but not earlier than the date on which certificates are served under subsection (2) or (3):

- (b) where the facts relevant to such assessment are found by the court to differ in any material respect from the facts set out in the application under section 10, or where the landlord appeals under subsection (4), the court may—

(i) confirm the provisional certificate; or

(ii) if satisfied that the increase in rent specified in the provisional certificate is manifestly unfair or unreasonable, having regard to the matters set out in subsection (5) of section 12 and to any determination it makes under paragraph (a) of this subsection, vary or set aside the increase in rent.

(7) The increase in rent specified in a provisional certificate or, where there has been an objection under subsection (3), ordered by the court shall take effect three months from the date of the receipt of the application under section 10; and the Commissioner shall, when issuing the certificate, endorse thereon a notice of the date when the increase in rent takes effect, regard being paid to section 8.

(8) Nothing in this section shall affect any defence or remedy available to the tenant but for the enactment of this Ordinance.

14. (1) No increase in rent in any tenancy, except by agreement, shall take effect within a period of one year from—

(a) the date on which the rent of the tenancy was last increased before the commencement of this Ordinance, whether or not such last increase was by agreement; or

(b) the date of any tenancy entered into before the commencement of this Ordinance,

whichever is the later.

(2) Subject to subsection (3), no application under section 10 for an increase in rent of any tenancy shall be made earlier than three months before the expiration of the period of one year referred to in subsection (1).

(3) No application under section 10 for an increase in rent of any tenancy shall be made during the continuance in force of this Ordinance where the rent of the tenancy has been increased under this Ordinance whether or not such increase was by agreement.

(4) Where—

(a) the rent of any tenancy was increased before the commencement of this Ordinance; or

(b) the tenancy was entered into before the commencement of this Ordinance,

Limitation on increases.

and the rent of such tenancy has been increased under this Ordinance, no order shall be made for the recovery of any increased rent or for the recovery of possession for non-payment thereof unless the landlord satisfies the court that one year has or will have elapsed between the commencement of the tenancy or the last increase in rent, as the case may be, and the date on which the increase takes effect.

(5) For the purposes of this section rent shall be deemed to have been increased if the tenant has made any payments to the landlord other than the regular payments of rent, and such additional payments have been made as a condition of the right to the occupation of the premises.

15. (1) Where the rent of a tenancy is increased under the provisions of this Ordinance the principal tenant may apply by notice in the specified form to the Commissioner for a certificate to be issued under subsection (2) or (3).

Increase in rents of sub-tenancies.

(2) On receipt of an application under subsection (1) the Commissioner may, save where the increase took effect under section 9, serve on the principal tenant and on the sub-tenant certificates specifying the percentage by which the rent of the tenancy has been increased and the date on which such increase took effect.

(3) On receipt of an application under subsection (1) in respect of an increase in rent under section 9 the Commissioner may serve on the principal tenant and on the sub-tenant certificates specifying what increase in rent of the sub-tenancy would in his opinion be reasonable in the circumstances of the sub-tenancy.

(4) The rent of a sub-tenancy shall be increased—

(a) by the percentage by which the rent of the tenancy is increased as specified in a certificate issued under subsection (2); or

(b) by the amount specified in a certificate issued under subsection (3).

(5) The increase in rent of a sub-tenancy shall take effect—

(a) three months from the date of the receipt of the application under section 10; or

(b) three months from the date of the endorsement of the Commissioner on a notice under section 9,

but not earlier than the date on which certificates are served under subsection (2) or (3):

Provided that no increase in rent of a sub-tenancy, except by agreement, shall take effect—

(a) earlier than the expiration of one year from—

(i) the date on which the rent of the sub-tenancy was last increased before the commencement of this Ordinance; or

(ii) the date of any sub-tenancy entered into before the commencement of this Ordinance, whichever is the later;

(b) where the rent of the sub-tenancy was increased under this Ordinance whether or not such increase was by agreement.

(6) The Commissioner shall, when issuing certificates under subsection (2) or (3), endorse thereon a notice of the date when the increase in rent under section 9, 11 or 13 takes effect, regard being paid to section 8, together with a notice setting out the proviso to subsection (5) and in the case of a certificate issued under subsection (3), he may endorse on the certificate such comments as he thinks proper relating to the application.

(7) Where the tenancy is not subject to this Ordinance by virtue of section 3, but a sub-tenancy created out of such tenancy is subject to this Ordinance, sections 10, 11, 12, 13 and 14 shall apply as if the sub-tenancy were a tenancy and references therein to landlord and tenant shall be deemed to be references to principal tenant and to sub-tenant respectively.

(8) For the purposes of this section, rent shall be deemed to have been increased where the sub-tenant has made any payments to the principal tenant, other than the regular payments of rent, and such additional payments have been made as a condition of the right to the occupation of the premises.

PART IV.

GENERAL.

16. (1) Neither the Commissioner nor any public officer employed in the Department of Rating and Valuation shall be called to give evidence in any proceedings and no subpoena shall be issued against the Commissioner or such public officer.

(2) Notwithstanding subsection (1), a subpoena *duces tecum* may be issued against the Commissioner or any public officer employed in the Department of Rating and Valuation to produce in any proceedings—

(a) an application under subsection (8) of section 4;

(b) an application under subsection (4) of section 5;

(c) an application under subsection (1) of section 10;

(d) an application under subsection (2) of section 11;

(e) an application under subsection (1) of section 15,

and a subpoena issued under this subsection shall be deemed to be complied with by the production of any document specified in the subpoena by any public officer employed in the Department of Rating and Valuation.

(3) The Governor may appoint any person having a knowledge of land values in Hong Kong to a panel of assessors for the purpose of any proceedings and a public officer to be the Secretary of such panel, and may fix the fees which shall be payable to such persons:

Provided that nothing in this subsection shall authorize the payment of remuneration to any public officer.

(4) For the purpose of any proceedings the court may call on the Secretary of the panel to nominate an assessor to assist the court in such proceedings.

(5) This section shall be in addition to, and not in substitution for, section 34 of the District Court (Civil Jurisdiction and Procedure) Ordinance.

(Cap. 336.)

(6) For the removal of doubt, jurisdiction is hereby conferred on the court for the purpose of hearing and determining all applications and appeals for which provision is made in this Ordinance, and all actions for possession upon the termination of any tenancy or sub-tenancy under section 7, and for the purpose of ordering the payment of rent or mesne profits in any such application, appeal or action, and such jurisdiction shall be exercised notwithstanding that the value of the property sought to be recovered or the amount of the annual rent thereof or the amount of rent or mesne profits being claimed exceeds ten thousand dollars.

(7) All determinations of the court under this Ordinance shall be final and no appeal shall lie therefrom.

(8) For the purposes of this section, "proceedings" means any proceedings in the court brought under the Ordinance.

17. (1) For the purposes of this Ordinance, the Governor may appoint a panel of persons, to be known as the Rent Increases Advisory Panel, to assist the Commissioner in those cases in which he is empowered to consult with the members thereof.

Rent Increases
Advisory Panel.

(2) Notice of appointments to the panel shall be published in the *Gazette*.

Exercise of
powers of
Commissioner.
(Cap. 116.)

18. (1) The Commissioner may, for the purposes of this Ordinance, exercise any of the powers conferred on him by section 4 of the Rating Ordinance.

(2) The powers conferred and duties imposed by this Ordinance on the Commissioner, other than those relating to a review, may be exercised and performed by any public officer employed in the Department of Rating and Valuation who holds the office of Senior Rating and Valuation Surveyor or above.

(3) The powers conferred and duties imposed by this Ordinance on the Commissioner relating to a review and to an assessment under section 13 may be exercised and performed by any Assistant Commissioner or any Principal Rating and Valuation Surveyor.

Forms.

19. (1) The Commissioner may specify the forms to be used under this Ordinance.

(2) The Commissioner may publish in the *Gazette* any form specified by him under subsection (1).

(3) The Commissioner may in his discretion accept any notice or application which is not in the form specified.

Enlargement
of time.

20. Where under this Ordinance time is fixed for the making of any application to the Commissioner, he may enlarge such time.

Rules.

21. The Chief Justice may make rules regulating—

- (a) the practice and procedure in all proceedings brought before the court under this Ordinance;
- (b) the costs which the court may award upon the determination of any proceedings under this Ordinance;
- (c) the fees to be paid to the court in respect of any proceedings under this Ordinance.

Service of
notice.

22. Service of any notice, application, certificate or other document under this Ordinance may be effected—

- (a) by personal service,
- (b) by registered post addressed to the last known place of business or residence of the person to be served, or
- (c) in the case of service on a tenant or sub-tenant, by leaving the notice, application, certificate or other document with an adult occupier of the premises in which the tenant or sub-tenant resides and to which such document relates.

23. Nothing in this Ordinance shall—

Saving.

- (a) authorize any increase in rent during the unexpired portion of a tenancy or sub-tenancy for a fixed term;
- (b) subject to subsection (7) of section 15 and paragraph (d) of subsection (1) of section 7 afford to any sub-tenant any security of tenure more extensive than that enjoyed by his principal tenant; or
- (c) affect any right or remedy arising, either before or after the commencement of this Ordinance, out of any breach of condition or other term in any tenancy or out of any condition providing for a right of re-entry in the event of the business of the tenant being wound up, the tenant suffering execution to be levied or a receiving order in bankruptcy to be made, assigning the lease for the benefit of creditors or entering any agreement or making any arrangement with creditors for the liquidation of debts by composition or otherwise:

Provided that a covenant to yield up possession on a specified date shall be construed as a covenant to yield up possession on such later date as may be necessary to permit the giving of notice of termination as required by the Tenancy (Notice of Termination) Ordinance.

(Cap. 335.)

24. Subject to the provision of subsection (4) of section 6, this Ordinance shall expire at midnight on the 31st day of May 1972.

Expiry of
Ordinance.

25. The Security of Tenure (Domestic Premises) Ordinance 1970 is repealed.

Repeal of
Security of
Tenure
(Domestic
Premises)
Ordinance
1970.

26. Where—

Transitional.

- (a) by virtue of section 4 any tenancy is not subject to this Ordinance or is excluded from the provisions thereof; and
- (b) a notice of termination in respect of such tenancy had been given under the Tenancy (Notice of Termination) Ordinance prior to the 30th day of January 1970,

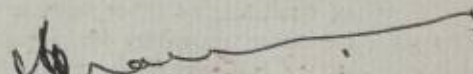
(Cap. 335.)

the period between the 30th day of January 1970 and—

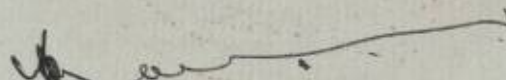
- (i) the date of the commencement of this Ordinance in respect of such tenancies to which this Ordinance does not apply; or

(ii) the date on which a tenancy becomes excluded from this Ordinance by virtue of a certificate issued under section 4, shall not count for the purposes of such notice of termination but it shall thereafter continue in force and the tenancy shall cease in accordance with the terms of the notice, regard being paid to this section.

Passed by the Hong Kong Legislative Council this 3rd day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

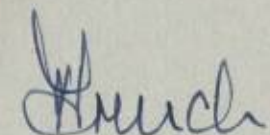

Deputy Clerk of Councils.

HONG KONG

NO. 57 OF 1970.



I assent.



Governor.

4th June, 1970.

An Ordinance to amend the Exchange Fund Ordinance.

[5th June, 1970.]

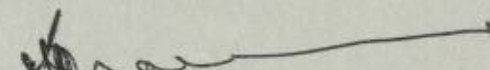
Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Exchange Fund (Amendment) Ordinance 1970. Short title.

2. Section 3 of the principal Ordinance is amended in the proviso to subsection (2) by inserting after "thousand" the following— Amendment of section 3. (Cap. 66.)

"five hundred".

Passed by the Hong Kong Legislative Council this 3rd day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

[Signature]
Deputy Clerk of Councils.



HONG KONG

No. 58 OF 1970.



I assent.

[Signature]
Governor.

4th June, 1970.

An Ordinance to amend the Hong Kong Export Credit Insurance Corporation Ordinance.

[5th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Hong Kong Export Credit Insurance Corporation (Amendment) Ordinance 1970.

Short title.

2. The principal Ordinance is amended by adding after section 9 the following new section—

Addition of new section 9A. (Cap. 1115.)

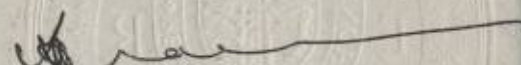
"Power of Corporation to enter into re-insurance agreement.

9A. The Corporation may enter into an agreement with any person whereby such person undertakes to insure the Corporation against all or any of the liability of the Corporation under a contract of insurance entered into under section 9 either before or after the commencement of the Hong Kong Export Credit Insurance Corporation (Amendment) Ordinance 1970."

Passed by the Hong Kong Legislative Council this 3rd day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

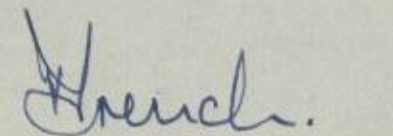

Deputy Clerk of Councils.

