

Chapter:	281	MERCHANT SHIPPING ORDINANCE	Gazette Number	Version Date
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		Long title	64 of 1999	05/11/1999
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To consolidate and amend the law relating to merchant shipping and to remove anomalies and out-moded provisions therefrom.

(Amended 61 of 1989 s. 13; 64 of 1999 s. 3)

[30 October 1953] *G.N.A. 141 of 1953*

(Originally 14 of 1953)

Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Merchant Shipping Ordinance.

Section:	2	Interpretation	64 of 1999	05/11/1999
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In this Ordinance, unless the context otherwise requires-

"collision regulations" (碰撞規例) means the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap 369 sub. leg. N); (Added 78 of 1990 s. 2)

"crew" (船員) means seafarers and apprentices; (Added 54 of 1982 s. 2. Amended 44 of 1995 s. 143)

"Director" (處長) means the Director of Marine and includes any person deputed or authorized by the Director to execute any power or perform any duty vested in or imposed upon him hereunder;

"junk" (中式帆船) includes lorcha and any vessel of Chinese or other Asiatic build, construction or rig whether such vessel is of a sea going type or not and whether mechanically propelled or not;

"lorcha" (西式中國帆船) includes any vessel-

- (a) of European build and construction, but of Chinese or other Asiatic rig; or
- (b) of Chinese or other Asiatic build and construction, but of European rig;

"master" (船長) includes every person (except a pilot) having command or charge of any ship;

"officer" (高級船員) means an officer within the meaning of section 2 of the Merchant Shipping (Seafarers) Ordinance (Cap 478); (Replaced 44 of 1995 s. 143)

"passenger" (乘客) means any person carried in a vessel except- (Amended 76 of 1978 s. 81)

- (a) a person employed or engaged in any capacity on board the vessel on the business of the vessel;
- (b) a person on board the vessel either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstances that neither the master nor the owner could have prevented or forestalled; and
- (c) a child under 1 year of age; [cf. 1949 c. 43 s. 26 U.K.]

"Port Health Officer" (港口衛生主任) includes the Director of Health and any officer for the time being performing the duties of Port Health Officer; (Amended L.N. 76 of 1989)

"port of Hong Kong" (香港的港口) and "port" (港口) where by the context a port out of Hong Kong is not indicated, mean a place declared to be such under the Shipping and Port Control Ordinance (Cap 313); (Amended 76 of 1978 s. 81; 61 of 1989 s. 13)

"river trade limits" (內河航限) means-

- (a) the waters in the vicinity of Hong Kong within the following boundaries- (Amended 61 of 1989 s. 13)
 - (i) to the East, meridian 114° 30' East;
 - (ii) to the South, parallel 22° 09' North;
 - (iii) to the West, meridian 113° 31' East; and
- (b) all inland waterways in the provinces of Kwangtung and Kwangsi on the mainland of China to which access can be obtained by inland waterways from the area defined in paragraph (a); (Replaced 17 of 1965 s. 2. Amended 44 of 1995 s. 143)

"seafarer" (海員) includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship; (Amended 44 of 1995 s. 143)

"ship" (船、船舶) (except where section 50A applies) includes any description of vessel used in navigation not propelled by oars but excludes junks and lorchas whether mechanically propelled or not: (Amended 64 of 1980 s. 2)

Provided that a mechanically propelled junk or lorcha shall not be deemed by this provision to be excluded from the definition of ship for the purposes of the collision regulations; (Amended 78 of 1990 s. 2)

"steamer" or "steamship" (汽船) includes any vessel propelled by steam, and subject to any modification that may be prescribed by regulation shall include a vessel propelled by electricity or other mechanical power;

"tons" (噸) and "tonnage" (噸位) mean tons and tonnage as calculated according to the Merchant Shipping (Registration) (Tonnage) Regulations (Cap 415 sub. leg. C); (Amended 64 of 1999 s. 3)

"vessel" (船隻) includes-

- (a) any ship or boat or junk or any other description of vessel used in navigation; and
- (b) any floating dry dock, floating workshop or floating restaurant. (Replaced 35 of 1975 s. 2)
(Amended 78 of 1990 s. 2; 44 of 1995 s. 143; 64 of 1999 s. 3)
[cf. 1894 c. 60 s. 742 U.K.]

Part:	I	REGISTRATION AND LICENSING OF SHIPS	L.N. 282 of 2006	02/01/2007
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Section:	3	Certificate or licence required by all ships trading in Hong Kong	L.N. 282 of 2006	02/01/2007
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(1) Every ship trading outwards from Hong Kong or trading or being used for any commercial purpose in the waters of Hong Kong must be provided with-

- (a) a certificate of registry or certificate of provisional registry granted under the Merchant Shipping (Registration) Ordinance (Cap 415);
- (b) a certificate of registry or other document granted in a place outside Hong Kong and similar or equivalent in effect to a certificate referred to in paragraph (a); or
- (c) a certificate of ownership within the meaning of section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap 548). (Replaced 43 of 1999 s. 91)

(2) A document purporting to be-

- (a) a certificate of registry or other document referred to in subsection (1)(b); or
- (b) a copy of such a certificate or document certified as a true copy by a person having custody of the original, or having responsibility for the grant of the original,

shall be admitted in evidence in legal proceedings under this section upon its production unless it is proved that it is not the document it purports to be or that it was not signed or certified by the person by whom it purports to be signed or certified, as the case may be, and if so admitted shall be sufficient, but not conclusive, evidence of any matter stated in the certificate or document.

