

Chapter:	508	MERCHANT SHIPPING (COLLISION DAMAGE LIABILITY AND SALVAGE) ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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An Ordinance to make provision relating to merchant shipping with a view to enabling certain Conventions to be carried into effect.

[16 June 1997] *L.N. 322 of 1997*

(Originally 35 of 1997)

Section:	1	Short title		30/06/1997
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## PART I

### PRELIMINARY

(1) This Ordinance may be cited as the Merchant Shipping (Collision Damage Liability and Salvage) Ordinance.

(2) (Omitted as spent)

Section:	2	Interpretation		30/06/1997
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## PART II

### COLLISION DAMAGE LIABILITY

(1) In this Part, unless the context otherwise requires-  
"freight" (運費) includes passage money and hire; [cf. 1911 c. 57 s. 1(2) U.K.]

"vessel" (船隻) includes any ship or boat, or any other description of vessel used in navigation. [cf. 1894 c. 60 s. 742 U.K.]

(2) References in this Part to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages. [cf. 1911 c. 57 s. 1(2) U.K.]

Section:	3	Rules as to division of damage or loss		30/06/1997
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(1) Where by the fault of 2 or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault. [cf. 1911 c. 57 s. 1(1) U.K.]

(2) If, having regard to all the circumstances of the case, it is not possible to establish degrees of fault, the liability shall be apportioned equally. [cf. 1911 c. 57 s. 1(1)(a) U.K.]

(3) Nothing in this section shall operate so as to render a vessel liable for damage or loss to which its fault has not contributed. [cf. 1911 c. 57 s. 1(1)(b) U.K.]

(4) Nothing in this section shall affect the liability of a person under a contract of carriage or any other contract. [cf. 1911 c. 57 s. 1(1)(c) U.K.]

(5) Nothing in this section shall be construed as imposing any liability upon a person from which he is exempted by any contract or law, or as affecting the right of a person to limit his liability in the manner provided by law. [cf. 1911 c. 57 s. 1(1)(c) U.K.]

Section:	4	Damages for loss of life or personal injuries		30/06/1997
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(1) Where loss of life or personal injuries are suffered by a person on board a vessel owing to the fault of that

vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several. [cf. 1911 c. 57 s. 2 U.K.]

(2) Nothing in this section shall be construed as depriving a person of any right of defence on which, independently of this section, he might have relied in an action brought against him by any person injured, or any person or persons entitled to sue in respect of the loss of life or personal injuries, or shall affect the right of a person to limit his liability in cases to which this section relates in the manner provided by law. [cf. 1911 c. 57 s. 2 U.K.]

Section:	5	Right of contribution	30/06/1997
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(1) Subject to subsection (2), where loss of life or personal injuries are suffered by a person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels that exceeds the proportion in which that vessel is in fault, those owners may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault. [cf. 1911 c. 57 s. 3(1) U.K.]

(2) No amount may be recovered by way of contribution under subsection (1) that could not have been recovered in the first instance as damages by reason of any statutory or contractual limitation of, or exemption from, liability, or for any other reason. [cf. 1911 c. 57 s. 3(1) U.K.]

(3) In addition to any other remedy provided by law but subject to this Part, a person entitled to a contribution under subsection (1) shall, for the purpose of recovering the contribution, have the same rights and powers as a person entitled to sue for damages in the first instance. [cf. 1911 c. 57 s. 3(2) U.K.]

Section:	6	Jurisdiction in cases of loss of life or personal injury	30/06/1997
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Any enactment which confers on a court Admiralty jurisdiction in respect of damage or loss shall have effect as though references in that enactment to such damage or loss included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought in rem or in personam. [cf. 1911 c. 57 s. 5 U.K.]

Section:	7	Limitation of actions	30/06/1997
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(1) Subject to subsection (3), no action shall be maintainable to enforce any claim or lien against a vessel or its owners in respect of any damage or loss to another vessel, its cargo or freight, or any property on board the vessel, or damages for loss of life or personal injuries suffered by any person on board the vessel, caused by the fault of the former vessel, whether such vessel is wholly or partly in fault, unless proceedings in the action are commenced within 2 years from the date when the damage, loss or injury was caused. [cf. 1911 c. 57 s. 8 U.K.]