HONG KONG

No. 59 OF 1970.



I assent.



Governor.

4th June, 1970.

An Ordinance to amend further the Public Health and Urban Services Ordinance.

[5th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

- | | |
|--|---|
| 1. This Ordinance may be cited as the Public Health and Urban Services (Amendment) Ordinance 1970. | Short title. |
| 2. Section 55 of the principal Ordinance is amended in paragraph (f) of subsection (1) by deleting "analysis" and substituting the following—
"any analysis or bacteriological or other examination". | Amendment of section 55.
(Cap. 132.) |
| 3. Section 63 of the principal Ordinance is amended in subsection (1)—
(a) by deleting the full stop at the end thereof and substituting a colon; and | Amendment of section 63. |

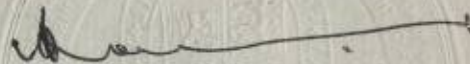
(b) by inserting the following proviso—

"Provided that this subsection shall not apply to any sample taken for bacteriological examination."

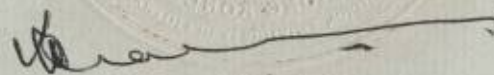
Amendment of section 74.

4. Section 74 of the principal Ordinance is amended in subsection (1) by inserting, after "analysis", the following—
"or bacteriological or other examination".

Passed by the Hong Kong Legislative Council this 3rd day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

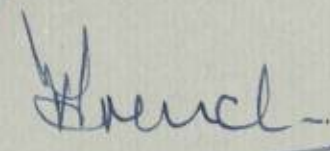

Deputy Clerk of Councils.

HONG KONG

No. 60 OF 1970.



I assent.


Governor.

4th June, 1970.

An Ordinance to amend further the Supreme Court Ordinance.

[5th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Supreme Court (Amendment) (No. 2) Ordinance 1970. Short title.

2. The principal Ordinance is amended by adding, after section 8, the following new section— Addition of new section 8A.
(Cap. 4.)

"Wards of court.
12, 13 & 14
Geo. 6, c. 100,
s. 9.

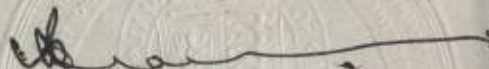
8A. (1) Subject to the provisions of this section, no infant shall be made a ward of court except by virtue of an order to that effect made by the court.

(2) Where application is made for such an order in respect of an infant, the infant shall become a ward of court on the making of the application, but shall cease to be a ward of court at the expiration of such

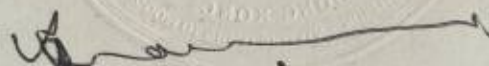
period as may be prescribed by rules of court unless within that period an order has been made in accordance with the application.

(3) The court may, either upon an application in that behalf or without such an application, order that any infant who is for the time being a ward of court shall cease to be a ward of court."

Passed by the Hong Kong Legislative Council this 3rd day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

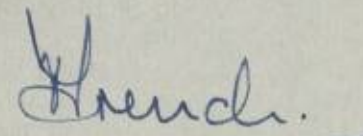

Deputy Clerk of Councils.

HONG KONG

No. 61 OF 1970.



I assent.


Governor.

4th June, 1970.

An Ordinance to amend further the Church of England Trust Ordinance.

[5th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Church of England Trust (Amendment) Ordinance 1970. Short title.

2. Section 2 of the principal Ordinance is amended— Amendment of section 2. (Cap. 1014.)

- (a) by deleting the definition of "Archdeacon of Hong Kong";
- (b) by inserting, after the definition of "church body", the following—

"“Church of England” means the English speaking churches of the diocese in which are performed such rites and ceremonies as are customary in the Provinces of Canterbury and York and are authorized by the Bishop:

Provided that nothing in this definition shall prevent the performance in such churches of such other services as may be authorized by the Bishop;"

- (c) in the definition of "commissary"—
 - (i) by deleting "of Victoria, Hong Kong,";
 - (ii) by deleting "only of the avoidance of the see, a person nominated by the Archbishop of Canterbury" and substituting the following—
"of the incapacity of the Bishop or of the avoidance of the see, the Dean or such other person nominated by the Chairman of the House of Bishops";
- (d) in the definition of "Diocesan Conference" by deleting "for the Diocese";
- (e) in the definition of "diocese" by deleting "of Victoria, Hong Kong";
- (f) by inserting, after the definition of "diocese", the following—
"House of Bishops" means the House of Bishops established in accordance with the constitution of the Council of the Church in South East Asia;"

Amendment of
section 3.

- 3. Section 3 of the principal Ordinance is amended—
 - (a) in paragraph (a) of subsection (1) by deleting—
 - (i) from sub-paragraph (i) "of Victoria, Hong Kong";
 - (ii) from sub-paragraph (ii) "of Saint John's Cathedral";
 - (b) in paragraph (c) of subsection (1) by deleting "and of British nationality,";
 - (c) in subsection (2) by deleting "Archbishop of Canterbury" and substituting the following—
"Chairman of the House of Bishops".

Amendment of
section 5.

- 4. Section 5 of the principal Ordinance is amended by deleting subsection (4) and substituting the following—
"(4) All deeds and other documents requiring the common seal of the trustees shall be sealed with such seal and shall be signed by two trustees."

Amendment of
section 6.

- 5. Section 6 of the principal Ordinance is amended in subsection (2) by deleting "of the Church of England" at the first place where it occurs.

- 6. Section 8 of the principal Ordinance is amended—

Amendment of
section 8.

- (a) in subsection (1)—
 - (i) by deleting "appoint" in the second place where it occurs and substituting the following—
"nominate";
 - (ii) by deleting "agreed" and substituting the following—
"recommended";
 - (iii) by deleting "appointment" in the third place where it occurs and substituting the following—
"nomination";
- (b) in subsection (2)—
 - (i) by deleting "the Archdeacon of Hong Kong" and substituting the following—
"one clerical representative";
 - (ii) by deleting paragraph (a) of the proviso and substituting the following—
"(a) the incumbent of the church in which the vacancy is expected to occur shall not be a member of the board;"
- (c) in subsection (5) by deleting "dismissal" from the proviso and substituting the following—
"termination";
- (d) by inserting, after subsection (5), the following new subsection—
"(6) Save with the consent of the trustees no amendment shall be made to the agreement of the clergyman in charge of any church."

- 7. Section 10 of the principal Ordinance is amended by deleting "and such other church councils as may be constituted by regulations made under this Ordinance" and substituting the following—

Amendment of
section 10.

"and a Christ Church, Kowloon Tong, church council, and a church council for every other church to which this Ordinance for the time being applies".

- 8. Section 12 of the principal Ordinance is amended by deleting "and, under the general or special authority of the Bishop, with the Archdeacon of Hong Kong".

Amendment of
section 12.

Repeal of
section 14.

Amendment of
section 16.

9. Section 14 of the principal Ordinance is repealed.

10. Section 16 of the principal Ordinance is amended—

(a) in subsection (1) by deleting "within the scope of this Ordinance" and substituting the following—

"to which this Ordinance for the time being applies";

(b) in subsection (2), by inserting, after "in any church", the following—

"to which this Ordinance for the time being applies";

(c) in subsection (3), by inserting, after "in a church", the following—

"to which this Ordinance for the time being applies".

Validation.

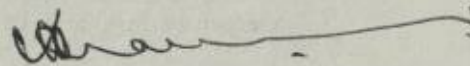
(Cap. 1014,
sub. leg.)

11. For the avoidance of doubt it is hereby declared that any annual church meeting held, prior to the commencement of the Church of England Trust (Amendment) Ordinance 1970, pursuant to regulation 17 of the Church of England Trust (Church Councils) Regulations shall be deemed to have been validly and properly held notwithstanding—

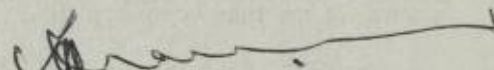
(a) that such meeting was not held before the 15th February as required by the said regulation 17;

(b) that at such meeting the provisions of the rules of procedure for church councils contained in the Appendix to the Church of England Trust (Church Councils) Regulations were not complied with.

Passed by the Hong Kong Legislative Council this 3rd day of June, 1970.

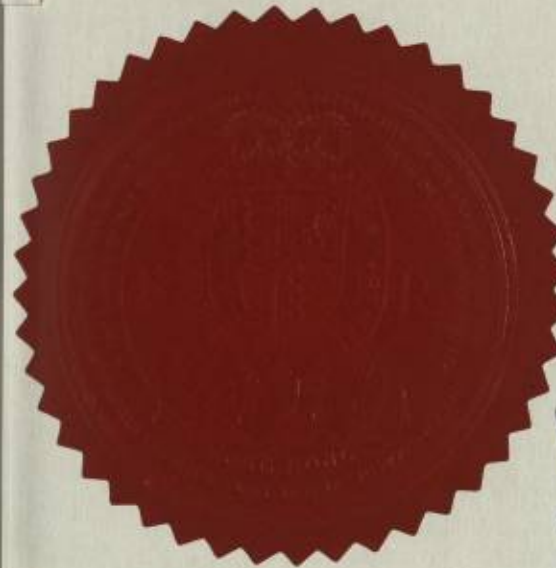

Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

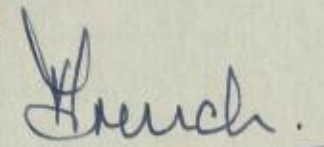

Deputy Clerk of Councils.

HONG KONG

No. 62 OF 1970.



I assent.


Governor.

18th June, 1970.

An Ordinance to facilitate the incorporation of owners of flats in multi-storey buildings, to provide for the management of such buildings and for matters incidental thereto or connected therewith.

[19th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I.

SHORT TITLE AND INTERPRETATION.

1. This Ordinance may be cited as the Multi-storey Buildings (Owners Incorporation) Ordinance 1970. Short title.
2. In this Ordinance, unless the context otherwise requires— Interpretation.
"administrator" means a person appointed as an administrator under section 30 or 31;

Repeal of
section 14.

Amendment of
section 16.

9. Section 14 of the principal Ordinance is repealed.

10. Section 16 of the principal Ordinance is amended—

(a) in subsection (1) by deleting "within the scope of this Ordinance" and substituting the following—

"to which this Ordinance for the time being applies";

(b) in subsection (2), by inserting, after "in any church", the following—

"to which this Ordinance for the time being applies";

(c) in subsection (3), by inserting, after "in a church", the following—

"to which this Ordinance for the time being applies".

Validation.

(Cap. 1014,
sub. leg.)

11. For the avoidance of doubt it is hereby declared that any annual church meeting held, prior to the commencement of the Church of England Trust (Amendment) Ordinance 1970, pursuant to regulation 17 of the Church of England Trust (Church Councils) Regulations shall be deemed to have been validly and properly held notwithstanding—

(a) that such meeting was not held before the 15th February as required by the said regulation 17;

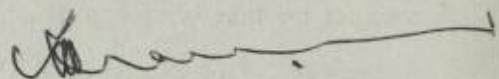
(b) that at such meeting the provisions of the rules of procedure for church councils contained in the Appendix to the Church of England Trust (Church Councils) Regulations were not complied with.

Passed by the Hong Kong Legislative Council this 3rd day of June, 1970.



Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



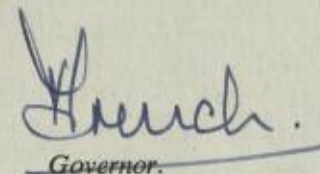
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18th June, 1970.

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PART I.

SHORT TITLE AND INTERPRETATION.

1. This Ordinance may be cited as the Multi-storey Buildings (Owners Incorporation) Ordinance 1970. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.
"administrator" means a person appointed as an administrator under section 30 or 31;

"building" means—

- (a) any building which consists of two or more levels, including basements; and
- (b) the land upon which such a building is erected and any land in common ownership with such land;

"common parts" means—

- (a) the whole of a building, except such parts as have been specified or designated in an instrument registered in the Land Office as being for the exclusive use, occupation or enjoyment of an owner; and
- (b) unless so specified or designated, those parts specified in the First Schedule;

First Schedule.

"corporation" means a corporation registered under section 8;

"court" means the District Court;

"deed of mutual covenant" means a document which—

- (a) defines the rights, interests and obligations of owners among themselves; and
- (b) is registered in the Land Office;

"flat" means any premises in a building which are referred to in a deed of mutual covenant whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession;

(Cap. 128.)

"Land Office" means the Land Office established under the Land Registration Ordinance and a District Land Office established under the New Territories Ordinance;

(Cap. 97.)

"Land Officer" includes, in relation to buildings on land registered in a District Land Office, an Assistant Land Officer appointed under section 9 of the New Territories Ordinance, save that only the Land Officer may specify forms;

(Cap. 97.)