(Replaced 74 of 1990 s. 104)

Part:	II	(Repealed 44 of 1995 s. 143)		30/06/1997
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Section:	4	(Repealed 44 of 1995 s. 143)		30/06/1997
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Section:	5	(Repealed 44 of 1995 s. 143)		30/06/1997
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Section:	5A	(Repealed 44 of 1995 s. 143)		30/06/1997
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Section:	5B	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	6	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	6A	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	7	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	8	(Repealed 44 of 1995 s. 143)		30/06/1997
Part:	III	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	9	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	10	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	11	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	12	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	13	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	14	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	14A	(Repealed 44 of 1995 s. 143)		30/06/1997
Part:	IV	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	15	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	16	(Repealed 44 of 1995 s. 143)		30/06/1997
Part:	V	(Repealed 44 of 1995 s. 143)		30/06/1997

Section:	17	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	18	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	19	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	20	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	21	(Repealed 44 of 1995 s. 143)		30/06/1997
Section:	22	(Repealed 44 of 1995 s. 143)		30/06/1997
Part:	VI	SURVEY OF PASSENGER AND OTHER SHIPS AND CERTIFICATES THEREOF		30/06/1997
Section:	23	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	24	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	25	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	26	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	27	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	28	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	29	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	30	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	31	(Repealed 63 of 1981 s. 124)		30/06/1997
Section:	32	(Repealed 63 of 1981 s. 124)		30/06/1997

Section:	33	(Repealed 63 of 1981 s. 124)		30/06/1997
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Section:	34	(Repealed 63 of 1981 s. 124)		30/06/1997
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Section:	34A	Forfeiture of ships	23 of 1998	01/07/1997
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Remarks:

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

(1) Where the owner or master of a ship has committed an offence under section 38 of the Merchant Shipping (Safety) Ordinance (Cap 369), the ship shall be liable to forfeiture, whether or not the owner or master is convicted in respect of such offence. (Amended 63 of 1981 s. 124)

(2) With the approval of the Attorney General, the Director may seize and detain any ship which appears to him to be liable to forfeiture under subsection (1), and within 21 days of any such seizure the Director shall serve notice of seizure on the owner of the ship:

Provided that where there is more than one owner of a ship it shall be sufficient for the purposes of this subsection to give notice to one of the owners.

(3) A notice under subsection (2) 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 in the Marine Department in a place to which the public have access for a period of not less than 7 days commencing within 21 days of the seizure of the ship.

(4) Within 7 days after the service under subsection (2) of a notice of seizure, notice of the seizure of the ship shall be-

- (a) published in the Gazette and in 1 newspaper published in Hong Kong in the English language and in 1 newspaper so published in the Chinese language; and
- (b) in the case of a ship not registered in Hong Kong, served on the consular officer (if any) for the state to which the ship belongs. (Amended 23 of 1998 s. 2)

(5) Where a notice of seizure has been served under subsection (2), any person who has a claim (hereinafter referred to as the claimant) may within 30 days after-

- (a) the date of the notice, if it was served under subsection (3)(a) or (b); or
- (b) the first day on which the notice was exhibited, if it was served under subsection (3)(c),

give notice in writing to the Director that he claims that the ship is not liable to forfeiture.

(6) If, on the expiry of the appropriate period of time specified in subsection (5) for the giving of a notice of claim, no such notice has been given in writing to the Director, the ship shall be forfeited forthwith to the Crown.

(7) A person has a claim for the purposes of this section and section 34B if-

- (a) he is the owner of the ship or the agent of the owner; or
- (b) he was in possession of the ship at the time it was seized.

(Added 1 of 1979 s. 3)

Section:	34B	Determination of applications for forfeiture		30/06/1997
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(1) Where a notice of claim is given under section 34A(5), the Director shall apply to a magistrate for the forfeiture of the ship and shall state in the application the name and address of the claimant as specified in the notice of claim.

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

(3) If, on the hearing of an application under this section-

- (a) neither the claimant nor any other person appears before the magistrate to make a claim and the

magistrate is satisfied that the summons was duly served; or
 (b) neither the claimant nor any other person satisfies the magistrate that he has a claim,
 and the magistrate is satisfied that the ship is liable to forfeiture, the magistrate shall order that the ship be forfeited to the Crown.

(4) If, on the hearing of an application under this section-
 (a) a person satisfies the magistrate that he has a claim; and
 (b) the magistrate is satisfied that the ship is liable to forfeiture,
 the magistrate may order that the ship be-
 (i) forfeited to the Crown; or
 (ii) delivered to the owner thereof or his agent.