(2) Subject to subsection (3), no action shall be maintainable under this Ordinance to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings in the action are commenced within 1 year from the date of payment. [cf. 1911 c. 57 s. 8 U.K.]

(3) Any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend the period within which proceedings in the action must be commenced, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend any such period to any extent sufficient to give such reasonable opportunity. [cf. 1911 c. 57 s. 8 U.K.]

Section:	8	Application	30/06/1997
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(1) This Part applies in all cases heard and determined in any court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused. [cf. 1911 c. 57 s. 9(3) U.K.]

(2) This Part applies to any person responsible for the fault of a vessel, other than the owners, as though the references in this Part to "owners" included such person. [cf. 1911 c. 57 s. 9(4) U.K.]

(3) Where, by virtue of a charter or demise, or for any other reason, the owners of a vessel are not responsible for the navigation and management of the vessel, this Part shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible. [cf. 1911 c. 57 s. 9(4)]

U.K.]

Section:	9	Salvage Convention 1989 to have the force of law		30/06/1997
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### PART III

#### SALVAGE

(1) The provisions of the International Convention on Salvage 1989 ("the Convention"), as set out in Part I of Schedule 1, shall have the force of law in Hong Kong. [cf. 1994 c. 28 s. 1(1) U.K.]

(2) The provisions of Part II of Schedule 1 shall have effect in connection with the Convention, and subsection (1) shall have effect subject to the provisions of that Part. [cf. 1994 c. 28 s. 1(2) U.K.]

(3) Nothing in subsection (1) or (2) shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which this Part comes into force. [cf. 1994 c. 28 s. 1(4) U.K.]

(4) The provisions of Schedule 2 (which make amendments consequential on subsections (1) and (2)) shall have effect, but nothing in any amendment made by those provisions shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which the amendment comes into force. [cf. 1994 c. 28 s. 1(6) U.K.]

(5) Sections 23, 24 and 25 of the Interpretation and General Clauses Ordinance (Cap 1) apply to the repeal of an Act mentioned in Schedule 2 as they apply to the repeal of an Ordinance.

Section:	10	Amendment of Part I of Schedule 1		30/06/1997
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The Director of Marine may, by notice in the Gazette, amend Part I of Schedule 1 in accordance with any revision to the Convention, which may apply to Hong Kong from time to time.

Section:	11	Repeals		30/06/1997
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### PART IV

#### REPEAL

(1) The Maritime Conventions Act 1911 (1911 c. 57 U.K.) is repealed so far as it is applied to Hong Kong.

(2) Sections 23, 24 and 25 of the Interpretation and General Clauses Ordinance (Cap 1) apply to the repeal of an Act mentioned in subsection (1) as they apply to the repeal of an Ordinance.

Schedule:	1	INTERNATIONAL CONVENTION ON SALVAGE 1989	25 of 1998; 64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 64 of 1999 s. 3

[sections 9(1) & (2) & 10]

### PART I

#### TEXT OF CONVENTION

#### CHAPTER I-GENERAL PROVISIONS

#### ARTICLE 1

#### Definitions

For the purpose of this Convention-

- (a) "Salvage operation" (救助作業) means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) "Vessel" (船舶) means any ship or craft, or any structure capable of navigation.
- (c) "Property" (財產) means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) "Damage to the environment" (環境損害) means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) "Payment" (支付款項) means any reward, remuneration or compensation due under this Convention.
- (f) "Organization" (組織) means the International Maritime Organization.
- (g) "Secretary-General" (秘書長) means the Secretary-General of the Organization.

## ARTICLE 2

### Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

## ARTICLE 3

### Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

## ARTICLE 4

### State-owned vessels

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.
2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

## ARTICLE 5

### Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.
2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.
3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

## ARTICLE 6

### Salvage contracts

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides

expressly or by implication.

2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

## ARTICLE 7

### Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if-

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

## CHAPTER II-PERFORMANCE OF SALVAGE OPERATIONS

## ARTICLE 8

### Duties of the salvor and of the owner and master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger-
  - (a) to carry out the salvage operations with due care;
  - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
  - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
  - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor-
  - (a) to co-operate fully with him during the course of the salvage operations;
  - (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
  - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

## ARTICLE 9

### Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

## ARTICLE 10

### Duty to render assistance

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.