"management committee" means a management committee appointed under section 3 or 4;

"owner" means—

- (a) a person who for the time being appears from the records at the Land Office to be the owner of an undivided share in land on which there is a building; and
- (b) a registered mortgagee in possession of such share;

"registered mortgagee" means—

- (a) a person to whom an owner's interest in a building has been mortgaged or charged under a mortgage or charge which has been registered in the Land Office; and

- (b) a person in whose favour a charge upon a flat has been created by virtue of any Ordinance;

"register" means the register of corporations maintained under section 12;

"share" means the share of an owner in a building determined in accordance with section 39.

PART II.

MANAGEMENT COMMITTEE.

3. (1) A meeting of the owners to appoint a management committee may be convened by—

Appointment of management committee.

- (a) any person managing the building in accordance with the deed of mutual covenant (if any); or
- (b) any other person authorized to convene such a meeting by the deed of mutual covenant (if any); or
- (c) the owners of not less than five *per cent* of the shares.

(2) At a meeting convened under subsection (1) a management committee may be appointed—

- (a) in accordance with the deed of mutual covenant, if the deed provides for the appointment of a management committee; or
- (b) if there is no deed of mutual covenant, or the deed contains no provision for the appointment of a management committee, by a resolution of the owners of not less than fifty *per cent* of the shares.

4. (1) The court may, upon application by—

Appointment of management committee after application to court.

- (a) the owners of not less than twenty *per cent* of the shares; or
- (b) the Attorney General,

order that a meeting of owners shall be convened, by such owner as the court may direct, to appoint a management committee.

(2) Upon the making of an order under subsection (1) the court may order that the costs of the application shall be paid by the applicant or by any person opposing the application.

(3) If a corporation is established, the corporation shall refund to the applicant any costs paid by him in accordance with an order made under subsection (2).

(4) At a meeting convened in accordance with an order made under subsection (1), a management committee may be appointed by a resolution passed by a majority of votes of the owners voting at the meeting personally or by proxy.

Notice of and
voting at
meetings.

5. (1) Notice of a meeting convened under section 3 or 4 shall be served upon each owner in accordance with subsection (2) not less than fourteen days before the date of the meeting—

- (a) in the case of a meeting convened by a person referred to in paragraph (a) or (b) of subsection (1) of section 3, by the convenor;
- (b) in the case of a meeting convened by the owners referred to in paragraph (c) of subsection (1) of section 3, by an owner nominated by the convenors;
- (c) in the case of a meeting convened in accordance with an order made under subsection (1) of section 4, by the owner directed by the court to convene the meeting.

(2) Service of a notice required to be served under subsection (1) may be effected—

- (a) personally upon the owner; or
- (b) by registered post addressed to the owner at his last known address; or
- (c) by leaving the same at the owner's flat.

(3) A notice required to be served under subsection (1) shall be published in one English language and one Chinese language newspaper specified in a list of newspapers issued for this purpose by the Secretary for Home Affairs and published in the *Gazette*.

(4) A notice under subsection (1) shall specify—

- (a) the date, time and place of such meeting; and
- (b) the resolutions which are to be proposed and, in particular, the resolution for the appointment of a management committee.

(5) At a meeting convened under section 3 or 4—

- (a) each owner shall, save where the deed of mutual covenant otherwise provides, have one vote in respect of each share which he owns;
- (b) a vote may be cast either personally or by a proxy appointed in accordance with sub-paragraph (2) of paragraph 4 of the Third Schedule; and
- (c) if a share is jointly owned by two or more persons, the vote in respect of that share may be cast—
 - (i) by a proxy jointly appointed by the co-owners; or
 - (ii) by one co-owner appointed by the others; or
 - (iii) if no appointment has been made under sub-paragraph (i) or (ii) either personally or by proxy by

Third Schedule.

the co-owner whose name stands first in relation to that share in the register kept at the Land Office.

(6) For the purposes of subsection (5), the appointment of a proxy shall have no effect unless the instrument appointing the proxy is produced at the meeting.

6. The provisions of the Second Schedule shall have effect with respect to the composition and procedure of a management committee.

Composition
and procedure
of management
committee.
Second Schedule.

PART III. INCORPORATION.

7. (1) A management committee appointed under section 3 or 4 shall within fourteen days of such appointment apply to the Land Officer for the registration of the owners as a corporation under this Ordinance.

Application by
management
committee for
registration of
owners as a
corporation.

(2) An application under subsection (1) shall be in such form as the Land Officer may specify and shall include the following particulars—

- (a) the name of the proposed corporation, which shall be in the form "The Incorporated Owners of";

(Description of building)

- (b) the name (if any) and address of the building;
- (c) the address of the proposed registered office of the corporation; and
- (d) the name and address of the chairman and secretary of the management committee.

(3) An application under subsection (1) shall be accompanied by the following documents—

- (a) a copy of the deed of mutual covenant (if any) in respect of the building;
- (b) where an application has been made to the court under subsection (1) of section 4, a copy of the order of the court;
- (c) a copy of the resolution or other document evidencing the appointment of the management committee under section 3 or 4 certified as correct by the chairman or secretary of the management committee or by the chairman of the meeting at which the resolution was passed; and
- (d) a declaration by the chairman or secretary of the management committee, in such form as the Land Officer may specify, that the provisions of section 3 or 4 and section 5 have been complied with.

Incorporation.

8. (1) The Land Officer shall, if satisfied that the provisions of section 3 or 4 and subsections (2) and (3) of section 7 have been complied with, issue a certificate of registration in the prescribed form.

(2) With effect from the date of issue of the certificate of registration under subsection (1)—

(a) the owners for the time being shall be a body corporate with perpetual succession and shall in the name of the corporation specified in the certificate of registration be capable of suing and being sued and, subject to this Ordinance, of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer; and

(b) the management committee appointed under section 3 or 4 shall be deemed to be the first management committee of the corporation.

(3) A corporation shall have a common seal, the affixing of which shall be authenticated by the signature of the chairman and secretary of the management committee.

(4) A corporation shall have a registered office in the Colony.

(5) The Third Schedule shall have effect with respect to the meetings and procedure of a corporation.

9. No corporation shall be registered by a name which, in the opinion of the Land Officer, is undesirable.

10. (1) A corporation may, by resolution of not less than seventy-five *per cent* of the votes of the owners voting either personally or by proxy, change its name.

(2) If at any time a corporation is registered by a name which, in the opinion of the Land Officer, is so similar to the name by which another corporation is registered as to be likely to mislead, the Land Officer may direct that the first mentioned corporation shall change its name within a period of six weeks from the date of the direction or such longer period as the Land Officer may allow.

(3) A corporation which makes default in complying with a direction under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of fifty dollars for each day during which the default continues.

(4) When a corporation changes its name under this section, the Land Officer shall enter the new name on the register main-

Third Schedule.

Undesirable names.

11 & 12 Geo. 6, c. 38, s. 17.

Change of name.

11 & 12 Geo. 6, c. 38, s. 18.

tained by him under section 12 in place of the former name, and shall issue an amended certificate of registration.

(5) A change of name of a corporation under this section shall not affect any rights or obligations of the corporation or render defective any legal proceedings by or against the corporation, and any legal proceedings which might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

11. (1) A management committee shall cause to be prominently displayed—

(a) a copy of the certificate or amended certificate of registration issued under subsection (1) of section 8 or subsection (4) of section 10 and a notice stating the address of the registered office of the corporation—

(i) at each entrance to the building to the owners of which such certificate relates; and

(ii) on the outside of the door of the registered office of the corporation; and

(b) a notice bearing the words "Registered Office of
(name of corporation)
of the registered office of the corporation.

(2) A corporation which exhibits or uses any name of or for the corporation in Chinese characters, whether or not such name is a transliteration or translation of its name in its certificate or amended certificate of registration issued under subsection (1) of section 8 or subsection (4) of section 10, shall append to such name so used in Chinese characters the Chinese characters "業主立案法團".

(3) In the event of a contravention of this section, every member of the management committee shall be guilty of an offence and shall be liable on conviction to a fine of fifty dollars unless he proves that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

12. (1) The Land Officer shall maintain a register of corporations.

(2) The Land Officer shall enter in the register the following particulars of each corporation—

(a) the name of the corporation;

(b) the name (if any) and address of the building;

Display of copy certificate of registration, etc.

Land Officer to maintain register of corporations.

- (c) the address of the registered office of the corporation;
- (d) the name and address of the chairman and secretary of the management committee;
- (e) the name and address of any administrator.

(3) The secretary of the management committee shall, within twenty-eight days of the date of any change in the particulars registered under subsection (2), other than the particulars referred to in paragraph (e) of that subsection, give notice thereof to the Land Officer in such form as the Land Officer may specify.

(4) In the event of a contravention of subsection (3), the secretary of the management committee shall be guilty of an offence and shall be liable on conviction to a fine of one hundred dollars for each day during which the contravention continues.

(5) Upon payment of such fee as may be prescribed, any person may—

- (a) inspect the register and any document required to be submitted to the Land Officer under this Ordinance; and
- (b) require a copy or extract of any such register or document to be made and certified under the hand of the Land Officer.

Conclusiveness
of certificate of
registration.

13. A certificate or amended certificate of registration issued by the Land Officer in respect of a corporation shall be conclusive evidence that such corporation is incorporated under this Ordinance.

PART IV.

PROVISIONS RELATING TO CORPORATIONS.

Powers of
corporation
generally.

14. (1) Subject to this Ordinance, at a meeting of a corporation any resolution may be passed with respect to the control, management and administration of the common parts and any such resolution shall be binding on the management committee and all the owners.

(2) Without prejudice to the generality of subsection (1), a corporation may by resolution at a meeting remove from office and replace any member of the management committee.

(3) A resolution for the removal of so many members of the management committee as would reduce the number of members below the number required under paragraph 1 of the Second Schedule shall not have effect unless there is appointed, at the meeting at which such resolution is passed, a sufficient number of further members as will comply with such requirements.

Second Schedule.

15. (1) The members of an approved association may, by resolution of the majority of the members thereof present and voting at a meeting convened for that purpose, resolve to requisition a meeting of the management committee in accordance with this section and shall appoint from amongst themselves one person to be known as the "tenants' representative":

Tenants'
representative.

Provided that the approved association shall not be entitled to requisition the convening of more than one meeting in any period of three months.

(2) Only a lawful occupier of a flat in the building and not an owner, may be appointed as the tenants' representative.

(3) The secretary of a management committee shall, on the written requisition of the approved association, which shall state the objects of the meeting, forthwith proceed duly to convene a meeting of the management committee within twenty-eight days from the date of receipt of the requisition for the purpose of hearing the tenants' representative on matters concerning the management of the building of which the members of the approved association are tenants or occupiers.

(4) In this section "approved association" means an association—

- (a) formed to represent the interests of the tenants or occupiers of flats in a building; and
- (b) which has been approved for the purposes of this section by the Secretary for Home Affairs.

16. When the owners of a building have been incorporated under section 8, the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by, and the liabilities of the owners in relation to the common parts of the building shall, subject to the provisions of this Ordinance, be enforceable against, the corporation to the exclusion of the owners, and accordingly—

Rights etc. of
owners to be
exercised etc.
by corporation.

- (a) any notice, order or other document which relates to any of the common parts of the building may be served upon the corporation at its registered office; and
- (b) any proceedings in court in respect of any of the common parts of the building may be brought and pursued by or against the corporation.

17. (1) If a judgment is given or an order is made against a corporation, execution to enforce the judgment or order may issue—

Enforcement
of judgments
etc. against a
corporation.

- (a) against any property of the corporation; or

- (b) with leave of the court in which such judgment was given or order made, against any owner.
- (2) An application for leave under paragraph (b) of subsection (1) shall be made by summons served personally upon the owner against whom execution is sought.
- 18. (1) The corporation shall—
 - (a) maintain the common parts and the property of the corporation in a state of good and serviceable repair and clean condition;
 - (b) carry out such work as may be ordered or required in respect of the common parts by any public officer or public body in exercise of the powers conferred by any Ordinance;
 - (c) do all things reasonably necessary for the enforcement of the obligations contained in the deed of mutual covenant (if any) for the control, management and administration of the building.
- (2) A corporation may, in its discretion—
 - (a) engage and remunerate staff for any purpose relating to the powers or duties of the corporation under this Ordinance or the deed of mutual covenant;
 - (b) retain and remunerate accountants for the purposes of auditing the corporation's books of accounts and preparing the annual income and expenditure accounts and balance sheets;
 - (c) retain and remunerate a manager or other professional trade or business firm or person to carry out on behalf of the corporation any of the duties or powers of the corporation under this Ordinance or the deed of mutual covenant;
 - (d) insure and keep insured the building or any part thereof to the reinstatement value thereof against fire and other risks;
 - (e) purchase, hire or otherwise acquire movable property for use by the owners in connexion with their enjoyment of the common parts or to satisfy any requirement of a public officer or public body for the purpose of any Ordinance;
 - (f) establish and maintain lawns, gardens and playgrounds on the common parts;
 - (g) act on behalf of the owners in respect of any other matter in which the owners as tenants in common have a joint interest or liability.