(5) If, on the hearing of an application under this section, the magistrate is not satisfied that the ship is liable to forfeiture, he shall order that it be delivered to the owner thereof or his agent.

(6) On the hearing of an application under this section, a certified true copy of the record of the proceedings, including the decision of the court, in any proceedings in respect of the offence under section 38 of the Merchant Shipping (Safety) Ordinance (Cap 369) or section 90(1) of the Criminal Procedure Ordinance (Cap 221) shall be admissible in evidence. (Amended 63 of 1981 s. 124)

(7) Subject to the provisions of this Ordinance, an application under this section shall be deemed for the purposes of the Magistrates Ordinance (Cap 227) to be a complaint to which section 8 of that Ordinance applies.

(Added 1 of 1979 s. 3)

Section:	34C	Claims for return of forfeited ships		30/06/1997
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(1) The owner of any ship forfeited to the Crown under section 34A or section 34B or his agent may within 6 weeks after-

- (a) the ship was forfeited to the Crown; or
- (b) the determination of any appeal against the order for its forfeiture,

give notice in writing to the Director of his intention to submit to the Governor a moral claim in respect of the forfeited ship.

(2) Where the owner of a forfeited ship has given notice in writing to the Director under subsection (1) and has submitted a moral claim to the Governor by lodging it with the Chief Secretary within 1 month from the date of such notice, the Governor may-

- (a) order the return of the forfeited ship to the owner or his agent; or
- (b) direct that the claim be referred to the Governor in Council.

(3) The Governor in Council, on considering a claim referred to him under subsection (2), may-

- (a) order the return of the forfeited ship to the owner or his agent; or
- (b) reject the claim.

(Added 1 of 1979 s. 3)

Section:	34D	Expiry of sections 34A, 34B and 34C		30/06/1997
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Sections 34A, 34B and 34C shall expire on 31 December 1985 unless the Legislative Council by resolution otherwise determines.

(Added 1 of 1979 s. 3. Extended L.N. 286 of 1979; L.N. 316 of 1980; L.N. 374 of 1981; L.N. 393 of 1982; L.N. 369 of 1983; L.N. 383 of 1984)

Part:	VII	(Repealed 44 of 1995 s. 143)		30/06/1997
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Section:	35	(Repealed-sections 35 to 50)		30/06/1997
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Part:	VIII	MARINE COURTS AND COURTS OF SURVEY	L.N. 282 of 2006	02/01/2007
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Section:	50A	Interpretation	L.N. 282 of 2006	02/01/2007
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In this Part, unless the context otherwise requires-
"certificate" (證書) and "certificate of competency" (合格證書) include a local certificate of competency issued under Part V of the Merchant Shipping (Local Vessels) Ordinance (Cap 548) and a licence within the meaning of section 2 of the Merchant Shipping (Seafarers) Ordinance (Cap 478); (Amended 36 of 1986 s. 8; 78 of 1990 s. 7; 44 of 1995 s. 143; 43 of 1999 s. 91)
"ship" (船、船舶) includes every description of vessel used in navigation.

(Added 64 of 1980 s. 3)

Section:	51	Preliminary inquiry	64 of 1999	05/11/1999
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) Where a shipping casualty has occurred a preliminary inquiry may be held respecting the casualty by any person appointed for the purpose by the Director of Marine.

(2) For the purpose of any such inquiry, the person holding the same shall have the powers given by section 115 of the Merchant Shipping (Safety) Ordinance (Cap 369).

(3) After the conclusion of such inquiry the person holding the same shall forward a report thereof to the Chief Executive without delay and, in any event, not later than 1 month after such conclusion.

(Added 44 of 1954 s. 2. Amended 64 of 1999 s. 3)

[cf. 1894 c. 60 s. 465 U.K.]

Section:	52	Chief Executive may appoint marine court; constitution, etc.	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) The Chief Executive may whenever occasion may arise in the circumstances detailed in section 53(2) (whether a preliminary inquiry under section 51 has been held or not) by warrant under his hand and the seal of Hong Kong, appoint a court (which shall be called the marine court) to make investigations as to casualties affecting ships, or to inquire into charges of incompetency or misconduct on the part of masters, mates or engineers of ships. (Amended 42 of 1956 s. 2; 37 of 1959 s. 9; 61 of 1989 s. 13)

(2) Such court shall consist of a judge, district judge or magistrate and shall hold its investigation or inquiry with the assistance of 2 or more assessors who shall be appointed by the Chief Executive and shall be masters of the Hong Kong mercantile marine or persons of nautical, engineering or other special skill or knowledge:

Provided that where any investigation or inquiry involves or appears likely to involve any question as to the cancellation or suspension of the certificate of a master, mate or engineer the court shall be assisted by not less than 2 assessors having experience in the Hong Kong mercantile marine. (Replaced 37 of 1959 s. 9. Amended 76 of 1978 s. 81)

(3) The assessors appointed to such court shall be remunerated at a rate which shall take account of the amount of work and time occupied by them upon the business of the court and such remuneration shall be determined by the Chief Executive either generally from time to time or specifically in any particular case:

Provided that nothing in this subsection shall be construed to authorize the payment of remuneration to any person employed full time in any office of emolument under the Government. (Replaced 17 of 1965 s. 25)

(Amended 64 of 1999 s. 3)

[cf. 1894 c. 60 s. 478 U.K.]

