

**PROVISIONAL LOCAL VESSEL ADVISORY COMMITTEE**

**Amendments to the Merchant Shipping  
(Reporting of Pollution Incidents) Regulations  
(Cap.413 Sub. Leg. C)**

**Purpose**

This paper seeks members' endorsement on the proposal to remove the ambiguity in the existing regulation 4(1)(a) of the Merchant Shipping (Reporting of Pollution Incidents) Regulations (Cap.413 sub. leg. C) relating to the requirement for reporting of pollution incidents involving the discharge of oil or noxious liquid substances<sup>(1)</sup>.

**Background**

2. The International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol (i.e. the "MARPOL Convention") was introduced with an aim to eliminating deliberate or negligent pollution of the marine environment by oil, chemical and other pollution substances. The MARPOL Convention is enforced in Hong Kong through the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap.413) and its subsidiary legislation.

3. Under Article 8 and Protocol I of the MARPOL Convention, the master of a ship is required to report incidents involving discharge or probable discharge of harmful substances to the nearest coastal State. This requirement is enforced through the Merchant Shipping (Reporting of Pollution Incidents) Regulations (Cap.413 Sub. Leg. C) and applies to Hong Kong ships and ships in the waters of Hong Kong. According to the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413), the definition of 'Hong Kong ship' is given as follows: -

"Hong Kong ship" means (a) a ship registered in Hong Kong;  
and (b) a vessel required to be licensed under Part IV of the  
Shipping and Port Control Ordinance (Cap. 313)

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<sup>(1)</sup> noxious liquid substance means any substance listed in column (a) of the table in Chapter 17 of the IBC Code (being a substance falling into category A, B, C or D) and any other liquid substance which is provisionally listed or class-approved as a category A, B, C or D substance.

4. Noting that there is a need for more precise requirements with regard to when to make reports in Article II of Protocol I, the Marine Environment Protection Committee of the International Maritime Organization adopted Resolution MEPC.68(38) on 10 July 1996 to amend Protocol I of the MARPOL Convention (Appendix 1 refers). The purposes of MEPC.68(38) are to introduce the following requirements of reporting for shipmasters :-

- a. reporting a discharge above the permitted level or probable discharge of oil or of noxious liquid substances for whatever reason; and
- b. reporting incident involves damage, failure or breakdown of a ship of 15 metres in length or above.

5. The Resolution MEPC. 68(38) entered into force internationally on 1 January 1998.

### **Proposal**

6. The new Article II(1)(c) of Protocol I of the MARPOL Convention, as amended by MEPC. 68(38), applies only to ship of 15 metres in length or above. However, for the proper implementation of MEPC. 68(38) in the waters of Hong Kong, the Article II(1)(c) will also apply to ships of less than 15 metres for the following reasons :-

- a. similar existing reporting requirements in regulation 4(1)(a) of the Merchant Shipping (Reporting of Pollution Incidents) Regulations (Cap.413 Sub. Leg. C) apply to all ships regardless of size. The relevant sections, i.e. regulations 3 and 4, are extracted in Appendix 2 for reference.
- b. safety and pollution prevention are considered of equal importance for small size vessels as well as for large size vessels; and

- c. similar provisions for reporting incident in other Hong Kong legislation, e.g. Shipping and Port Control Ordinance (Cap. 313) and Merchant Shipping (Safety) Ordinance (Cap. 369), apply to all ships regardless of size.

7. It is proposed to require all masters of local vessels to report all incidents relating to oil or noxious liquid substance for discharge above the permitted level<sup>(2)</sup> for whatever reason and reporting of incidents involving damage, failure or breakdown of a vessel to Director of Marine. As the permitted level has been given in the existing regulations and it will not be changed this time, the proposed amendments will **provide the master a clear requirement on the reporting of incidents not only arising from damage but for whatever reason.**

### **Legislative Amendment**

8. The Merchant Shipping (Reporting of Pollution Incidents) Regulations will be amended to give effect to the IMO Resolution MEPC.68(38) and to keep in line with the international requirements.