19. If a deed of mutual covenant provides that if an owner fails to pay any sum which is payable under the deed of mutual covenant, a person may sell that owner's interest in the land or register a charge against such interest in the Land Office, then, notwithstanding the provisions of the deed of mutual covenant, the corporation may, to the exclusion of such person, exercise such power of sale or register such charge in the same manner and subject to the same conditions as if it were the person referred to in the deed of mutual covenant.

Corporation may sell or register charges against flat in certain circumstances.

20. (1) A corporation shall establish and maintain a general fund—

Establishment of funds.

- (a) to defray the cost of the exercise of its powers and the performance of its duties under the deed of mutual covenant (if any) and this Ordinance; and
- (b) to pay Crown rent, premiums, taxes or other outgoings which are payable in respect of the building as a whole.

(2) A corporation may establish and maintain a contingency fund—

- (a) to provide for any expenditure of an unexpected or urgent nature; and
- (b) to meet any payments of the kind specified in subsection (1) if the fund established thereby is insufficient to meet them.

21. (1) A management committee shall determine the amount to be contributed by the owners to the fund established and maintained under section 20 during such period, not exceeding twelve months, as the management committee specifies.

Contributions to funds.

(2) Subject to subsection (1) of section 14 and to subsection (3), a management committee shall not increase the amount determined in accordance with subsection (1).

(3) A management committee may increase the amount required to be contributed by the owners to the extent to which the funds established and maintained under section 20 are insufficient to meet any payment due by the corporation in respect of the cost of complying with—

- (a) an order of a court; or
- (b) any notice, order or other document served upon the corporation in relation to the common parts by a public officer or public body under any Ordinance.

Recovery of
contributions
from owners.

22. (1) The amount to be contributed by an owner towards the amount determined under section 21 shall be—

- (a) fixed by the management committee in accordance with the deed of mutual covenant; and
- (b) payable at such times as the management committee may determine.

(2) If there is no deed of mutual covenant, or if the deed of mutual covenant does not provide for the fixing of contributions, the amount to be contributed by an owner towards the amount determined under section 21 shall be fixed by the management committee in accordance with the respective shares of the owners.

(3) The amount payable by an owner under this section shall be a debt due from him to the corporation at the time when it is payable.

(4) A certificate in writing signed by the chairman of the management committee stating the amount to be contributed under this section by an owner and when it is payable shall be admissible in evidence in any proceedings as *prima facie* evidence of the facts stated therein without further proof.

Liability of
occupier to pay
contributions
to funds.

23. (1) If any amount payable under section 22 by an owner who is not occupying a flat in the building concerned remains unpaid for a period of one month after it has become due to the corporation, the corporation may, without prejudice to any right of action against the owner, by notice in writing addressed to the occupier of the flat and served upon him either personally or by registered post, demand such amount from the occupier, who shall, subject to subsection (2), thereupon be liable to pay the same to the corporation.

(2) Notwithstanding subsection (1), the liability of the occupier of a flat to pay an amount demanded from him under subsection (1) shall extend only to such amount of rent or other charge (exclusive of rates) as is due at the time of service on him of the demand, or falls due subsequently from him, in respect of his occupation of the flat.

(3) In any proceedings by a corporation to recover an amount payable under subsection (1), it shall be presumed, until the contrary is proved, that the amount claimed does not exceed the amount of rent or other charge (exclusive of rates) due from the occupier at the time of commencement of such proceedings.

(4) If an occupier of a flat has paid an amount in accordance with this section—

- (a) that amount may, subject to the terms on which he occupies the flat, be deducted by him from the rent or

other charge due in respect of his occupation of the flat; and

- (b) any person, not being the owner, to whom such rent or other charge has been paid subject to such deduction, may in like manner as the occupier deduct such amount from the rent or other charge due from him in respect of the flat.

(5) Any deduction by an occupier or other person under subsection (4) shall operate as a discharge, to the extent of the amount so deducted, of his liability for the rent or other charge.

24. (1) Subject to the provisions of this section, the Distress for Rent Ordinance shall apply to an amount payable under section 22 or 23 as if the amount were rent payable to the corporation as landlord of the owner's flat.

Distress for
contributions.
(Cap. 7.)

(2) A corporation may name as the defendant in any distress under this section "the person in occupation of" a flat, without specifying in the application or in the warrant the name of any person in occupation of the flat.

25. If an owner fails to pay any amount payable under section 22 within one month of the same becoming due and a registered mortgagee of the flat in respect of which the owner is in default has paid such amount on the owner's behalf, such payment shall be recoverable by the registered mortgagee from the owner as if the amount of such payment formed part of the principal sum due under the registered mortgage of the flat.

Registered
mortgagee
may pay
contribution
and recover
same from
the owner.

26. A management committee shall, on the application of an owner, a registered mortgagee, an occupier, such other person as is referred to in paragraph (b) of subsection (4) of section 23 or a person authorized in writing in that behalf by such owner, registered mortgagee, occupier or other person, certify—

Management
committee to
certify matters
relating to
payment of
contributions.

- (a) the amount payable in accordance with section 22 by the owner;
- (b) the extent to which such sum has been paid; and
- (c) the name of the person by whom and the person on whose behalf such payment was made.

27. (1) A management committee shall maintain proper books of account and other records and shall prepare, not later than fifteen months after the date of registration of the corporation and thereafter at least once in every calendar year, an income and expenditure account and a balance sheet which shall both be signed by the chairman of the management committee and laid

Accounts of
corporation.

Third Schedule.

before the corporation at the annual general meeting convened in accordance with sub-paragraph (1) of paragraph 1 of the Third Schedule.

(2) The management committee shall permit an owner, a registered mortgagee or any person authorized in writing in that behalf by an owner or registered mortgagee to inspect the books of account at any reasonable time.

(3) In the event of a contravention of subsection (1), every member of the management committee shall be guilty of an offence and shall be liable on conviction to a fine of two thousand dollars unless he proves—

- (a) that the offence was committed without his consent or connivance; and
- (b) that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.

Insurance policy to be made available by management committee for inspection.

28. If a corporation has effected any policy of insurance in respect of the building or the common parts the management committee shall permit an owner, a registered mortgagee or any person duly authorized in writing in that behalf by an owner or registered mortgagee, to inspect the policy of insurance and the receipt for the last premium in respect thereof at any reasonable time.

Management committee to perform duties and exercise powers of corporation.

29. Subject to this Ordinance, the powers and duties conferred or imposed by this Ordinance on a corporation shall be exercised and performed on behalf of the corporation by the management committee.

PART V.

DISSOLUTION OF MANAGEMENT COMMITTEE AND APPOINTMENT OF ADMINISTRATOR.

Dissolution of management committee and appointment of administrator. Third Schedule.

30. (1) Subject to this section, the owners present at a meeting of the corporation convened under paragraph 1 of the Third Schedule may appoint an administrator and thereafter resolve that the management committee be dissolved.

(2) A resolution under subsection (1) shall have no effect until a copy thereof, certified as correct by the chairman of the meeting at which the resolution was passed, is lodged with the Land Officer within fourteen days after the date of the meeting.

(3) An administrator shall hold office from the date upon which a certified copy of the resolution referred to in subsection (1) is lodged with the Land Officer until—

- (a) the owners present at a meeting of the corporation convened under paragraph 1 of the Third Schedule appoint—
 - (i) another administrator; or
 - (ii) a new management committee; or
- (b) the court appoints an administrator under section 31.

Third Schedule.

31. (1) The court may, upon application made to it by—

- (a) an owner;
- (b) a registered mortgagee of an owner's flat;
- (c) an administrator; or
- (d) the Attorney General,

Appointment of administrator by the court.

dissolve the management committee and appoint an administrator, or remove and replace an administrator, as the case may be.

(2) The court may direct that an administrator appointed under subsection (1) shall hold office for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit, and the remuneration and expenses of the administrator shall be deemed to be part of the expenses of management of the building under this Ordinance.

32. (1) An administrator shall have all the powers and duties of a management committee and of the chairman and secretary thereof.

Powers and duties of an administrator.

(2) An administrator shall, within seven days of the date of his appointment or the determination of his appointment, give notice thereof to the Land Officer in such form as the Land Officer may specify.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of one hundred dollars for each day during which the contravention continues.

PART VI.

WINDING UP OF CORPORATIONS.

33. (1) A corporation may be wound up under the provisions of Part X of the Companies Ordinance as if it were an unregistered company within the meaning of that Ordinance and

Winding up of corporations. (Cap. 32.)

the provisions of that Ordinance relating to the winding up of an unregistered company shall, in so far as they are applicable, apply to the winding up of a corporation.

(2) In applying the provisions of the Companies Ordinance under subsection (1)—

- (a) a reference to a director of a company shall be deemed to be a reference to a member of a management committee; and
- (b) a reference to a member of a company shall be deemed to be a reference to an owner.

34. In the winding up of a corporation under section 33, the owners shall be liable to contribute, according to their respective shares, to the assets of the corporation to an amount sufficient to discharge its debts and liabilities.

PART VII.

MISCELLANEOUS.

35. Any person who, not being a corporation incorporated under this Ordinance, uses a name or title containing the words "Incorporated Owners" or the Chinese characters therefor, or other words or Chinese characters implying that such person is a corporation incorporated under this Ordinance, shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars.

36. Any person who—

- (a) in any form required by this Ordinance, or in any notice or document given, issued or made for the purposes of this Ordinance, makes any statement or furnishes any information; or
- (b) furnishes any information required to be furnished under this Ordinance,

which he knows, or reasonably ought to know, to be false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

37. A resolution passed at any meeting convened under this Ordinance shall not be invalid by reason only of the omission to give notice of the meeting to any person entitled to such notice.

Liability of owners on winding up.

Penalty for improper use of "Incorporated Owners".

False statement or information.

Saving for resolutions passed at meetings.

38. (1) The secretary of a management committee shall maintain a register, in which each flat in the building concerned shall be separately identified, and shall enter therein the following particulars with reference to each flat—

- (a) the name and address of the owner; and
 - (b) the name and address of the registered mortgagee (if any).
- (2) For the purposes of subsection (1)—
- (a) the address of an owner shall be the address of the flat which he owns; and
 - (b) the address of a registered mortgagee shall be his address appearing in the registered mortgage,

unless the owner or registered mortgagee notifies the secretary of the management committee in writing of some other address.

(3) Every person who becomes an owner or a registered mortgagee of a flat shall forthwith give notice thereof to the secretary of the management committee, who shall amend the register accordingly.

(4) The register kept under subsection (1) shall, subject to any resolution of the corporation at a meeting convened under paragraph 1 of the Third Schedule, be open to inspection only by an owner and a registered mortgagee of a flat in the building concerned.

39. An owner's share shall be determined—

- (a) in the manner provided in an instrument which is registered in the Land Office; or
- (b) if there is no such provision, then in the proportion which his undivided share in the building bears to the total number of shares into which the building is divided.

40. (1) A member of a management committee and any other person authorized in that behalf by the management committee may, on reasonable notice to the occupier thereof, enter a flat at any reasonable time for the purpose of—

- (a) inspecting, repairing, maintaining or renewing—
 - (i) any common parts in the flat; or
 - (ii) any other property in the flat the condition of which does or may affect adversely the common parts or other owners;
- (b) abating any hazard or nuisance which does or may adversely affect the common parts or other owners.

Secretary to maintain register.

Third Schedule.

Determination of owner's shares.

Powers of entry and inspection.

(2) A magistrate may, if satisfied by information on oath that it is necessary for any person to break into any flat which he is empowered to enter under subsection (1), by warrant authorize such person to break into the flat in the presence of a police officer.

(3) Any costs incurred by the management committee in connexion with the exercise by it of the powers conferred by subparagraph (ii) of paragraph (a) of subsection (1) or paragraph (b) of subsection (1) shall be recoverable by the corporation as a civil debt from the owner of the flat in respect of which such costs were incurred.

Power to
make regula-
tions.

41. The Governor in Council may make regulations for any of the following matters—

- (a) the fees payable in respect of the registration or filing of any documents submitted to the Land Officer under this Ordinance;
- (b) the fees payable for the inspection or copying of any document so registered or filed;
- (c) the fees payable for the issue of any certificate under this Ordinance;
- (d) prescribing anything which is to be or may be prescribed under this Ordinance;
- (e) the better carrying out of the purposes of this Ordinance.

Governor may
amend Second
and Third
Schedules.

42. The Governor may, by order published in the *Gazette*, amend the Second and Third Schedules.

Saving of
owner's rights.

43. Nothing in this Ordinance shall prevent an owner from selling, assigning, mortgaging, charging, leasing or otherwise disposing of or dealing with his undivided share in a building.

FIRST SCHEDULE.

[s. 2.]

COMMON PARTS.

1. External walls and load bearing walls, foundations, columns, beams and other structural supports.
2. Walls enclosing passageways, corridors and staircases.
3. The roofs, chimneys, gables, gutters, lightning conductors, arials and aerial cables.
4. Parapet walls, fences and boundary walls.