Section:	53	Enumeration of casualties, causes for inquiry, etc.	64 of 1999	05/11/1999
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) For the purpose of an investigation under this Part, a casualty shall be deemed to occur-

- (a) when on or near the coasts of Hong Kong any ship registered in Hong Kong is lost, abandoned or materially damaged;
 - (b) when on or near the coasts of Hong Kong any ship registered in Hong Kong has been stranded or damaged, and any witness is found in Hong Kong;
 - (c) when on or near the coasts of Hong Kong any ship registered in Hong Kong causes loss or material damage to any other ship;
 - (ca) when on or near the coasts of Hong Kong any material damage is caused by the escape from a ship registered in Hong Kong of oil or any substance other than oil; (Added 37 of 1990 s. 12)
 - (d) when any loss of life ensues by reason of any casualty happening to or on board any ship registered in Hong Kong on or near the coasts of Hong Kong; (Amended L.N. 386 of 1993)
 - (e) when in any place any such loss, abandonment, material damage or casualty as above-mentioned has occurred, and any witness is found in Hong Kong;
 - (f) when in any place any ship registered in Hong Kong has been stranded or damaged, and any witness is found in Hong Kong; and
 - (g) when any ship registered in Hong Kong has been lost or is supposed to have been lost, and any evidence is obtainable in Hong Kong as to the circumstances in which such ship proceeded to sea or was last heard of.
- (2) In any of the following cases-
- (a) (Repealed 64 of 1999 s. 3)
 - (b) where a casualty occurs in any part of the world to a ship registered in Hong Kong;
 - (c)-(d) (Repealed 64 of 1999 s. 3)
 - (e) where the incompetency or misconduct has occurred on board a ship registered in Hong Kong; and
 - (f) (Repealed 64 of 1999 s. 3)

such court may make investigation respecting such casualty and may hear and inquire into any such charge of incompetency or misconduct, and for such purposes the court shall have the same jurisdiction over the matter in question as if it had occurred within its ordinary jurisdiction, but subject to all provisions, restrictions and conditions which would have been applicable if it had so occurred. Such court shall also have the powers given by section 115 of the Merchant Shipping (Safety) Ordinance (Cap 369) as well as all the powers of a magistrate acting as a court of summary jurisdiction. [cf. 1894 c. 60 ss. 478 & 729 U.K.]

(3) An inquiry shall not be held into any matter which has once been the subject of an investigation or inquiry other than a preliminary inquiry under section 51, and has been reported on by a competent court or tribunal in Hong Kong, or in respect of which the certificate of a master, mate or engineer has been cancelled or suspended by a naval court. (Amended 42 of 1956 s. 3)

(4) (Repealed 64 of 1999 s. 3)

(Amended 61 of 1989 s. 13; 74 of 1990 s. 104; 64 of 1999 s. 3)
[cf. 1894 c. 60 s. 464 U.K.]

Section:	54	Penalty for refusing to attend as a witness, etc.	64 of 1999	05/11/1999
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Any person who refuses to attend as a witness before any person or court having the powers given by section 115 of the Merchant Shipping (Safety) Ordinance (Cap 369), after having been required in the exercise of any such power to do so, or refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations required by any such person or court in the exercise of any such power, shall be guilty of an offence and shall be liable on conviction to a fine of \$5000.

(Added 44 of 1954 s. 3. Amended 73 of 1974 s. 12; 64 of 1999 s. 3)
[cf. 1894 c. 60 s. 729(3) U.K.]

Section:	55	Grounds for cancellation or suspension of certificate	64 of 1999	05/11/1999
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

- (1) The certificate of a master, mate or engineer may be cancelled or suspended-
 - (a) if the court finds that loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default; or

(b) if the court finds that he is incompetent, or that he has been guilty of any gross act of misconduct, drunkenness or tyranny, or that, in a case of collision, he has failed to render such assistance or give such information as is required by the Merchant Shipping (Safety) Ordinance (Cap 369). (Amended 64 of 1999 s. 3) [cf. 1894 c. 60 s. 422 U.K.]

(1A) In this section, evidence that a master, mate, or engineer is incompetent may include evidence that he fails to comply with the standards of competency and other conditions prescribed to qualify a person for the certificate held by him. (Added 62 of 1981 s. 8)

(2) Where any case before any such court as aforesaid involves a question as to the cancellation or suspension of a certificate, the court shall at the conclusion of the case or as soon afterwards as possible state in open court the decision to which it has come with respect to the cancellation or suspension thereof.