### **Endorsement sought**

9. Members' endorsement of the proposal outlined above in paragraphs 6 and 7 is sought.

### **Presentation**

10. This paper will be circulated to members for comments. Members are requested to return their comments, if any, to the Secretary of PLVAC on or before 10 July 2000. For enquiry, please contact Mr. Y.M. CHENG at 2852 4605.

Technical Policy Branch  
Multi-lateral Policy Division  
Marine Department  
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<sup>(2)</sup> The 'permitted level' referring here is the same meaning as given under 'the quantity or instantaneous rate permitted' in regulation 4(1)(c) of the Merchant Shipping (Reporting of Pollution Incidents) Regulations (Cap.413 Sub. Leg. C). This 'permitted level' is specified under Part II of the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B)

**ANNEX 2****RESOLUTION MEPC.67(38)  
adopted on 10 July 1996****AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF 1978 RELATING  
TO THE INTERNATIONAL CONVENTION FOR THE PREVENTION  
OF POLLUTION FROM SHIPS, 1973  
(Amendments to Protocol I)****THE MARINE ENVIRONMENT PROTECTION COMMITTEE,**

RECALLING Article 38(a) of the Convention on the International Maritime Organization concerning the function of the Committee conferred upon it by international conventions for the prevention and control of marine pollution,

NOTING article 16 of the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1973 Convention") and article VI of the Protocol of 1978 relating to the 1973 Convention (hereinafter referred to as the "1978 Protocol") which together specify the amendment procedure of the 1978 Protocol and confers upon the appropriate body of the Organization the function of considering and adopting amendments to the 1973 Convention, as modified by the 1978 Protocol (MARPOL 73/78),

NOTING ALSO that there is a need for more precise requirements with regard to when to make reports in article II of Protocol I, Provisions concerning Reports of Incidents Involving Harmful Substances, of the 1973 Convention,

HAVING CONSIDERED the amendments to article II of Protocol I of the 1973 Convention, agreed at its thirty-seventh session and circulated in accordance with article 16(2)(a) of the 1973 Convention,

1. **ADOPTS**, in accordance with article 16(2)(b) of the 1973 Convention, amendments to Protocol I of MARPOL 73/78, the text of which is set out at Annex to the present resolution;
2. **DETERMINES**, in accordance with article 16(2)(f)(iii) of the 1973 Convention, that the amendments shall be deemed to have been accepted on 1 July 1997, unless prior to the date, not less than one-third of the Parties or the Parties, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant fleet, have communicated to the Organization their objections to the amendments;
3. **INVITES** the Parties to note that in accordance with article 16(2)(g)(ii) of the 1973 Convention the amendments shall enter into force on 1 January 1998 in accordance with paragraph 2 above;
4. **REQUESTS** the Secretary-General, in conformity with article 16(2)(e) of the 1973 Convention, to transmit to all Parties to the 1978 Protocol certified copies of the present resolution and the text of the amendments contained in the Annex; and
5. **REQUESTS FURTHER** the Secretary-General to transmit to the Members of the Organization which are not Parties to the 1978 Protocol copies of the resolution and its Annex.

ANNEX

TEXT OF AMENDMENTS TO PROTOCOL OF MARPOL 73/78

Existing text of article II(1) shall be replaced by the following:

- "(1) The report shall be made when an incident involves:
- (a) a discharge above the permitted level or probable discharge of oil or of noxious liquid substances for whatever reason including those for the purpose of securing the safety of the ship or for saving life at sea; or
  - (b) a discharge or probable discharge of harmful substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges; or
  - (c) damage, failure or breakdown of a ship of 15 metres in length or above which:
    - (i) affects the safety of the ship; including but not limited to collision, grounding, fire, explosion, structural failure, flooding, and cargo shifting; or
    - (ii) results to impairment of the safety of navigation; including but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system, and essential shipborne navigational aids; or
  - (d) a discharge during the operation of the ship of oil or noxious liquid substances in excess of the quantity or instantaneous rate permitted under the present Convention."

