

DANGEROUS GOODS (AMENDMENT) ORDINANCE 2002

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 4 OF 2002

L.S.

TUNG Chee-hwa
Chief Executive
21 March 2002

An Ordinance to amend the Dangerous Goods Ordinance.

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Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Dangerous Goods (Amendment) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

Section 2 of the Dangerous Goods Ordinance (Cap. 295) is amended—

(a) in the definition of “dangerous goods”, by repealing “goods or substances” and substituting “substances, materials or articles”;

(b) by repealing the definition of “explosive” and substituting—
““explosive” (爆炸品) means—

(a) any solid or liquid substance or any mixture of solid or liquid substances, or both, which is—

(i) capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings; or

(ii) designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these, as a result of non-detonative self-sustaining exothermic chemical reactions; or

- (b) any article containing any substance or mixture referred to in paragraph (a);”;
- (c) by repealing the definition of “vessel” and substituting—
 - ““vessel” (船隻) includes—
 - (a) any ship, junk, boat, dynamically supported craft, seaplane, or any other description of vessel used in navigation; and
 - (b) any other description of vessel in Hong Kong or in the waters of Hong Kong not used in navigation or not constructed or adapted for use in navigation;”;
- (d) by adding—
 - ““IMDG Code” (《規則》) means the International Maritime Dangerous Goods Code published by the International Maritime Organization, as amended or revised by the Organization from time to time;”.

3. Application

Section 3 is amended by repealing everything from “This” to “section 5” and substituting—

“This Ordinance shall apply to—

- (a) explosives;
- (b) gases;
- (c) flammable liquids or solids;
- (d) substances liable to spontaneous combustion;
- (e) substances that, in contact with water, emit flammable gases;
- (f) oxidizing substances;
- (g) organic peroxides;
- (h) toxic substances;
- (i) infectious substances;
- (j) radioactive material;
- (k) corrosive substances; and
- (l) such substances, materials or articles to which the Ordinance is applied by the Chief Executive in Council under section 5”.

4. Regulations

Section 5 is amended—

(a) in subsection (1)—

(i) in paragraph (a), by adding “, materials” after “substances”;

(ii) by repealing paragraph (b) and substituting—

“(b) the exemption from the operation of this Ordinance or any part thereof of—

(i) any—

(A) substance, material or article; or

(B) group or description of substances, materials or articles,

to which this Ordinance applies, or any quantity thereof; or

(ii) any group or description of persons,

by reference generally or by reference to any circumstances as may be specified and subject to such terms and conditions as may be specified;”;

(iii) by adding—

“(ba) the application to or exemption from—

(i) any section of this Ordinance; or

(ii) any provision of the regulations,

in respect of dangerous goods on land or dangerous goods at sea;”;

(iv) in paragraph (d), by repealing “storage,” and substituting “handling, loading, unloading, stowage, storage, carriage;”;

(v) in paragraph (e)—

(A) by adding “, placard, mark or sign” after “label”;

(B) by adding “, freight container” after “case”;

(vi) by adding—

“(ga) the implementation of all or part of the IMDG Code, any other publication issued by the International Maritime Organization or any other international agreement dealing with dangerous goods, including the utilization of—

(i) a system of classification of dangerous goods;

(ii) testing requirements used to determine whether or not a substance, material or article constitutes dangerous goods to which regulations should apply,

contained in such code, publication or other international agreement;”;

- (vii) in paragraph (*h*)—
 - (A) by adding “and declaration” after “information” where it twice appears;
 - (B) by adding “and other persons” after “public officers”;
- (viii) in paragraph (*i*), by adding “and warning signs” after “signals”;
- (ix) by adding—
 - “(ma) empowering the—
 - (i) Director of Marine, in respect of dangerous goods at sea; and
 - (ii) Director of Fire Services, in respect of dangerous goods on land, to grant an exemption, in respect of a specific case or a specific person, from all or any of the provisions of this Ordinance, subject to such terms and conditions as the Director of Marine or the Director of Fire Services may specify;
 - (mb) prohibiting or controlling the employment of any person or class of persons in connection with the manufacture, loading, unloading, shipment, transshipment, storage, carriage, movement, sale or use of dangerous goods, for the purpose of ensuring proper standards are maintained in the course of any such activity;
 - (mc) measures to be taken in the event of an emergency occurring while dangerous goods are being transported by a vehicle;”;
- (b) in subsection (2), in the proviso, by repealing “of \$25,000” and substituting “at level 6”.

5. Section added

The following is added before Part II—

“5A. Codes of practice

(1) In this section, “Director” (處長) means the Director of Fire Services or the Director of Marine, as the case may be.

(2) For the purpose of providing practical guidance in respect of any one or more of the requirements of this Ordinance or of regulations made under this Ordinance, the Director may issue such codes of practice (whether prepared by the Director or not) as the Director considers appropriate.

(3) The Director may amend or revoke a code of practice issued by him under subsection (2).

(4) Where the Director exercises a power under subsection (2) or (3), he shall, as soon as may be reasonably practicable, publish notice thereof in the Gazette and the notice shall be in such form as the Director considers appropriate.

(5) A failure by any person to observe a provision of such a code shall not of itself cause him to incur any criminal liability, but where—

(a) in any criminal proceedings the defendant is alleged to have committed an offence either—

(i) by reason of a contravention of or a failure to comply with, whether by act or omission, this Ordinance or regulations made under this Ordinance; or

(ii) by reason of a failure to discharge or perform a duty imposed by this Ordinance or such regulations; and

(b) the matter to which the alleged contravention or failure relates is one to which, in the opinion of the court, such a code relates,

then subsection (6) shall apply as regards the proceedings.