(3) Any master, mate or engineer whose certificate is suspended or cancelled in pursuance of this Ordinance shall, on the demand of the court, deliver his certificate to the court, or if it is not demanded by the court deliver it to the Chief Executive or as he directs, and in default he shall be guilty of an offence and shall be liable on conviction to a fine of \$5000. (Amended 17 of 1965 s. 26; 73 of 1974 s. 12; 64 of 1999 s. 3)

(4) The court shall in all cases send a full report on the case with the evidence to the Chief Executive, and shall also if it determines to cancel or suspend any certificate send the certificate cancelled or suspended to the Chief Executive or other authority by whom the certificate was granted. (Amended 17 of 1965 s. 26; 64 of 1999 s. 3)

(5) A certificate shall not be cancelled or suspended by a court under this Part unless a copy of the report, or a statement of the case on which the investigation or inquiry has been ordered, has been furnished before the commencement of the investigation or inquiry to the holder of the certificate.

[cf. 1894 c. 60 s. 470(1)-(4) U.K.]

Section:	56	Provisions for re-hearing and appeal	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

(1) The Chief Executive may, in any case where under this Part an investigation as to a casualty affecting a ship or an inquiry into the conduct of a holder of a certificate of competency has been held, order the case to be re-heard either generally or as to any part thereof, either by the court by which it was heard in the first instance or by a marine court appointed under this Part or by a judge sitting in admiralty jurisdiction, and shall do so- (Amended 47 of 1985 s. 2; 64 of 1999 s. 3)

- (a) if new and important evidence which could not be produced at the investigation or inquiry has been discovered; or
- (b) if for any other reason there has in his opinion been ground for suspecting that a miscarriage of justice has occurred. (Amended 64 of 1980 s. 4)

(2) Where an application under subsection (1) for a re-hearing is not made or is refused, an appeal shall lie from any order or finding of the court or tribunal holding the inquiry to the Court of First Instance. (Replaced 25 of 1998 s. 2)

(3) Subject to the provisions of any regulations relating thereto made under section 58, an appeal to the Court of First Instance under this section shall be to 1 judge or to the Court of Appeal as the Chief Justice may decide and shall be subject to any rules of court made under the High Court Ordinance (Cap 4). (Replaced 37 of 1959 s. 10. Amended 25 of 1998 s. 2)

(4) The provisions of this section shall apply to any investigation or inquiry referred to in subsection (1) whether held before or after the commencement of the Merchant Shipping (Amendment) Ordinance 1985 (47 of 1985). (Added 47 of 1985 s. 2)

[cf. 1894 c. 60 s. 478 U.K.]

Section:	57	Further powers of court		30/06/1997
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(1) A marine court shall have the following further powers-

- (a) it may remove the master of any ship if that removal is shewn to the satisfaction of the court by evidence on oath to be necessary. Such removal may be made upon the application of any owner of the ship or his agent, or of the consignee of the ship, or of any certificated mate, or of one-third or more of

- the crew of the ship;
- (b) it may appoint a new master instead of the one removed:
 Provided that where the owner, agent or consignee of the ship is within the jurisdiction of the marine court, such an appointment shall not be made without the consent of that owner, agent or consignee;
- (c) it may make such order as it thinks fit respecting the costs of the investigation or any part thereof, and such order shall be enforced by the court in the same way as an order for costs under the Magistrates Ordinance (Cap 227).
- (2) (Repealed 17 of 1965 s. 27)

Section:	58	Regulations as to procedure, fees, etc.	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) The Chief Executive in Council may by regulation prescribe and provide for carrying into effect the enactments relating to formal investigations into casualties and inquiries into charges of incompetency or misconduct and to the re-hearing of or appeal from any such investigation or inquiry, and in particular, with respect to the procedure, the parties, the persons allowed to appear, the notice to such parties and persons or to persons affected, and the amount and application of fees. (Amended 37 of 1959 s. 10; 64 of 1999 s. 3)

(2) For the purposes of this Part, a marine court shall have all the powers of a magistrate sitting under the Magistrates Ordinance (Cap 227).

(3) Every formal investigation or inquiry shall be conducted in such a manner that, if a charge is made against any person, he shall have an opportunity of making a defence. (Amended 37 of 1959 s. 11)

Section:	59	(Repealed 63 of 1981 s. 124)		30/06/1997
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Section:	60	(Repealed 63 of 1981 s. 124)		30/06/1997
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Part:	IX	(Repealed 76 of 1978 s. 81)		30/06/1997
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Part:	X	(Repealed 76 of 1978 s. 81)		30/06/1997
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Part:	XI	(Repealed 76 of 1978 s. 81)		30/06/1997
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Section:	61	(Repealed-sections 61 to 90)		30/06/1997
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Part:	XII	TRAWLERS		30/06/1997
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Section:	91	Interpretation		30/06/1997
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In this Part-

"trawler" (拖網漁船) means any mechanically propelled vessel of non-primitive design and build of whatever tonnage, which engages in fishing operations for profit upon the high seas with nets, lines or trawls and which operates from Hong Kong as a ship registered in Hong Kong, but excludes any sailing or mechanically propelled fishing boat, junk or dinghy licensed under regulations made under section 105; (Amended 61 of 1989 s. 13; 74 of 1990 s. 104; L.N. 386 of 1993)

"voyage" (航程) means a fishing trip commencing with a departure from a port for the purpose of fishing, and ending with the first return to a port thereafter upon the conclusion of the trip when one of such ports is within Hong Kong: (Amended 61 of 1989 s. 13)

Provided that a return due to distress only shall not be deemed to be a return if it is followed by a resumption of the trip.