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MARINE ENVIRONMENT PROTECTION  
COMMITTEE

38th session  
Agenda item 20  
1 to 10 July 1996

Multi-lateral Policy Division	
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REPORT OF THE MARINE ENVIRONMENT PROTECTION COMMITTEE  
ON ITS THIRTY-EIGHTH SESSION

Corrigenda

It should be noted that the resolutions of MEPC 38 have been incorrectly numbered from resolution MEPC.67(38). Since MEPC.67(37) exists already, resolutions from the thirty-eighth session should be renumbered. The following are the annexes of the MEPC 38 report with the correct resolution numbers:

- ANNEX 2 RESOLUTION MEPC.68(38) - AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF 1978 RELATING TO THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973 (AMENDMENTS TO PROTOCOL I)
- ANNEX 3 RESOLUTION MEPC.69(38) - AMENDMENTS TO THE INTERNATIONAL CODE FOR THE CONSTRUCTION AND EQUIPMENT OF SHIPS CARRYING DANGEROUS CHEMICALS IN BULK (IBC CODE)
- ANNEX 4 RESOLUTION MEPC.70(38) - AMENDMENTS TO THE CODE FOR THE CONSTRUCTION AND EQUIPMENT OF SHIPS CARRYING DANGEROUS CHEMICALS IN BULK (BCH CODE)
- ANNEX 6 RESOLUTION MEPC.71(38) - GUIDELINES FOR THE DEVELOPMENT OF GARBAGE MANAGEMENT PLANS
- ANNEX 8 RESOLUTION MEPC.72(38) - REVISION OF THE LIST OF SUBSTANCES TO BE ANNEXED TO THE PROTOCOL RELATING TO THE INTERVENTION ON THE HIGH SEAS IN CASES OF MARINE POLLUTION BY SUBSTANCES OTHER THAN OIL

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[Subsidiary]

[附屬法例]

vehicle or shipborne barge or other cargo unit containing harmful substances for shipment;

“marine pollutant” (海洋污染物) means a substance which is identified as a marine pollutant in the IMDG Code;

“Merchant Shipping Notice” (商船公告) means a notice described as such and issued by the Department of Transport of the United Kingdom; any reference to a particular Merchant Shipping Notice includes a reference to that Notice as amended or replaced from time to time by a subsequent Notice;

“noxious liquid substance” (有毒液體物質) has the same meaning as in regulation 1(2) of the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg.);

“oil” (油類) means petroleum in any form including crude oil, fuel oil, sludge and oil refuse and any refined petroleum products, other than petrochemicals which are noxious liquid substances;

“sea” (海) includes any estuary or arm of the sea;

“ship” (船、船舶) means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, hovercraft, submersibles, floating craft and also fixed or floating platforms except when they are actually engaged in exploration or exploitation of the seabed or associated off-shore processing of sea-bed mineral resources.

(37 of 1990 s. 12)

3. Application

These regulations apply to—

- (a) Hong Kong ships; and
(b) other ships while they are within the waters of Hong Kong.

4. Duty to report

- (1) The master of a ship involved in an incident at sea involving—
(a) an actual or probable discharge of oil, or of any noxious liquid substance carried in bulk resulting or likely to result from damage to the ship or its equipment, or made or likely to be made for the purpose of securing the safety of a ship or saving life at sea;
(b) an actual or probable discharge of a marine pollutant in packaged form from the ship; or

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際用於勘探或開採海床，或正實際用於有關的離岸處理海床礦產作業，則屬例外；

“排放”(discharge)指自船舶排出，不論是因何導致的，包括洩漏、棄置、溢出、滲漏、泵出、散發或排清；但不包括——

- (a) 於 1972 年 11 月 13 日在倫敦簽訂的《防止傾卸廢物及其他物品污染海洋公約》# (a) 所指的傾卸；或
(b) 由於勘探和開採海床礦產及有關的離岸處理海床礦產作業而直接產生的任何排出；或
(c) 為進行關於減少或控制污染的正規科學研究而造成的任何排出；

“商船公告”(Merchant Shipping Notice)指描述為 Merchant Shipping Notice 的公告，該公告乃由處長王國運輸部\*發出的；任何對某特定商船公告的提述，包括對不時經其後的公告修訂或代替的該公告的提述；