(6) In any criminal proceedings to which this subsection applies, the following namely—

(a) compliance with a provision of a code found by the court to be relevant to a matter to which a contravention or failure alleged in the proceedings relates;

(b) a contravention of or failure to comply with, whether by act or omission, any such provision so found,

may be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(7) In any criminal proceedings, any document which purports to be a copy of a particular code shall, in the absence of evidence to the contrary, be regarded by the court as being a true copy of that code.”.

6. Penalty for breach of licence

Section 9B is amended by repealing everything after “conviction” and substituting—

“—

(a) for a first offence, by a fine at level 5 and imprisonment not exceeding 1 month;

(b) for a subsequent offence, by a fine at level 6 and imprisonment not exceeding 3 months.”.

7. Marking of dangerous goods and giving of notice of their character

Section 10 is amended by repealing “No” and substituting “Except as otherwise provided in this Ordinance or regulations made under this Ordinance, no”.

8. Power of entry, etc.

Section 12 is amended—

(a) in subsection (1)—

(i) by adding “and any officer of the Marine Department not below the rank of Marine Inspector II” after “Commissioner of Mines,”;

(ii) in paragraph (b), by adding “, material or article” after “substance”;

(b) in subsection (2)—

(i) in paragraph (d), by repealing “and” at the end;

(ii) in paragraph (e)—

(A) by repealing “vessel or vehicle” wherever it appears and substituting “vessel, vehicle or aircraft”;

(B) by repealing the full stop and substituting “; and”;

(iii) by adding—

“(f) detain any vessel, vehicle or aircraft which he is empowered to stop, board and search and any person on board such vessel, vehicle or aircraft, where the officer or member has reasonable grounds for believing that anything liable to seizure under subsection (1)(e) results in a danger to public safety, and such detention may continue until the officer or member is satisfied that the danger to public safety has been removed.”.

9. Regulations for management of depots

Section 13E(2) is amended by repealing “of \$25,000” and substituting “at level 6”.

10. Offences and penalties

Section 14 is amended—

(a) in subsection (1), by repealing everything from “Any” to “months” and substituting—

- “Any person who contravenes—
- (a) section 6 or 7 shall be guilty of an offence and shall be liable—
 - (i) for a first offence, to a fine at level 6 and to imprisonment for 6 months;
 - (ii) for a subsequent offence, to a fine of \$200,000 and to imprisonment for 12 months;
 - (b) section 8 or 10 shall be guilty of an offence and shall be liable to a fine at level 6 and to imprisonment for 6 months”;
 - (b) in subsection (2), by repealing “of \$1,000” and substituting “at level 3”;
 - (c) in subsection (3), by repealing “of \$20,000” and substituting “at level 6”.

11. Section added

The following is added—

“19A. Application of IMDG Code

- (1) Where dangerous goods—
 - (a) are being carried on board a vessel from a place outside Hong Kong to Hong Kong; or
 - (b) are intended to be carried on board a vessel from Hong Kong to a place outside Hong Kong,and such goods are packed, marked and labelled in accordance with the IMDG Code, they shall be deemed to comply with the requirements of any regulations made under this Ordinance in respect of the packing, marking and labelling of such goods for conveyance by vessels or by vehicles transporting them to or from any berth where the vessel on which they have been, or will be, conveyed is located.
- (2) Where dangerous goods are passing through Hong Kong as part of a journey from a place outside Hong Kong to another place outside Hong Kong and such goods are packed, marked and labelled in accordance with the IMDG Code, they shall be deemed to comply with the requirements of any regulations made under this Ordinance in respect of the packing, marking and labelling of such goods for conveyance by vessels or by vehicles across the territory.
- (3) Subsection (1) also applies to dangerous goods where the vessel carrying or intended to carry such goods arrives at or departs from a port outside Hong Kong and the goods are transported by vehicle between Hong Kong and such vessel.”.

Consequential Amendments

Shipping and Port Control Ordinance

12. Interpretation

Section 2 of the Shipping and Port Control Ordinance (Cap. 313) is amended by repealing the definition of “dangerous goods” and substituting—
““dangerous goods” (危險品) means dangerous goods within the meaning of section 2 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.);”.

Merchant Shipping (Safety) Ordinance

13. Interpretation

Section 2(1) of the Merchant Shipping (Safety) Ordinance (Cap. 369) is amended—

(a) by repealing the definition of “dangerous goods” and substituting—

““dangerous goods” (危險品) means substances, materials or articles—

(a) that are classified in the IMDG Code as dangerous for carriage by sea; or

(b) the properties of which are, in the opinion of the Director, dangerous when carried by sea and the Director has, by notice in the Gazette, declared them to be so,

and includes empty receptacles and residues in tanks or cargo holds which have been used previously for the carriage of dangerous goods, unless such receptacles, tanks or cargo holds have, after such use, been—

(i) cleaned and dried;

(ii) gas freed or ventilated where appropriate; or

(iii) where the previous contents were radioactive materials, cleaned and adequately closed,

but does not include substances, materials or articles forming part of the equipment or stores of a vessel;”;

(b) by adding—

““IMDG Code” (《規則》) means the International Maritime Dangerous Goods Code published by the International Maritime Organization, as amended or revised by the Organization from time to time;”.

Merchant Shipping (Local Vessels) Ordinance

14. Interpretation

Section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) is amended by repealing the definition of “dangerous goods” and substituting—

““dangerous goods” (危險品) means dangerous goods within the meaning of section 2 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg.);”.

15. Interpretation

Section 37 is amended, in the definition of “修理”, in paragraph (b), by repealing “貨物” and substituting “品”.