Section:	92	Certificates of competency as trawling masters	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(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). (Amended L.N. 262 of 1985)

(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. (Amended 64 of 1999 s. 3)

(Replaced 63 of 1970 s. 2)

Section:	93	Voyages without certificated officers		30/06/1997
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(1) Subject to section 92, a trawler shall not commence any voyage unless such vessel is provided with at least a duly certificated trawling master and trawler engineer and the master for the time being of any trawler contravening the provisions of this subsection shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to imprisonment for 2 years. (Amended 63 of 1970 s. 3; 73 of 1974 s. 12)

(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 \$20000 and to imprisonment for 12 months. (Replaced 63 of 1970 s. 3. Amended 73 of 1974 s. 12)

Section:	94	Regulations applicable to trawlers	24 of 2005; L.N. 282 of 2006	02/01/2007
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(1) Without prejudice to the generality of other powers to make regulations conferred by this Ordinance, and without prejudice to the application of regulations made under such other powers except so far as they are inconsistent with regulations made under this section, the Chief Executive in Council may by regulation control, prescribe or provide for- (Amended 64 of 1999 s. 3)

(a) the registry and conditions of sale and mortgage of trawlers, and the keeping of a trawler register and issuance of identification letters and numbers to such vessel;

(b) the forms, period and conditions of agreement of crew, of reports of crew and of statements of change

- of crew, of wage accounts and certificates of discharge of crew, of records and reports of death, injuries, ill-treatment or punishment of crew and of every casualty to a trawler;
- (c) maintenance of discipline on board trawlers and also for the prevention of disorder and confusion;
 - (d) the maintaining of a register of trawling masters and trawling engineers; (Replaced 73 of 1974 s. 4)
 - (e) duties and obligations of the owners, agents, masters, masters for the time being, engineers and crew of trawlers and the institution of inquiries into disputes between the above persons, and of inquiries into deaths, injuries, ill-treatment or punishment of crew;
 - (f) adequate means for preventing, by force if necessary, any trawlers from leaving, or attempting to leave the waters of Hong Kong or any port thereof in contravention of this Ordinance or of any regulations made thereunder; (Amended 61 of 1989 s. 13)
 - (g) examination, approval of suitability and annual or periodic surveys of trawlers, including hulls, machinery and equipment, for the purpose of certifying in such form as may be prescribed that such vessels are fit for their intended service;
 - (h) scale of manning suitable for the intended service of trawlers to ensure that trawlers are not over nor undermanned, and to ensure that trawlers are not carrying passengers, save that the Director may permit experts or observers to be signed on as members of the crew for specific purposes or duties;
 - (i) regulation of entry of boys under 16 years of age into the sea-fishing service, and prescribing of forms of indenture and agreements with such boys and their enforcement; (Amended 24 of 2005 s. 34)
 - (j) fees in respect of registration, permits, clearances, certificates, surveys and other documents or services relating to trawlers not otherwise provided for under this Ordinance; and (Amended 24 of 2005 s. 34)
 - (k) the measures to be taken for the control and prevention of fire and protection of life and property, including specifying the general and specific requirements relating to the life-saving appliances and fire-fighting appliances to be provided on trawlers. (Added 24 of 2005 s. 34)

(2) The Director may exempt any trawler from the provisions of any regulation made hereunder if he is satisfied that compliance therewith is either impracticable or unreasonable.

Section:	94A	Certificates of competency for trawling masters, etc.	30/06/1997
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(1) The Director shall cause examinations to be held in respect of persons who wish to obtain certificates of competency as trawling masters or trawling engineers, and shall appoint examiners for that purpose. Every such appointment shall be notified in the Gazette.

(2) The Director of Marine may make rules prescribing or providing for-

- (a) the standards of competency to be attained and other conditions to be satisfied (subject to any exceptions allowed by or under the rules) by candidates for any examination conducted under subsection (1);
- (b) the procedure for and the method of conducting any such examination;
- (c) the subjects to be taken at any such examination for the manner in which those subjects are to be specified;
- (d) fees and forms in relation to any such examination; and
- (e) the method of granting certificates of competency and copies of such certificates.

(3) The Director may publish any rules made under subsection (2) in such manner as he thinks fit, and shall, on payment of the appropriate charge, provide a copy of the rules to any person who applies to him in that behalf.

(Added 73 of 1974 s. 5)

Section:	95	Application of other provisions to trawlers	30/06/1997
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Every trawling master, owner and agent shall comply with-

- (a) section 3(1)(a) as if the trawler were a ship trading within or from the waters of Hong Kong;
- (b) the Merchant Shipping (Seafarers) Ordinance (Cap 478) as to all matters relating to the employment and discharge of crew; and
- (c) the relevant regulations made under the Merchant Shipping (Seafarers) Ordinance (Cap 478) as to the provisions of medicines and medical stores on the appropriate scale as if the trawler were proceeding to a place outside Hong Kong.

