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COMITÉ MARITIME INTERNATIONAL

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Level 42, 2 Park Street, Sydney
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Attention: Mr Stuart Hetherington

Dear Mr Sirs

International Working Group on Vessel Nomenclature – response to questionnaire

We refer to your letter dated 8 March 2016.

Our reply to your questionnaire is as follows, following the questionnaire's numbering.

1. Yes, there is a number of Ordinances and Regulations containing definitions of “Ship” or “Vessel” that convey a meaning similar to the definitions in your questionnaire, with various modifications. The number is quite large. Some definitions are definitive, some are inclusive, and some are exclusive. We provide some of the definitions by way of example in the following:
 - (a) Section 12E of the High Court Ordinance (Chapter 4)

“(1) ...Ship includes any description of vessel used in navigation and (except in subsection 2c of this section) includes, subject to any regulations made by the Governor, a hovercraft;”
 - (b) Section 2 of the Merchant Shipping (Registration) Ordinance (Chapter 415)

“...Ship means, subject to section 3, every description of vessel capable of navigation in water not propelled by oars, and includes any ship, boat or craft and an air-cushion vehicle or similar craft used wholly or partly in navigation in water.”

Section 3 provides “The Director may by notice published in the Gazette provide that a thing designed or adapted for use at sea and described in the notice is or is not to be treated as a ship for the purpose of the Ordinance...”

(c) Section 2 of the Merchant Shipping (Seafarers) Ordinance (Chapter 478)

“...Ship means every description of vessel used in navigation in water not propelled by oars, and includes any ship, boat or craft used wholly or partly for navigation in water any craft so used the weight of which is partly supported by forces other than hydrostatic forces, but excludes any junk or lorcha howsoever propelled;”

(d) Section 2 of the Merchant Shipping (Safety) Ordinance (Chapter 369)

“... Ship includes any vessel used in navigation other than a vessel propelled by oars or a junk;”

(e) Section 11C of the United Nation (Anti-Terrorism Measures) Ordinance (Chapter 575)

“... Ship means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft;”

(f) Section 2 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Chapter 413)

“...Ship means a vessel of any type whatsoever operating in the marine environment and includes a hydrofoil, hovercraft, submersible or floating craft and a fixed or floating platform;”

(g) Section 3 of the Merchant Shipping (Security of Ship and Port Facilities) Ordinance (Chapter 582)

“...Ship means

(a) A ship (including a high-speed craft) of 500 gross tonnage or upwards that is engaged on international voyages; or

(b) A cargo ship (including a high speed craft) of 500 gross tonnage or upwards that is engaged on voyages,

and includes a mechanically propelled vessel capable of engaging in drilling operations for the exploration for or exploitation of resource beneath the sea-bed such as liquid or gaseous hydrocarbons, sulphur or salt, not on location;”

(h) Section 2 of the Merchant Shipping Ordinance (Chapter 281)

“...vessel 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;”

(i) Section 2 of the Import and Export Ordinance (Chapter 60)

“...vessel includes every description of vessel used in navigation for the carriage of persons or articles, whether or not the vessel is mechanically propelled and whether or not the vessel is towed or pushed by another vessel;”

(j) Section 2 of the Fisheries Protection Ordinance (Chapter 171)

“...vessel means any ship, junk, boat, dynamically supported craft, or any other description of vessel used in navigation;”

(k) Section 2 of the Port Control (Cargo Working Areas) Ordinance (Chapter 81)

“...vessel includes any ship, boat, junk or lorcha and any other description of vessel used in navigation and includes also any floating wharf, ramp, pontoon or landing place;”

(l) Section 2 of the Merchant Shipping (Collision Damage Liability and Salvage) Ordinance (Chapter 508)

“...vessel includes any ship or boat, or any other description of vessel used in navigation;”

2. The definition of “vessel” varies depending on the subject of the particular law. For details, please see the above answer to question 1.
3. Yes. In brief, there are procedures under Order 75 of the High Court Rules specifically for admiralty proceedings in relation to ships. Under Order 75 rule 5 of the High Court Rules, a warrant of arrest can be issued against a ship within the jurisdictional waters of Hong Kong for its arrest for enforcement of certain specific maritime claims.

The shipowner may put up a bail bond or cash or other agreed security for the release of the ship. If the ship is not released, the bailiff or any party having a maritime claim within the recognized categories against the ship may make an application to the court for the appraisal and sale of the ship *pendente lite* in due course in accordance with Order 75 rule 12, rule 22 and rule 23. Otherwise, it is possible for a ship to remain under arrest for the duration of the proceedings.

The order of priority of claims is not set out in the statute. Under Order 75 rule 22, the court has the power to determine the priority of claims against the proceeds of sale of a ship. There is a well-settled order of priorities which is regularly applied by the court, although this order is only a *prima facie* ranking, subject to the court’s equitable jurisdiction. The usual order in general terms can be summarised as follows: (a) the court’s bailiff fees for the arrest, preservation and sale of the vessel; (b) the expenses of arrest, preservation and sale *pendente lite*; (c) the costs of the arresting party; (d) maritime liens attached to the ship, not the sister ship, to which the claim arose; (e) secured maritime claims; and (f) unsecured maritime claims. The application of this principle was illustrated in a decision in the case of

The Ruby Star (HCAJ 129/2013, 30 April 2015), a copy of which is here: www.hklii.hk/eng/hk/cases/hkcfi/2015/842.htm

The above procedures under Order 75 are not applicable to enforcement of claims against other property.