“《國際海運危險貨物守則》”(the IMDG Code)指由國際海事組織頒布，並不時經任何文件修訂的 1977 年版《國際海運危險貨物守則》†，而該任何文件是國務大臣認為不時屬有關的和在商船公告所指明的。

(1990 年第 37 號第 12 條)

3. 適用範圍

本規例適用於——

- (a) 香港船舶；及
(b) 正在香港水域內的其他船舶。

4. 報告的職責

- (1) 如某船在海上牽涉任何事故，而該事故涉及——
(a) 因或相當可能因該船或其設備受到損毀而實際或頗有可能排放油類或排放以散裝狀況運輸的任何有毒液體物質，或為確保船舶安全或在海上拯救人命而作出或相當可能作出實際或頗有可能排放油類或排放以散裝狀況運輸的任何有毒液體物質的行動；
(b) 實際或頗有可能從該船排放有包裝的海洋污染物；或

(a) Cmnd. 5169。

# “《防止傾卸廢物及其他物品污染海洋公約》”乃“Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter”之譯名。

\* “聯合國運輸部”乃“Department of Transport of the United Kingdom”之譯名。

† “《國際海運危險貨物守則》”乃“International Maritime Dangerous Goods Code”之譯名。

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[Subsidiary]

- (c) an actual discharge during the operation of the ship of oil or any noxious liquid substance in excess of the quantity or instantaneous rate permitted under the relevant provision of Part 3 of the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg.) or Part II of the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg.),

shall report the particulars of such an incident without delay and to the fullest extent possible in accordance with the requirements of regulation 5.

(2) In the event of a report from such a ship being incomplete or unobtainable, the owner shall, to the fullest extent practicable, make or complete the report required by paragraph (1).

### 5. Contents of reports

The report or the initial report if there is more than one shall in every case include—

- (a) the identity of ship or ships involved;
- (b) the time, type and location of the incident;
- (c) the quantity and type of substance involved;
- (d) the assistance or salvage measures requested or being undertaken.

### 6. Supplementary reports

Any person required under regulation 4(1) or (2) to make a report shall, if possible—

- (a) make such a supplementary report or reports as may be appropriate in the circumstances—
  - (i) supplementing the information contained in the initial report as necessary; and
  - (ii) providing information concerning further developments; and
- (b) comply as fully as possible with any request for additional information made by or on behalf of the government of a state whose interests may be affected by the incident.

### 7. Reporting procedures

Reports shall be made by the fastest telecommunications channels available with the highest possible priority to the nearest coastal state.

[附屬法例]

- (c) 在該船運作時實際排放油類或任何有毒液體物質，而所排放的油類或該等物質超逾《商船(防止油類污染)規例》(第 413 章，附屬法例)第 3 部或《商船(控制散裝有毒液體物質污染)規例》(第 413 章，附屬法例)第 II 部的有關條文所准許的數量或瞬時率，

則該船的船長須立即將該事故的詳情，按照第 5 條的規定作出盡可能詳盡的報告。

(2) 如該船所發出的報告不完整或不能取得，船東須在切實可行範圍內盡量作出或完成第 (1) 款所規定的報告。

### 5. 報告的內容

報告或初步報告(如多於一個報告的話)須在每一情況下包括——

- (a) 被牽涉的一艘或多於一艘的船舶的識別；
- (b) 事故的發生時間、類型及發生位置；
- (c) 所涉及的物質數量及類型；
- (d) 所要求或正採取的援助或救助措施。

### 6. 補充報告

根據第 4(1) 或 (2) 條須作出報告的人，如有可能——

- (a) 須在適當情況下，作出一份或多於一份補充報告——
  - (i) 以對初步報告所載的資料作需要的補充；及
  - (ii) 以提供關於進一步發展的資料；及
- (b) 對於可能受該事故而影響利益的國家，須盡可能遵從其政府或其代表所作的關於提供額外資料的要求。

### 7. 作出報告的程序

報告須以可供使用的最快捷電訊途徑，按可能範圍內的最優先次序向最近的沿岸國家作出。

附錄 2  
Appendix 2  
第 2 頁 (合 2 頁)  
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