(Replaced 44 of 1995 s. 143)

Part:	XIII	(Repealed 76 of 1978 s. 81)		30/06/1997
Part:	XIV	(Repealed 76 of 1978 s. 81)		30/06/1997
Section:	96	(Repealed-sections 96 to 107A)		30/06/1997
Part:	XIVA	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107B	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107C	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107D	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107E	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107F	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107G	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107H	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107I	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107J	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107K	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107L	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107M	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007
Section:	107N	(Repealed 43 of 1999 s. 91)	L.N. 282 of 2006	02/01/2007

Part:	XV	DETENTION OF SHIP IN CERTAIN EVENTS		30/06/1997
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Section:	108	Power to detain ship in certain cases		30/06/1997
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Where under this Ordinance it is enacted that, under certain conditions, a ship shall not leave the waters of or any port of Hong Kong, the Director may under such conditions detain the ship until he is satisfied that the provisions of the law have been fulfilled.

(Amended 61 of 1989 s. 13)
[cf. 1894 c. 60 s. 692(3) U.K.]

Section:	109	Penalty for taking detained ship to sea		30/06/1997
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(1) Where under this Ordinance a ship is authorized or ordered to be detained, if the ship, after such detention or after service on the master of any notice of or order for such detention, proceeds or attempts to proceed to sea before having been released by competent authority, the master of the ship, and also the owner or agent, and any person who sends the ship to sea, if such owner, agent or person is party or privy to the offence, shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to imprisonment for 2 years. (Amended 73 of 1974 s. 12)

(2) Where a ship proceeds to sea in contravention of subsection (1) whilst having on board a public officer who is acting in the execution of his duty, the master and owner of the ship-

(a) in addition to any penalty to which he may be liable under subsection (1), shall each be guilty of an offence against this subsection and shall each be liable on conviction to imprisonment for 6 months and to a fine of \$20000 and an additional fine of \$1000 for each day during the period from the date on which the ship proceeded to sea until the date on which the officer is returned to Hong Kong or, if he does not return directly to Hong Kong, would have returned if he had travelled by the quickest practicable route; and

(b) shall be jointly and severally liable to pay all expenses incidental to the taking of the officer to sea and to securing his return to Hong Kong,

and all such expenses may be recovered in the same manner as a fine. (Replaced 73 of 1974 s. 12)

[cf. 1894 c. 60 s. 692(1) U.K.]

Section:	110	(Repealed 23 of 1998 s. 2)	23 of 1998	01/07/1997
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Remarks:

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

Part:	XVI	EVIDENCE, REGULATIONS AND FEES		30/06/1997
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Section:	111	(Repealed 5 of 1971 s. 13)		30/06/1997
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Section:	112	Use of official log and articles of agreement as evidence		30/06/1997
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In any proceeding in court against any person for a breach of the provisions of this Ordinance, all entries in the official log and the articles of agreement shall be received in evidence subject to all just exceptions.

[cf. 1894 c. 60 s. 239(6) U.K.]

Section:	113	Service of documents		30/06/1997
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(1) Where, for the purposes of this Ordinance, any document is to be served on any person, that document may be served-

(a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same

at his last place of abode;

- (b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship with the person being or appearing to be in charge or command of the ship; and
- (c) if the document is to be served on the master of a ship, where there is no master and the ship is in Hong Kong on the managing owner of the ship, or if there is no managing owner on some agent of the owner residing in Hong Kong, or where no such agent is known or can be found by affixing a copy thereof to the mast of the ship. (Amended 61 of 1989 s. 13)

(2) Any person who obstructs the service under this Ordinance of a document on the master of a ship shall be guilty of an offence and shall be liable on conviction to a fine of \$5000.

(3) Any owner, agent or master of a ship who is party or privy to an offence against subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to imprisonment for 2 years.

(Amended 73 of 1974 s. 12)
[cf. 1894 c. 60 s. 696(1) U.K.]

Section:	114	Regulations. General powers	L.N. 282 of 2006	02/01/2007
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(1) In addition to the powers hereinbefore given the Chief Executive in Council may by regulation control, prescribe or provide for- (Amended L.N. 100 of 1984; 64 of 1999 s. 3)

- (a) prohibiting, restricting or regulating in any manner whatsoever the embarkation or landing of persons or things on or from vessels of all kinds including the ships of war of any foreign state; (Amended 23 of 1998 s. 2)
- (b) forms to be used for the purpose of this Ordinance or of regulations under the Ordinance;
- (c) fees to be paid in respect of the grant of certificates, clearances, licences, permits and other documents, or the performance of services or surveys or grant of facilities under this Ordinance or the Merchant Shipping (Safety) Ordinance (Cap 369); (Amended 17 of 1965 s. 61; 52 of 1977 s. 3; 74 of 1990 s. 104; 20 of 1996 s. 9)
- (d) fees to be paid whenever either by or under this Ordinance or otherwise the official signature of the Director to any certificate, authorization, consent, licence, permit or exemption, or to any alteration, transfer or renewal thereof, addition thereto or endorsement thereon, is requested or required, or whenever a search of the registers of his department is granted; (Added 37 of 1959 s. 19)
- (e) (Repealed 43 of 1999 s. 91)
- (f) anything required or permitted to be prescribed by this Ordinance; or (Added 61 of 1989 s. 12)
- (g) generally for the better and more effectual carrying out of the provisions of this Ordinance. (Added 61 of 1989 s. 12)