5. Vents serving two or more flats.
6. Water tanks, pumps, wells, sewers, drains, soil pipes, waste pipes, channels, water-courses, gutters, ducts, downpipes, cables, conduits, refuse chutes, hoppers and refuse container chambers.
7. Cellars, toilets, water closets, wash houses, bathhouses, kitchens and caretakers' flats.
8. Passageways, corridors, staircases, landings, light wells, staircase window frames and glazing, hatchways, roofways and outlets to the roofs and doors and gates giving access thereto.
9. Lifts, escalators, lift shafts and machinery and apparatus used in connexion therewith and the housing thereof.
10. Lighting apparatus, air conditioning apparatus, central heating apparatus, fire fighting equipment and installations intended for the use and benefit of all of the owners generally and any room or chamber in which such apparatus, equipment or installation is fitted or installed.
11. Fixtures situated in a flat which are used in connexion with the enjoyment of any other flat or other portion of the building.

SECOND SCHEDULE.

[ss. 6 & 42.]

COMPOSITION AND PROCEDURE OF MANAGEMENT COMMITTEE.

1. The management committee shall consist of—
 - (a) such number of persons as is specified in the deed of mutual covenant;
 - (b) if there is no deed of mutual covenant or the deed does not specify the number of persons which shall constitute the management committee, not less than—
 - (i) three persons if the building contains not more than twelve flats; or
 - (ii) five persons if the building contains more than twelve flats.
2. The owners shall, at a meeting convened under section 3 or 4, appoint—
 - (a) from amongst themselves, or in accordance with the deed of mutual covenant, the members of the management committee;
 - (b) a chairman of the management committee, who shall be one of the persons appointed as a member of the management committee;
 - (c) a secretary of the management committee who may, but need not be, one of the persons appointed as a member of the management committee.
3. Subject to section 14 and paragraph 4, the members of the management committee appointed at a meeting convened under section 3 or 4 shall hold office until a new management committee is appointed and assumes office at the second annual general meeting of the corporation.

4. (1) No person shall be appointed as a member of a management committee who—

- (a) has been declared bankrupt;
- (b) has entered into composition with his creditors;
- (c) has at any time been sentenced to imprisonment for six months or more.

(2) A member of a management committee shall cease to be a member of the committee if he—

- (a) becomes disqualified for appointment as a member of a management committee under sub-paragraph (1);
- (b) becomes incapacitated by physical or mental illness;
- (c) absents himself from three or more consecutive meetings of the management committee without the consent of the management committee;
- (d) resigns his office, by notice in writing delivered to the secretary of the management committee;
- (e) ceases to be an owner, if appointed in his capacity as an owner, or ceases to be qualified to be a member according to the deed of mutual covenant; or
- (f) is removed from office by resolution of the corporation.

5. (1) At the second annual general meeting of a corporation convened in accordance with sub-paragraph (1)(b) of paragraph 1 of the Third Schedule and thereafter at every alternate annual general meeting, all members of the management committee shall retire from office.

(2) At an annual general meeting of a corporation at which the management committee retires under sub-paragraph (1) the corporation shall, in accordance with this Ordinance, appoint—

- (a) a new management committee;
- (b) a chairman of the management committee; and
- (c) a secretary of the management committee, if the office of secretary of the management committee is vacant.

(3) Members of the management committee who retire under sub-paragraph (1) shall be eligible for re-appointment under sub-paragraph (2).

6. (1) A casual vacancy occurring in a management committee may be filled by the management committee.

(2) If a casual vacancy occurs in the office of the secretary of a management committee, the management committee may appoint an owner or any other person to fill the vacancy till the next annual general meeting.

7. A management committee shall, in addition to any meetings held pursuant to section 15, meet at least once in every period of six months.

8. (1) A meeting of a management committee—

- (a) may be convened at any time by the chairman; and
- (b) shall be convened by the secretary, at the request of any two members thereof, within fourteen days of receiving such request.

(2) Notice of a meeting of the management committee shall be sent by post by the secretary to each member of the management committee at least seven days before the date of the meeting and every such notice shall specify the place, date and time of such meeting.

(3) If a management committee resolves that it shall meet at specified intervals and the resolution specifies the place, dates or days and times of such meetings, the secretary shall send a copy of such resolution, and a copy of any subsequent resolution of the management committee affecting the same, to each member of the management committee by post, and sub-paragraph (2) shall not apply in the case of any such meeting.

9. The quorum necessary for the transaction of business at a meeting of a management committee shall be fifty *per cent* of the members of the management committee:

Provided that the quorum shall in no case be less than three.

10. (1) A meeting of a management committee shall be presided over by—

- (a) the chairman; or
- (b) in the absence of the chairman, a member appointed as chairman for that meeting by the management committee.

(2) All acts, matters or things authorized or required to be done by the management committee may be decided by a majority of those present and voting at a meeting of the management committee.

(3) At a meeting of the management committee, each member present shall have one vote on a question before the committee and if there is an equality of votes the chairman shall have, in addition to a deliberative vote, a casting vote.

(4) The secretary shall keep minutes of the proceedings at every meeting of a management committee.

(5) Subject to this Ordinance, the procedure at meetings of a management committee shall be as is determined by the management committee.

THIRD SCHEDULE.

[ss. 8(5) & 42.]

MEETINGS AND PROCEDURE OF CORPORATION.

1. (1) The management committee shall convene—

- (a) the first annual general meeting of a corporation not later than fifteen months after the date of the registration of the corporation;
- (b) an annual general meeting in every calendar year after the calendar year in which the first annual general meeting was held, and not later than fifteen months after the date of the previous annual general meeting;
- (c) a general meeting of the corporation at any time for such purposes as the management committee thinks fit.

(2) The chairman of the management committee shall convene a general meeting of the corporation at the request of not less than five *per cent* of the owners for the purposes specified by such owners within fourteen days of receiving such request.

2. (1) Notice of a meeting convened under paragraph 1 shall be sent by the secretary of the management committee by post to each owner at least seven days before the date of the meeting.

(2) Every notice referred to in sub-paragraph (1) shall specify—

- (a) the place, date and time of the meeting;
- (b) every resolution to be proposed or other matter to be discussed at the meeting.

3. (1) The chairman of the management committee appointed under paragraph 2 of the Second Schedule shall preside at a meeting of the corporation.

(2) If the chairman of the management committee is absent the owners at a meeting shall appoint an owner as chairman for that meeting.

(3) Subject to subsection (1) of section 10, all matters arising at a meeting of the corporation at which a quorum is present shall be decided by a majority of votes of the owners voting either personally or by proxy:

Provided that if the deed of mutual covenant provides for any resolution requiring the affirmative vote of more than a simple majority of the owners present either personally or by proxy, the provisions of such deed of mutual covenant shall apply to any such resolution.

(4) If there is an equality of votes the chairman shall have, in addition to a deliberative vote, a casting vote.

(5) (a) At any meeting of the corporation each owner shall, subject to the provisions of any instrument registered in the Land Office and subject to sub-paragraph (6), have one vote in respect of each share which he owns.

(b) If any share is jointly owned by two or more persons the vote in respect of that share may be cast—

- (i) by a proxy jointly appointed by the co-owners; or
- (ii) by one co-owner appointed by the others; or
- (iii) if no appointment has been made under (i) or (ii), either personally or by proxy by the co-owner whose name stands first in relation to that share in the register kept by the secretary of the management committee under section 38.

(6) If a registered mortgagee is in possession of an owner's flat, such mortgagee shall, to the exclusion of the owner, be entitled to exercise the voting rights of such owner.

(7) No resolution passed at any meeting of the corporation shall have effect unless the same was set forth in the notice sent to the owners in accordance with paragraph 2 or is ancillary or incidental to a resolution or other matter so set forth.

(8) Nothing in sub-paragraph (7) shall preclude the passing of a resolution as amended at a meeting of a corporation.

4. (1) At a meeting of the corporation the votes of owners may be given either personally or by proxy.

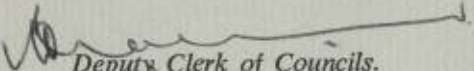
(2) The instrument appointing a proxy shall be in writing signed by the owner, or if the owner is a body corporate, under the seal of that body.

(3) The appointment of a proxy shall have no effect unless the instrument appointing the proxy is lodged with the secretary of the management committee not less than forty-eight hours before the time for the holding of the meeting at which the proxy proposes to vote, or within such lesser time as the chairman shall allow.

5. The quorum at a meeting of the corporation shall be—

- (a) twenty *per cent* of the owners, in the case of a meeting at which a resolution for the dissolution of the management committee under section 30 is proposed; or
- (b) ten *per cent* of the owners in any other case.

Passed by the Hong Kong Legislative Council this 17th day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Deputy Clerk of Councils.

HONG KONG

No. 63 OF 1970.



I assent.

French

Governor.

18th June, 1970.

An Ordinance to amend further the Merchant Shipping Ordinance.

[19th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Merchant Shipping (Amendment) Ordinance 1970.

Short title.

2. Section 92 of the principal Ordinance is repealed and replaced by the following section—

Repeal and replacement of section 92 of principal Ordinance. (Cap. 281.)

"Certificates of competency as trawling masters.

92. (1) The holder of a certificate of competency as a trawling master which is not endorsed with the word "LIMITED" may, subject to the provisions of this Part, command a trawler on any voyage.

(2) The holder of a certificate of competency as a trawling master which is endorsed with the word "LIMITED" may command a trawler for the purpose

only of fishing in an area bounded on the North by the parallel of 25 degrees North, on the South by the parallel of 15 degrees North and on the East by the meridian of 122 degrees East.

(3) The Director may, on the application of a person holding a certificate of competency as a trawling master which is endorsed with the word "LIMITED", exempt such person from the restriction specified in subsection (2).

(4) The holder of a certificate of competency as a trawling master, whether or not the certificate is endorsed with the word "LIMITED", shall, in so far as he does not contravene the provisions of this section, be a duly certificated trawling master and the holder of a Board of Trade certificate of competency as skipper (full) or skipper (limited) shall be deemed to be a duly certificated trawling master subject to such conditions and limitations as the Director may specify in any particular case."

Amendment of
section 93.

3. Section 93 of the principal Ordinance is amended—

(a) in subsection (1), by deleting "A trawler" and substituting the following—

"Subject to section 92, a trawler"; and

(b) by deleting subsection (2) and substituting the following—

"(2) Any person who—

(a) having been engaged as a trawling master—

(i) goes to sea in command of a trawler without being entitled to do so under section 92; or

(ii) uses the trawler of which he is in command for the purpose of fishing in waters in contravention of section 92;

(b) having been engaged as a trawling engineer, goes to sea on a trawler without holding a certificate of competency as a trawling engineer;

(c) employs any person to act as a trawling master in command of a trawler without ascertaining that such person is entitled to do so under section 92; or

(d) employs any person to act as a trawling engineer on a trawler without ascertaining that such person holds a certificate of competency as a trawling engineer,

shall be guilty of an offence and shall be liable on conviction to a fine of four thousand dollars."

4. The principal Ordinance is amended by adding the following section after section 107—

Addition of
section 107A.

"Cancellation
or
suspension
of local
certificates
of com-
petency.

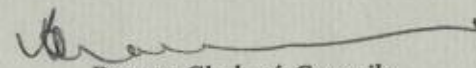
107A. (1) The Director may cancel, or suspend for any period, any local certificate of competency issued by virtue of the provisions of this Part, if it is proved to his satisfaction after due inquiry that the holder of the certificate has been guilty of any incompetency or negligence in the performance of his duties as master or engineer as the case may be.

(2) A person aggrieved by a decision of the Director under subsection (1) may, within fourteen days after being informed of the decision, by notice in writing delivered to the Registrar of the Supreme Court appeal to such judge, District Judge or magistrate as the Chief Justice may nominate, and upon appeal such decision may be confirmed, varied or set aside as may seem just."

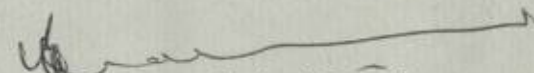
5. Section 117 of the principal Ordinance is amended in subsection (2) by substituting a full stop for the colon and deleting the proviso.

Amendment of
section 117.

Passed by the Hong Kong Legislative Council this 17th day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Deputy Clerk of Councils.

HONG KONG

No. 64 OF 1970.



I assent.

Hutch.
—Governor.

18th June, 1970.

An Ordinance to amend the Road Traffic Ordinance and to validate certain regulations made under that Ordinance.

[19th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Road Traffic (Amendment) (No. 2) Ordinance 1970.

Short title.

2. Section 3 of the principal Ordinance is amended—

Amendment of
section 3.
(Cap. 220.)

(a) in subsection (1), by—

(i) deleting paragraph (b) and substituting the following—

“(b) controlling the driving of vehicles and the use of vehicles, their equipment and apparatus;”;
and

(ii) inserting in paragraph (1) after "which has been" the following—
"driven or"; and

(b) in subsection (3), by deleting "Any" and substituting the following—

"Without prejudice to any other provision of this Ordinance authorizing the imposition of any other punishment or penalty, any".