3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

## ARTICLE 11

### Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

## CHAPTER III-RIGHTS OF SALVORS

## ARTICLE 12

### Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

## ARTICLE 13

### Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below-
  - (a) the salvaged value of the vessel and other property;
  - (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
  - (c) the measure of success obtained by the salvor;
  - (d) the nature and degree of the danger;
  - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
  - (f) the time used and expenses and losses incurred by the salvors;
  - (g) the risk of liability and other risks run by the salvors or their equipment;
  - (h) the promptness of the services rendered;
  - (i) the availability and use of vessels or other equipment intended for salvage operations;
  - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

## ARTICLE 14

### Special compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent of the expenses incurred by the salvor.

However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

## ARTICLE 15

### Apportionment between salvors

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

## ARTICLE 16

### Salvage of persons

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

## ARTICLE 17

### Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

## ARTICLE 18

### The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

## ARTICLE 19

### Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or

the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

## CHAPTER IV-CLAIMS AND ACTIONS

### ARTICLE 20

#### Maritime lien

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

### ARTICLE 21

#### Duty to provide security

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavors to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

### ARTICLE 22

#### Interim payment

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

### ARTICLE 23

#### Limitation of actions

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of 2 years.  
The limitation period commences on the day on which the salvage operations are terminated.
2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.
3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

### ARTICLE 24

#### Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to

the law of the State in which the tribunal seized of the case is situated.

## ARTICLE 25

### State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognized principles of international law.

## ARTICLE 26

### Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

## ARTICLE 27

### Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

## PART II

### PROVISIONS HAVING EFFECT IN CONNECTION WITH THE CONVENTION

#### Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

#### Claims excluded from the Convention

2. (1) The provisions of the Convention do not apply-
- (a) to a salvage operation which takes place in inland waters of Hong Kong and in which all the vessels involved are of inland navigation;
  - (b) to a salvage operation which takes place in inland waters of Hong Kong and in which no vessel is involved; and
  - (c) when the property involved is a maritime cultural property of prehistoric archaeological or historic interest and is situated on the sea-bed.

(2) In this paragraph "inland waters" (內水) does not include any waters within the ebb and flow of the tide at ordinary spring tides or the waters of any dock which is directly or (by means of one or more other docks) indirectly, connected with such waters.

#### Assistance to persons in danger at sea

3. (1) The master of a vessel who fails to comply with the duty imposed on him by article 10, paragraph 1, commits an offence and shall be liable-
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine at level 3, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine at level 5, or both.

(2) Compliance by the master of a vessel with that duty shall not affect his right or the right of any other person to a payment under the Convention or under any contract.

The reward and special compensation: the common understanding

4. In fixing a reward under article 13 and assessing special compensation under article 14 the court or arbitrator is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

Meaning of "judicial proceedings"

5. References in the Convention to judicial proceedings are references to proceedings in the Court of First Instance; and any reference to the tribunal having jurisdiction (so far as it refers to judicial proceedings) shall be construed accordingly.

(Amended 25 of 1998 s. 2)

Meaning of "national law"

6. References in the Convention to "national law" include the law of Hong Kong.

Meaning of "State"

7. References in the Convention to State include Hong Kong.

Meaning of "State Party"

8. (1) The Chief Executive may by order certify any State specified in the order is a party to the Convention in respect of a specified country and the order shall, subject to the provisions of any subsequent order made for those purposes, be conclusive evidence that the State is a party to the Convention in respect of that country. (Amended 64 of 1999 s. 3)

(2) In this paragraph "country" (國家) includes territory.

Meaning of "tribunal"

9. References in the Convention to tribunal are references to the Court of First Instance.

(Amended 25 of 1998 s. 2)

Schedule:	2	SALVAGE: CONSEQUENTIAL AND RELATED AMENDMENTS		30/06/1997
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[section 9(4) & (5)]

Merchant Shipping Act 1894

1. Sections 544, 545 and 546 of the Merchant Shipping Act 1894 (1894 c. 60 U.K.) are repealed in so far as they applied to Hong Kong.

2. (Omitted as spent)