(2) Any regulations made under this Ordinance may prescribe offences in respect of contraventions of those regulations, and may provide for the imposition in respect of any such offence of a fine not exceeding \$50000 and of imprisonment for a period not exceeding 2 years. (Replaced 73 of 1974 s. 12)

(3) Any regulations made under this Ordinance may-

- (a) make different provisions for different circumstances and provide for a particular case or class of cases;
- (b) be made so as to apply only in such circumstances as are prescribed by the regulations;
- (c) provide in respect of any provision thereof that the Director of Marine may amend that provision by notice in the Gazette; and
- (d) provide that in such cases as are prescribed by the regulations a ship shall be liable to be detained or delayed by such person as may be prescribed by the regulations. (Added 30 of 1984 s. 5)

(4) Any fees prescribed under this Ordinance- (Amended 43 of 1999 s. 91)

- (a) may be fixed at levels which provide for the recovery of expenditure incurred or likely to be incurred by the Government or other authority in relation generally to the administration, regulation and control of ports, vessels and navigation in the waters of Hong Kong, and shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the provision of any particular service, facility or matter; and
- (b) may, without prejudice to the generality of paragraph (a), be fixed at different amounts in relation to different sizes of vessel, whether measured by tonnage, length or otherwise, or in relation to different classes, types or descriptions of service, facility, licence or vessel. (Added 25 of 1986 s. 3)

Section:	115	Payment of remuneration to certain persons	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) There may be paid out of the revenue to any officer or person appointed under this Ordinance, or to any member of a marine court or court of survey, or to any assessor, such remuneration as this Ordinance directs, or in so far as this Ordinance does not extend as the Chief Executive may direct.

(2) There may be paid out of the revenue all costs and compensation payable by the Chief Executive or the Government in pursuance of this Ordinance.

(3) The fees prescribed by the Chief Executive in Council are hereby declared to be payable to the Director, and the same and all other fees payable under this Ordinance may be recovered in the District Court as a civil debt. (Amended 17 of 1965 s. 62; 35 of 1969 Schedule)

(Amended 64 of 1999 s. 3)

Section:	116	(Repealed 76 of 1978 s. 81)		30/06/1997
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Part:	XVII	APPLICATION, EXEMPTIONS AND CONSEQUENTIAL PROVISIONS	64 of 1999	05/11/1999
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Section:	117	Prosecution of offences	64 of 1999	05/11/1999
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(1) (Repealed 64 of 1999 s. 3)

(2) Any offence under this Ordinance may be prosecuted, heard and determined summarily by any magistrate in accordance with the provisions of the Magistrates Ordinance (Cap 227). (Amended 63 of 1970 s. 5; 50 of 1991 s. 4; 64 of 1999 s. 3) [cf. 1932 c. 9 s. 72 U.K.]

Section:	118	Dispensing power and exemption	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The Chief Executive may, if he thinks fit, and upon such conditions (if any) as he thinks fit to impose, exempt any vessel from any specified requirement contained in, or prescribed in pursuance of, this Ordinance, or dispense with the observance of any such requirement in the case of any vessel, if he is satisfied that that requirement has been substantially complied with in the case of that vessel, or that compliance with the requirement is unnecessary in the circumstances of the case, and that the action taken or provision made as respects the subject matter of the requirement in the case of the vessel is as effective as, or more effective than actual compliance with the requirements:

Provided that the Secretary for Transport and Housing shall in the month of January in each year lay before Legislative Council a special report stating the cases in which the Chief Executive has exercised his powers under this subsection during the preceding year, and the grounds upon which action has been taken in each case. (Amended 17 of 1957 s. 3; L.N. 362 of 1997; 64 of 1999 s. 3; L.N. 125 of 2004; L.N. 130 of 2007)

(2) This Ordinance shall not, except where otherwise specially provided, apply to Her Majesty's ships of war or to the ships of war of any foreign state. (Amended 17 of 1965 s. 63; 76 of 1978 s. 81; 23 of 1998 s. 2)

[cf. 1906 c. 48 s. 78 U.K.]

Section:	119	(Repealed 64 of 1999 s. 3)	64 of 1999	05/11/1999
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Section:	120	Validation		30/06/1997
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For the avoidance of doubt, it is declared that the Shipping and Port Control (Fees) Ordinance 1986 (25 of 1986) shall apply in relation to any port dues or other fees or charges specified in regulations made before its commencement, and not revoked prior thereto, as it applies in relation to port dues and other fees and charges prescribed thereafter.

(25 of 1986 s. 4 incorporated)