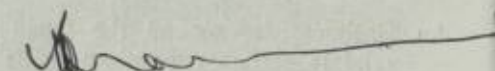
Validation.

3. Any regulation purporting to be made under the principal Ordinance and to be in force at the commencement of this Ordinance shall have effect from such date as if the amendments made by section 2 of this Ordinance had been in force at the time the regulation was made.

Passed by the Hong Kong Legislative Council this 17th day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

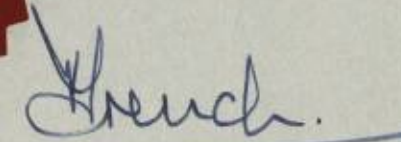

Deputy Clerk of Councils.

HONG KONG

NO. 65 OF 1970.



I assent.


Governor.

18th June, 1970.

An Ordinance to amend the Inland Revenue Ordinance.

[19th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. (1) This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 1970.

Short title and commencement.

(2) Sections 3 and 7 (subject to subsection (3) of this section) shall be deemed to have come into operation on 1st April 1970 and shall apply to assessments for the year of assessment commencing on 1st April 1970 and to subsequent years of assessment.

(3) Sections 2, 4, 5, 8 and 11 and paragraph (e) of subsection (1) of section 42B as inserted by section 7, shall be deemed to have come into operation on 1st April 1970 and shall apply to assessments for the year of assessment commencing on 1st April 1971 and to subsequent years of assessment.

Amendment of
section 2.
(Cap. 112.)

2. Section 2 of the principal Ordinance is amended in subsection (1) by inserting, after the definition of "agent", the following—

"approved charitable donation" means a donation of money to an institution or trust specified for the purposes of this definition by the Governor in Council under section 89;"

Amendment of
section 12.

3. Section 12 of the principal Ordinance is amended by inserting, after subsection (1), the following new subsections—

"(1A) For the purpose of calculating allowances under paragraph (a) of subsection (1), "total income", in subsection (1) of section 42B, means the assessable income of the individual for the relevant year of assessment as reduced by the outgoings, expenses and allowances provided for in paragraphs (b) and (c) of subsection (1).

(1B) Notwithstanding paragraph (a) of subsection (1), for the purpose of ascertaining the net chargeable income for any year of assessment of a person chargeable to salaries tax, an individual shall not be entitled to an allowance under paragraph (f) of subsection (1) of section 42B in any year of assessment unless the individual has, in such year of assessment, assessable income other than income of his wife which is deemed to be his under section 10."

Amendment of
section 13.

4. Section 13 of the principal Ordinance is amended by deleting paragraph (b) of the proviso and substituting the following—

"(b) in no case shall the amount of salaries tax charged on any person exceed that amount which would have been chargeable on him had the standard rate been charged on the whole of his assessable income as reduced by the outgoings, expenses and allowances provided for in paragraphs (b) and (c) of subsection (1) of section 12 and any allowance under paragraph (e) of subsection (1) of section 42B."

Addition of
new section
19B.

5. The principal Ordinance is amended by adding, after section 19A, the following—

"Approved
charitable
donations.

19B. (1) Subject to subsection (2), a person chargeable to tax under this Part may deduct the aggregate of approved charitable donations made by that person in the basis period for a year of assessment, if such aggregate is not less than one hundred dollars, from what would otherwise have been the

assessable profits of such person for that year of assessment after first giving effect, where appropriate, to section 19.

(2) A person shall not be entitled under subsection (1) to deduct for any year of assessment—

- (a) any sum which is allowable as a deduction under section 16, 16B or 16C;
- (b) a sum exceeding ten *per cent* of the assessable profits of that person for that year."

6. Section 42 of the principal Ordinance is amended in subsection (1) by deleting the full stop at the end thereof, substituting a colon and adding the following proviso—

Amendment of
section 42.

"Provided that there shall be deducted from that part of the total income arising from paragraphs (a) and (d) the amount of any interest payable on any money borrowed for the purpose of producing that part of the total income where the amount of such interest has not been allowed and deducted under the provisions of Part IV."

7. Section 42B of the principal Ordinance is amended—

Amendment of
section 42B.

(a) in subsection (1), by deleting paragraph (e) and substituting the following—

"(e) an allowance of the aggregate of approved charitable donations made by the individual in the year preceding the year of assessment, if such aggregate is not less than one hundred dollars, to the extent that such donations have not been deducted under section 19B, but an allowance under this paragraph shall not exceed in any year of assessment ten *per cent* of the total income of the individual in that year;

(f) an allowance of three thousand dollars if at any time during the year of assessment the individual was married to a wife whose income was deemed under section 10 to be the income of that individual, but an individual shall not be granted an allowance under this paragraph in any year of assessment—

(i) greater than the income of his wife which is deemed in that year to be his; and

(ii) unless the Commissioner is satisfied that the income of his wife which is so deemed to be his is reasonable in amount having regard to the services rendered in respect of which the income accrued;

- (g) an allowance of two thousand dollars if the individual or his wife, not being a wife living apart from her husband, maintains or contributes to the maintenance of a parent of the individual or his wife in the year of assessment and that parent in that year—

- (i) was a permanent resident in the Colony; and
- (ii) was wholly or partially dependent on the individual or his wife and had an income, whether chargeable to tax under this Ordinance or not (and excluding the maintenance or contribution received from the individual or his wife), not exceeding two thousand dollars,

and an allowance under this paragraph may be granted in respect of each parent of the individual or his wife so maintained;

Provided that—

- (a) if two or more individuals are entitled to claim an allowance under this paragraph in respect of the same parent for the same year of assessment, the allowance due shall be apportioned on such basis as those individuals may agree and failing agreement on such basis as the Commissioner may decide having regard to the contributions made by each individual to the maintenance of the parent during the year of assessment;
- (b) an individual shall not be granted an allowance under this paragraph greater than the amount contributed by him or his wife in the relevant year of assessment to the maintenance of the parent in respect of whom the allowance is claimed;
- (h) an allowance of three thousand six hundred dollars if the total income of the individual for the year of assessment as reduced by the allowance granted under the other paragraphs of this subsection to that individual in that year of assessment does not exceed three thousand six hundred dollars, or an allowance, if the total income of the individual for the year of assessment as reduced by the allowances granted under the other paragraphs of this subsection to that individual in that year of assessment exceeds three thousand six hundred dollars but is less than seven thousand two hundred dollars, of an amount

calculated by deducting from three thousand six hundred dollars one dollar in respect of each dollar by which such total income as so reduced exceeds three thousand six hundred dollars.”;

- (b) by deleting subsection (2) and substituting the following—

“(2) For the purposes of paragraph (g) of subsection (1), “parent of the individual or his wife” includes a parent of a deceased spouse of the individual.”.

8. Section 43 of the principal Ordinance is amended by inserting after subsection (1) the following—

Amendment of section 43.

“(1A) Notwithstanding subsection (1), the amount of tax charged on an individual under that subsection shall not in any case exceed the amount which would have been chargeable on him had the standard rate been charged on his total income as reduced by any allowance made under paragraph (e) of subsection (1) of section 42B.”.

9. Section 65 of the principal Ordinance is amended—

Amendment of section 65.

- (a) in subsection (1), by deleting “a deputy chairman” and substituting the following—

“two deputy chairmen”;

- (b) in subsection (4), by inserting after “chairman or” where it first occurs the following—

“a”;

- (c) in subsection (6), by deleting “deputy chairman” and substituting the following—

“deputy chairmen”.

10. Section 88 of the principal Ordinance is amended by deleting the following—

Amendment of section 88.

“, ecclesiastical or educational”.

11. The principal Ordinance is amended by adding after section 88 the following new section—

Addition of new section 89.

“Approval of charitable donations.

89. The Governor in Council may, by notice in the *Gazette*, specify any charitable institution or trust of a public character for the purposes of the definition of “approved charitable donation” in section 2.”.

12. Where a person who has been assessed to tax prior to the enactment of this Ordinance in respect of the year of assessment commencing on the 1st April 1970 proves to the satisfaction

Transitional.

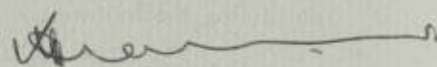
of the assessor, within twelve months from the date of enactment of this Ordinance, that had he been assessed to tax for that year of assessment subsequently to the enactment of this Ordinance, the amount of tax charged on him for that year of assessment would have been less than the amount charged on him under the said assessment, the assessor shall, notwithstanding anything contained in this or the principal Ordinance, cancel the said assessment and make a fresh assessment under the principal Ordinance as amended by this Ordinance.

Passed by the Hong Kong Legislative Council this 17th day of June, 1970.



Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Deputy Clerk of Councils.

HONG KONG

No. 66 OF 1970.



I assent.

French

Governor.

18th June, 1970.

An Ordinance to amend the Sand Ordinance.

[19th June, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Sand (Amendment) Ordinance 1970.

Short title.

2. The principal Ordinance is amended by adding after section 1 the following new section—

Addition of
new section
1A.
(Cap. 147.)

"Applica-
tion of
Ordinance.

1A. This Ordinance shall not apply to sand which is produced by any quarrying operation or by the washing of other material so as to produce sand."

3. The principal Ordinance is amended by deleting the words "Director of Government Supplies" wherever they occur and substituting therefor the following—

"Director of Public Works".

Director of
Public Works
substituted
for Director
of Government
Supplies.

Amendment of
section 2.

4. Section 2 of the principal Ordinance is amended by deleting subsection (2) and substituting the following—

“(2) The Director of Public Works may grant a permit issued under subsection (1) on such terms and attach thereto such conditions as he may think fit.”.

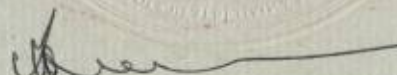
Repeal of
section 5.

5. Section 5 of the principal Ordinance is repealed.

Passed by the Hong Kong Legislative Council this 17th day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

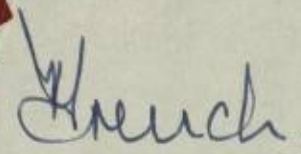

Deputy Clerk of Councils.

HONG KONG

No. 67 OF 1970.



I assent.


Governor.

18th June, 1970.

An Ordinance to provide for the regulation and control of the import of articles into Hong Kong, the export of articles from Hong Kong, and any matter incidental to or connected with the foregoing.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I.

PRELIMINARY.

1. This Ordinance may be cited as the Import and Export Ordinance 1970, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“air consignment note” and “air waybill” 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;
- "aircraft" means any machine which can derive support in the atmosphere from reactions of the air;
- "article in transit" 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, aircraft or vehicle in or on which it is brought into Hong Kong;
- "authorized officer" means a person authorized by the Director under section 4;
- "bill of lading" 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" 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;
 - (c) items of personal property reasonably required for the personal use of the crew or passengers of such vessel, aircraft or vehicle; and
 - (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;
- "commander" 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;
- "consign" 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" 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;
- "Director" means—
- (a) the Director of Commerce and Industry;
 - (b) except where the expression "Director of Commerce and Industry" is used, any Deputy or Assistant Director of Commerce and Industry; and
 - (c) the Commissioner of the Preventive Service and any Deputy or Assistant Commissioner of the Preventive Service;
- "domestic premises" means any premises or place used exclusively for residential purposes and constituting a separate household unit;
- "export" means to take, or cause to be taken, out of Hong Kong any article other than an article in transit;
- "import" means to bring, or cause to be brought, into Hong Kong any article other than an article in transit;
- "licence" means a licence, certificate, authorization or permit issued under the provisions of this Ordinance;
- "manifest" means a document which records or purports to record such particulars of the consignment of cargo in or on any vessel, aircraft or vehicle as may be prescribed by the Director of Commerce and Industry under section 17;
- "master" 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 Preventive Service" means any person holding an office specified in the First Schedule to the Preventive Service Ordinance; (Cap. 342.)
- "owner" means, other than for the purposes of Part VI—
- (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;

"prohibited article" 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;

"smuggling" means importing, exporting, unshipping, shipping, landing, loading, 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;

"unmanifested cargo" means any cargo which is not recorded in a manifest;

"vehicle" 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" 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.

PART II.

ADMINISTRATIVE DECISIONS AND APPEALS.

3. (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 regula-

Director's discretion to issue, cancel, revoke or suspend licences.

tions 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 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.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for three 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.

(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.

(9) The Director may delegate any of the powers and duties conferred or imposed on him by this section to any authorized officer.

4. The Director may authorize in writing any public officer and any police officer of the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

Power of Director to appoint authorized officers.

5. (1) The Governor may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by 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.

Director and other public officers to be subject to the Governor's directions.

(2) 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 Governor under subsection (1).

Appeals to the Governor.

6. (1) Any person aggrieved by a decision, act or omission of 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 fourteen 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 Governor may allow in any particular case, by notice in writing lodge an objection to the decision, act or omission with the Colonial Secretary.

(2) On consideration of an objection lodged in accordance with subsection (1), the Governor may confirm, vary or reverse the decision, act or omission of the Director or other public officer, or substitute therefor such other decision or make such other order as he may think fit.

(3) Nothing in this section shall entitle any person to lodge an objection under this section to any decision, act or omission of the Governor or of any court.

PART III.

PROHIBITED ARTICLES.

Possession of prohibited article after import.

7. (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 Director gives to the owner of the vessel, aircraft or vehicle written directions in respect of the removal or storage of the prohibited article.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of fifty thousand dollars and to imprisonment for one year.

(3) It shall be a defence to a charge under paragraph (a) of subsection (1) 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.

Delivery of import licence and manifest to the Director.

8. (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 seven 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 seven days after receiving the import licence, deliver it to the Director together with a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported, duly certified by him as a true copy or extract of the manifest.

(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 five thousand dollars.

9. (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 seven 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 seven days after receiving the import licence and written declaration—
 - (i) endorse the licence and return it to the person to whom it was issued; and
 - (ii) deliver the written declaration to the Director together with a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported, duly certified by him as a true copy or extract of the manifest.

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

(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 five thousand dollars.

Carriers prohibited from accepting prohibited articles for export without licence.

10. (1) The owner of a vessel, aircraft or vehicle shall not accept any prohibited article for export on the vessel, aircraft or vehicle until there is produced to him an export licence issued under this Ordinance or some other law in respect of the prohibited article.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of fifty thousand dollars and to imprisonment for one year.

(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.

Delivery of export licence and manifest to the Director.

11. (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, deliver the licence to the owner of the vessel, aircraft or vehicle in or on which he intends to export it.

(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, within fourteen days after the day on which the article is exported, deliver the export licence to the Director, together with a certified copy or certified extract of the manifest of the vessel, aircraft or vehicle in or on which the article has been exported.

(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 five thousand dollars.

Inspection and storage of prohibited articles.

12. (1) For the purpose of determining whether or not an article which—

- (a) has been imported within the period of six 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 the article shall, if required to do so by the Director, an authorized

officer or member of the Preventive Service of or above the rank of Revenue Sub-Inspector, produce it for inspection by the Director, an authorized officer or such member of the Preventive Service.

(2) The Director, any authorized officer or a member of the Preventive Service of or above the rank of Revenue Sub-Inspector shall determine whether or not any article produced to him for inspection under subsection (1) is a prohibited article.

(3) The person in possession or control of a prohibited article shall, if required to do so by the Director or an authorized officer, cause such article to be stored in a place specified by the Director 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 Director or authorized officer under subsection (3) shall not be removed from that place unless the Director 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 Director 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 ten thousand dollars and to imprisonment for six months.

13. (1) The Director 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.

Claim and disposal of prohibited articles found without owner.

(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 Director or an authorized officer under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(3) Where a prohibited article is stored in a specified place pursuant to an order given under subsection (1), the Director or an authorized officer shall, within the period of seventy-two hours after the prohibited article has been stored in that place, cause a notice to be exhibited at the Commerce and Industry 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 Director a claim in respect of it within thirty days; and
 - (c) stating his intention to apply to a magistrate at the expiration of thirty days from the date of the notice for an order that the prohibited article be forfeited to the Crown.
- (4) When a claim to ownership of a prohibited article is submitted to the Director pursuant to a notice given under subsection (3), the claimant shall produce to the Director or an authorized officer such evidence as to his ownership as may be required by the Director or authorized officer.
- (5) Without prejudice to any provision of this Ordinance relating to the seizure of any article which is liable to forfeiture, the Director or an authorized officer may, if he is satisfied of the validity of a claim made under subsection (4), authorize in writing the claimant to remove the prohibited article from the place in which it was stored, subject to the prior payment by the claimant of all storage and other charges which have accrued in respect of the storage of the article in the specified place.
- (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 Director or an authorized officer, order that a prohibited article be forfeited to the Crown.

PART IV.

UNMANIFESTED CARGO AND SMUGGLING.

Alteration of vessel, aircraft or vehicle for the purpose of smuggling.

14. (1) Any person who alters the 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 on conviction to a fine of ten thousand dollars and to imprisonment for six months.
- (2) If—
- (a) the Director, any authorized officer or any member of the Preventive 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 until the contrary is proved to have been altered for the purpose of smuggling an article into or out of Hong Kong.

15. (1) The master or agent of a vessel, the commander of an aircraft and the person in charge of a vehicle shall, on entering or leaving Hong Kong—

Duty to provide particulars of all cargo.

- (a) furnish any member of the Preventive Service of or above the rank of Revenue Sub-Inspector full particulars 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 Preventive Service; and
- (b) allow any member of the Preventive Service to board the vessel, aircraft or vehicle, inspect the cargo and search the vessel for contraband.

(2) Any person who contravenes paragraph (a) or (b) of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of one thousand dollars and to imprisonment for one month.

16. (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.

Prohibition against unauthorized placing of cargo on vessels, etc.

(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 ten thousand dollars and to imprisonment for six months.

17. Any cargo which is imported or exported shall either—

All cargo to be recorded in manifests.

- (a) be recorded in a manifest, which shall contain such particulars of the consignment of the cargo as may be prescribed by the Director of Commerce and Industry for the purposes of this Ordinance by notice published in the *Gazette*; or
- (b) be recorded in a document which complies with such requirements in respect of the cargo as may be prescribed by the Director of Commerce and Industry for the purposes of this Ordinance by notice published in the *Gazette*.

Offence of importing or exporting unmanifested cargo.

18. (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 on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(2) It shall be a defence to a charge under this section against the owner of a vessel, aircraft or vehicle, if the owner proves that he did not know and could not with reasonable diligence have known that the cargo was unmanifested.

Written list showing ports of call to be furnished to the Director.

19. (1) The owner of any vessel shall, if required to do so by the Director, an authorized officer or a member of the Preventive Service, furnish forthwith to the Director or to the authorized officer or member of the Preventive 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 three months immediately preceding the date of its arrival in Hong Kong.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of two hundred dollars.

PART V.

POWERS OF INVESTIGATION.

General powers of members of Preventive Service, etc.

20. (1) Without prejudice to the powers conferred by section 21, any member of the Preventive 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 and occupied by a person who has been registered under this Ordinance or a person who is the holder of a licence;
- (b) stop, board and search any vessel, aircraft or vehicle;
- (c) require any licence or any document—
 - (i) which relates to the origin or nature of any article; or
 - (ii) which he suspects to be relevant to an offence under this Ordinance,
 to be produced to him;

- (d) examine and take copies of any licence or any document referred to in paragraph (c);
- (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 may be issued under this Ordinance as may be required by the Director for the purpose of examination and investigation;
- (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 Preventive Service and any authorized officer may require—

- (a) any person to whom a licence has been issued;
- (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 Preventive 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 Preventive Service or an authorized officer pursuant to paragraph (e) of subsection (1) the Director 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 Director thinks fit.

21. (1) Subject to section 22, any member of the Preventive 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.

Special powers of members of the Preventive Service, etc.

(2) Any member of the Preventive Service and any authorized officer may seize—

(a) 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; and

(b) any vessel which has a tonnage not exceeding two hundred and fifty 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.

(3) Subject to section 22, any member of the Preventive 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 has been issued under this Ordinance.

(4) The owner of any article, licence or other document seized by a member of the Preventive Service or an authorized officer under this section may, on application to the Director and subject to such conditions as the Director may impose, photograph or make any other form of copy of the seized article, licence or document.

22. (1) No domestic premises shall be entered and searched by a member of the Preventive Service or an authorized officer unless—

(a) a magistrate has issued a warrant under subsection (2); or

(b) a member of the Preventive Service of or above the rank of Chief Revenue Inspector or an officer of the Commerce and Industry Department of or above the rank of Assistant Director of Commerce and Industry has given an authorization under subsection (3).

(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 Preventive Service or an authorized officer to enter and search the premises.

(3) A member of the Preventive Service of or above the rank of Chief Revenue Inspector or an officer of the Commerce and

Restrictions upon exercise of special powers of members of the Preventive Service, etc.

Industry Department of or above the rank of Assistant Director of Commerce and Industry may, if he reasonably suspects—

(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 Preventive Service or an authorized officer to enter and search the premises.

(4) A member of the Preventive 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 Preventive Service and any authorized officer to assist him in entering and searching the premises.

(5) No vessel which has a tonnage exceeding two hundred and fifty gross tons shall be detained under subsection (1) of section 21 for more than twelve hours without the consent of the Colonial Secretary, who may, by order in writing under his hand, detain such a vessel for further periods of not more than twelve hours each.

(6) No aircraft shall be detained under subsection (1) of section 21 for more than six hours without the consent of the Colonial Secretary, who may, by order in writing under his hand, detain an aircraft for further periods of not more than six hours each.

(7) Any order made by the Colonial Secretary under subsection (5) or (6) shall state the times from which and for which the order shall be effective.

23. (1) Any member of the Preventive 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 Preventive 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 Commissioner of the Preventive Service and then to a police station, there to be dealt with in accordance with the provisions of the Police Force Ordinance:

Provided that in no case shall any person be detained for more than forty-eight 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 Preventive Service or the

Powers of arrest of authorized officers and members of the Preventive Service.

(Cap. 232.)

authorized officer may use such force as is reasonably necessary to effect the arrest.

(4) If any member of the Preventive 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 Preventive 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. Any member of the Preventive 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.

Ancillary powers of investigation of suspected offence.

25. (1) Any member of the Preventive 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.

Locks and seals on premises, vessels, etc.

(2) If a member of the Preventive 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 five thousand dollars and to imprisonment for three 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. (1) Any person who—

- (a) obstructs a member of the Preventive Service or an authorized officer in the exercise of any power or the performance of any duty conferred or imposed on members of the Preventive Service and authorized officers by this Ordinance; or
- (b) fails to comply with any requirement, direction or demand given or made by a member of the Preventive Service or an authorized officer in the exercise or performance of any such power or duty,

Obstruction of members of the Preventive Service, etc.

shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(2) Any person who knowingly makes a false report, or furnishes any false or misleading information, to any member of the Preventive 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 ten thousand dollars and to imprisonment for six months.

authorized officer may use such force as is reasonably necessary to effect the arrest.

(4) If any member of the Preventive 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 Preventive 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. Any member of the Preventive 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.

Ancillary powers of investigation of suspected offence.

25. (1) Any member of the Preventive 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.

Locks and seals on premises, vessels, etc.

(2) If a member of the Preventive 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 five thousand dollars and to imprisonment for three 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. (1) Any person who—

- (a) obstructs a member of the Preventive Service or an authorized officer in the exercise of any power or the performance of any duty conferred or imposed on members of the Preventive Service and authorized officers by this Ordinance; or
- (b) fails to comply with any requirement, direction or demand given or made by a member of the Preventive Service or an authorized officer in the exercise or performance of any such power or duty,

Obstruction of members of the Preventive Service, etc.

shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(2) Any person who knowingly makes a false report, or furnishes any false or misleading information, to any member of the Preventive 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 ten thousand dollars and to imprisonment for six months.

PART VI.
FORFEITURE.

Seized articles,
etc. liable to
forfeiture.

27. (1) There shall be liable to forfeiture—

- (a) any article which has been seized by a member of the Preventive Service or an authorized officer in connexion with the contravention of any provision of this Ordinance;
- (b) any vessel not exceeding two hundred and fifty gross tons and any vehicle so seized and used in connexion with the contravention of any provision of this Ordinance,

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

(2) The Director may, at any time before serving notice under subsection (3), restore any article (other than an article referred to in the Schedule) 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 the provisions of this section and sections 28, 29 and 30 shall cease to apply to the article, vessel or vehicle.

(3) Within twenty-one days after the seizure of any article, vessel or vehicle which appears to him to be liable to forfeiture under subsection (1), the Director shall serve notice of such seizure upon the owner of the article, vessel or vehicle:

Provided that if there is more than one owner of any such article, vessel or vehicle, it shall be sufficient for the purposes of this subsection to give notice to one such owner.

(4) A notice given under subsection (3) 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 Director; or
- (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the Commerce and Industry Department, in a place to which the public have access, for a period of not less than seven days commencing within twenty-one days from the date of the seizure of the article, vessel or vehicle.

(5) Where a notice has been served under subsection (3) in respect of any article, vessel or vehicle seized under this Ordinance any person—

- (a) who is the owner thereof or the authorized agent of the owner; or

- (b) who was in possession of the article, vessel or vehicle when it was seized,

(hereinafter referred to as the claimant) may, within thirty days after—

- (i) the date of the notice, if it was served under paragraph (a) or (b) of subsection (4); or
- (ii) the first day on which it was exhibited, if it was served under paragraph (c) of subsection (4).

give notice in writing to the Director that he claims that the article, vessel or vehicle is not liable to forfeiture.

(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 Director the article, vessel or vehicle in respect of which notice was given under subsection (3) shall be forfeited forthwith to the Crown.

28. (1) When a notice of claim is given under subsection (5) of section 27, the Director or an authorized officer shall apply to a magistrate for the forfeiture of the article, vessel or vehicle and shall state in the application the name and address of the claimant as specified in the notice of the claim.

Determination
by magistrate
of applications
for forfeiture.

(2) When any such application is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of such summons to be served upon the Director.

(3) If, at the time and place appointed in a summons issued under subsection (2), the claimant or some other person who, though not the claimant, was, or would have been, entitled to make a claim under subsection (5) of section 27, appears before a magistrate, the magistrate shall hear the application.

(4) If, at such time and place, neither the claimant nor any other person who, though not the claimant, was, or would have been, entitled to make a claim under subsection (5) of section 27, appears before a magistrate and the magistrate is satisfied that the summons was duly served, the magistrate shall hear the application.

(5) Subject to the provisions of this Ordinance, an application under this section 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 this section a magistrate shall order that the article, vessel or vehicle, as the case may be, be forfeited to the Crown—

(a) in the case where—

(i) the person who appears in answer to the summons fails to satisfy the magistrate that he was, or would have been, entitled to make a claim under subsection (5) of section 27 in respect of the seized article, vessel or vehicle; and

(ii) no other person appears before the magistrate and satisfies him that he was, or would have been entitled to make such claim; and

(iii) the magistrate is satisfied that the article, vessel or vehicle is liable to forfeiture; or

(b) in the case where the magistrate is satisfied that the article—

(i) is liable to forfeiture; and

(ii) is such an article as is referred to in the Schedule.

Schedule.

(7) Upon the hearing of the application under this section, in any case other than a case referred to in paragraph (a) or (b) of subsection (6) a magistrate may, if he is satisfied—

(a) that a person is, or would have been, entitled to make a claim under subsection (5) of section 27 in respect of the seized article, vessel or vehicle; and

(b) that the article (not being such an article as is referred to in the Schedule), vessel or vehicle is liable to forfeiture, order that the article, vessel or vehicle—

(i) be forfeited to the Crown;

(ii) be delivered to the owner thereof or the authorized agent of the owner subject to any condition which he may specify in the order; or

(iii) be disposed of in such manner and subject to any such condition as he 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, purporting to be issued under the hand of the Director of Marine, 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.

29. (1) Where an application has been made under section 28 in respect of a vessel or vehicle which is liable to forfeiture, a magistrate 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 Director 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 Director before the date of hearing of the application.

(2) If—

(a) a magistrate 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 Director before the date of the hearing under section 28,

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

30. (1) The owner of any article, vessel or vehicle forfeited to the Crown under this Ordinance, or the authorized agent of the owner, may, within six weeks after—

Power to release seized vessels and vehicles prior to the hearing.

Claims for the return of forfeited articles, etc.

(a) the article, vessel or vehicle has been forfeited to the Crown under subsection (6) of section 27 or has been forfeited to the Crown by order of a magistrate under subsection (6) or (7) of section 28; or

(b) the determination of any appeal against an order for forfeiture of the article, vessel or vehicle made by a magistrate under subsection (6) or (7) of section 28,

give notice in writing to the Director of his intention to submit to the Governor a moral claim in respect of the forfeited article, vessel or vehicle.

(2) Where the owner of any forfeited article, vessel or vehicle or his authorized agent has given notice in writing to the Director under subsection (1) and has submitted a moral claim to the Governor by lodging it in triplicate with the Colonial Secretary within one month from the date of such notice, the Governor after considering the claim may—

(a) order the return of the forfeited article, vessel or vehicle to the claimant; or

(b) direct that the claim be referred to the Governor in Council.

(3) The Governor in Council after considering the claim referred to him under subsection (2) may—

- (a) order the return of the forfeited article, vessel or vehicle to the claimant; or
- (b) reject the claim.

PART VII. REGULATIONS.

Power to make
regulations.

31. (1) The Governor in Council may make regulations for all or any of the following purposes—

- (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;
- (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;
- (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;
- (i) requiring any person importing or exporting any article to give any specified information in respect of the article before or after it has been imported or exported;
- (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;

- (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 and for conditions which may be attached to such registration;
- (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 may be issued and for the condition which may be attached to the registration of any such person;
- (o) providing for the registration of any premises—
 - (i) in respect of which any licence may be issued; or
 - (ii) connected with the importing, exporting, manufacture, processing, storage, distribution, sale or other dealing with any article in respect of which any licence may be issued,
 and prescribing any condition upon the registration of such premises;
- (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;
- (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 overseas trade;

- (u) prohibiting or controlling the publication or disclosure of information or particulars furnished to the Director, an authorized officer or a member of the Preventive Service under this Ordinance;
- (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 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 Crown;
- (x) prescribing fees to be collected by the Director in respect of any matter arising under this 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 of Commerce and Industry may, by notice published in the *Gazette*, amend the Schedule to any regulation made under this Ordinance;
- (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;
- (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 Director 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 Director 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 Crown by a magistrate of all or any of the sum of money deposited under regulations made under paragraph (ad);
- (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.

(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 one hundred thousand dollars and imprisonment for a term not exceeding two years.

(4) No regulation made under paragraph (aa), (ab), (ac), (ad) or (ae) shall come into operation until it has been approved by resolution of the Legislative Council.

32. 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 overseas trade and to provide for the method of determination of the levy and the mode and time of payment thereof.

Power to levy by resolution of Legislative Council.

PART VIII.

MISCELLANEOUS.

33. (1) In any proceedings under this Ordinance it shall, unless the contrary is proved, be presumed that any cargo recorded in an import manifest furnished by—

Evidentiary provisions.

- (a) the master of a vessel;
- (b) the commander of an aircraft;
- (c) the person in charge of a vehicle; or
- (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, unless the contrary is proved, be presumed that any cargo recorded in an export manifest furnished by—

- (a) the master of a vessel;
- (b) the commander of an aircraft;

- (c) the person in charge of a vehicle; or
- (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 Preventive 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 until the contrary is proved, 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.

(4) Any copy of a licence or other document produced to the Director, an authorized officer or a member of the Preventive 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.

34. (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

Onus of proof
in court
proceedings.

(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 IIA of the Evidence Ordinance (which relates to the admissibility of hearsay evidence in civil proceedings) shall apply as if proceedings under this Ordinance were civil proceedings.

(Cap. 8.)

35. (1) The provisions of this Ordinance shall apply to any article contained in a postal packet.

Application of
Ordinance to
postal packets.

(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 Preventive 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", "Post Office", "officer of the Post Office" and "postal packet" shall have the meanings assigned to such terms, respectively, under section 2 of the Post Office Ordinance.

(Cap. 98.)

36. (1) Any person who, in respect of—

- (a) an application for the issue of a licence;
- (b) an application for registration under this Ordinance; or
- (c) any declaration, document or article required to be lodged with the Director, an authorized officer or member of the Preventive Service pursuant to the provisions of this Ordinance,

Offences in
respect of
licences.

makes any statement or furnishes any information orally or in writing 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 fifty thousand dollars and to imprisonment for one year, 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.

(2) Any person who, without the authority of the Director, alters a licence shall be guilty of an offence and shall be liable

on conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

Time limitation
for criminal
proceedings.

37. A complaint may be made or an information laid in respect of an offence under this Ordinance within two years from the time when the matter of such complaint or information respectively arose.

Informers.

38. 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.

Amendment of
Schedule.

39. The Governor may amend the Schedule by notice published in the *Gazette*.

Repeals.

40. (1) The Importation and Exportation Ordinance is repealed.

(Cap. 228.)

(2) Section 11 of the Summary Offences Ordinance is repealed.

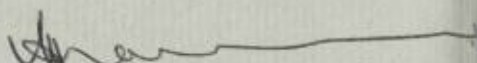
SCHEDULE.

[ss. 27, 28 & 39.]

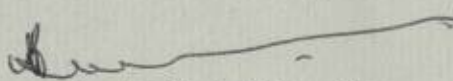
ARTICLES IN RESPECT OF WHICH, IF THEY ARE LIABLE TO FORFEITURE,
AN ORDER FOR THEIR FORFEITURE IS MANDATORY.

1. Gold.
2. Acetic anhydride.
3. Any article prescribed in the Schedule to the Importation and Exportation (Strategic Commodities) Regulations.
4. Any article—
 - (a) which has been imported directly or indirectly from Southern Rhodesia or from any other country if the article has been produced, manufactured or processed or has in any other way originated in Southern Rhodesia; or
 - (b) which is intended to be exported directly or indirectly to Southern Rhodesia.

Passed by the Hong Kong Legislative Council this 17th day of June, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Deputy Clerk of Councils.

HONG KONG

No. 68 OF 1970.



I assent.

Governor.

9th July, 1970.

An Ordinance to make provision with regard to customary marriages, concubinage, modern marriages and the dissolution of marriages, to repeal the Chinese Marriage Preservation Ordinance and for connected purposes.

[10th July, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I.

PRELIMINARY.

1. This Ordinance may be cited as the Marriage Reform Ordinance 1970. Short title.
2. In this Ordinance, unless the context otherwise requires— Interpretation.
“appointed day” means the day appointed for the purpose of this Ordinance by the Governor under section 3;

"Chinese law and custom" means such of the laws and customs of China as would immediately prior to the 5th April 1843 have been applicable to Chinese inhabitants of the Colony;

"customary marriage" means a marriage celebrated in Hong Kong in accordance with section 7;

"designated public officer" means a public officer designated for the purposes of Part V by the Governor under section 22;

"modern marriage" means a marriage celebrated in Hong Kong before the appointed day by open ceremony as a modern marriage and in the presence of two or more witnesses;

"parties to a customary marriage" means the husband and the principal wife (*tsai*) whether such wife is a *kit fat* or a *tin fong* wife; and, for the avoidance of doubt, "party to a customary marriage" does not include a concubine (*tsip*);

"Registrar" means the Registrar of Marriages, and any deputy registrar of marriages, appointed under section 3 of the Marriage Ordinance;

"validated marriage" means a modern marriage made valid by section 8.

3. The Governor may by notice in the *Gazette* appoint a day to be the appointed day for the purposes of this Ordinance.

PART II.

MARRIAGES ON AND AFTER APPOINTED DAY.

4. Marriages entered into in Hong Kong on and after the appointed day shall imply the voluntary union for life of one man with one woman to the exclusion of all others and may be contracted only in accordance with the Marriage Ordinance.

5. (1) On or after the appointed day, no man may take a concubine and no woman may acquire the status of a concubine.

(2) Subsection (1) shall not affect in any way—

- (a) the status or rights of a concubine lawfully taken before the appointed day; or
- (b) the status or rights of a child, whether born before, on or after the appointed day, of a concubine lawfully taken before the appointed day.

6. (1) On or after the appointed day no person shall contract a *kim tiu* (兼祧) marriage.

(2) Subsection (1) shall not affect in any way—

- (a) the status or rights of a party to a *kim tiu* (兼祧) marriage lawfully contracted before the appointed day;

(Cap. 181.)

Power to
appoint day.

Marriages on
and after
appointed
day to be
monogamous.
(Cap. 181.)

Status of
concubinage
not to be
acquired on
and after
appointed day.

Kim tiu (兼祧)
marriages
not to be
entered into.

- (b) the status or rights of a child, whether born before, on or after the appointed day, of parties to a *kim tiu* (兼祧) marriage contracted before the appointed day.

PART III.

CUSTOMARY AND MODERN MARRIAGES.

7. (1) For the purposes of this Ordinance, a marriage shall constitute a customary marriage if it was or is celebrated in Hong Kong before the appointed day in accordance with Chinese law and custom.

Customary
marriage.

(2) A marriage shall be deemed to accord with Chinese law and custom if it was celebrated or is celebrated before the appointed day in Hong Kong in accordance with the traditional Chinese customs accepted at the time of the marriage as appropriate for the celebration of marriage either—

- (a) in the part of Hong Kong where the marriage took place; or
- (b) in the place recognized by the family of either party to the marriage as their family place of origin.

(3) A customary marriage of persons who are subject to Chinese law and custom is hereby declared to be a valid marriage.

8. Subject to section 14, every marriage celebrated in Hong Kong before the appointed day as a modern marriage by a man and a woman each of whom, at the time of the marriage, was not less than sixteen years of age and was not married to any other person shall be a valid marriage, and shall be deemed to have been valid since the time of celebration, notwithstanding—

Validation
of modern
marriage.

- (a) that the proper personal law and religion of the parties, or one of them, was Chinese law and custom, and the marriage was prohibited by or failed to comply with the requirements of Chinese law and custom; or
- (b) that the marriage was not under and in accordance with the Marriage Ordinance.

(Cap. 181.)

PART IV.

POST-REGISTRATION OF CUSTOMARY MARRIAGES AND VALIDATED MARRIAGES.

9. (1) The Registrar shall maintain separate registers for the registration of customary marriages and validated marriages.

(2) The parties to a customary marriage or a validated marriage celebrated in Hong Kong before the appointed day may apply

Registration
of customary
marriages and
validated
marriages.