4. No, the 1993 Convention on Maritime Liens and Mortgages has not been adopted in Hong Kong.
5. “Ship” and “Vessel” are legal terms to be determined by the Hong Kong courts in case of dispute. Though the Hong Kong courts may receive foreign law evidence as to their definitions if their meanings are governed by foreign law for a particular dispute.
6. It depends on the purpose of the interpretation. Only the High Court has admiralty jurisdiction over ships. The exercise of the admiralty jurisdiction of the High Court and the arrest of ships are governed by section 12 to section 12E of the High Court Ordinance and Order 75 of the High Court Rules. They are matters of local law. Therefore, for determining whether an object falls within the admiralty jurisdiction of the High Court and subject to arrest under Order 75, the general view is that the High Court should determine whether the object is a ship or not in accordance with the Hong Kong law, and the High Court is not bound by categorization by a foreign registry or authority. Please see the definition of “ship” in section 12E of the High Court Ordinance in the above answer 1(a).
7. We have located only one decision relating to whether an object should be classified as a “Dead Ship”. This is the judgment in *R v Kwong Lung Co Ltd*. The judgment is here: www.hklii.hk/eng/hk/cases/hkcfi/1986/13.html
8. The definitions of “ship” or “vessel” used in the Hong Kong laws in respect of the conventions are as follows, referring to the table “TERMS USED in CONVENTIONS” attached to Professor Bulent Sozer’s summary:
 - (a) The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 was implemented by the CARRIAGE OF GOODS BY SEA ORDINANCE (Chapter 462). In section 1:

"ship" (船舶) means any vessel used for carriage of goods by sea, other than a vessel which is regularly employed in trading to or from Hong Kong and which is required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (Cap 548). (Amended 43 of 1999 s. 91)’ (the underlined are absent from the convention).
 - (b) Hong Kong has not adopted the UN Convention on Conditions for Registration of Ships. Under the MERCHANT SHIPPING (REGISTRATION) ORDINANCE (Chapter 415), in section 1:

"ship" (船舶) means, subject to section 3, every description of vessel capable of navigating in water not propelled by oars, and includes any ship, boat or craft and an air-cushion vehicle or similar craft used wholly or partly in navigation in water.”

- (c) The International Convention on Salvage 1989 was implemented by the MERCHANT SHIPPING (COLLISION DAMAGE LIABILITY AND SALVAGE) ORDINANCE (Chapter 508). There is no separate definition of “vessel” in the Ordinance in relation to the Convention and therefore the definition in the Convention should directly apply.
- (d) The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (as amended in 1976) was implemented by the MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) ORDINANCE (Chapter 434). In section 4:
- “(a) notwithstanding paragraph 3 of Article 1 of the Convention, "ship" (船、船舶) in the Convention means any seagoing vessel, and includes any air-cushion vehicle designed to operate in or over water while so operating;” (emphasis added, the Ordinance expressly includes, rather than as in the convention excludes air-cushion vehicle)
- (e) Hong Kong has not adopted the Rules for the Assessment of Damages in Maritime Collisions, Lisbon, 29 February 1998.
- (f) Hong Kong is a party to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels, 29 November 1969. There is no separate definition for “ship” for this Convention under Hong Kong law.
- (g) The Convention on Limitation of Liability for Maritime Claims, 1976 was implemented by the MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) ORDINANCE (Chapter 434). In section 13:
- ‘(a) "ship" (船、船舶) in the Convention includes-
- (i) any air-cushion vehicle designed to operate in or over water while so operating; and
- (ii) any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship;’
- (h) Hong Kong is a party to the International Convention for the Prevention of Pollution from Ships, London, 2 November 1973, Protocol 1978. Under the MERCHANT SHIPPING (PREVENTION AND CONTROL OF POLLUTION) ORDINANCE (Chapter 413). In section 2:
- "ship" (船) (船舶) means a vessel of any type whatsoever operating in the marine environment and includes a hydrofoil, hovercraft, submersible or floating craft and a fixed or floating platform.’ (the definition is very close to that in the convention though it expressly includes hovercraft).
- (i) The Convention on the International Regulations for Preventing Collisions at Seas, London, 20 October 1972 was implemented by the MERCHANT SHIPPING (SAFETY) (SIGNALS OF DISTRESS AND PREVENTION OF COLLISIONS) REGULATIONS (Chapter 369N). There is no separate definition of “vessel” in the regulations and therefore the definition in the convention should apply directly.

- (j) The International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 were implemented by the MERCHANT SHIPPING (LIABILITY AND COMPENSATION FOR OIL POLLUTION) ORDINANCE (Chapter 414).

Section 2 provides:

“ship” (船) (船舶) means any sea-going vessel or seaborne craft of any type whatsoever;’

Section 6 provides:

“(3A) Subject to subsection (3B), this section applies to any ship constructed or adapted for carrying oil in bulk as cargo. (Added 46 of 1997 s. 4)

(3B) Where a ship referred to in subsection (3A) is capable of carrying other cargoes besides oil, this section shall apply to such a ship-

(a) while it is carrying oil in bulk as cargo; and

(b) subject to the owner proving that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil. (Added 46 of 1997 s. 4)”

- (k) The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 was implemented by the BUNKER OIL POLLUTION (LIABILITY AND COMPENSATION) ORDINANCE (Chapter 605). Section 2 provides:

“ship” (船舶) means a sea-going vessel or seaborne craft of any type;’

- (l) Hong Kong is not a party to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substance by Sea, 1996.
- (m) Hong Kong is a party to the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990. Certain provisions of the convention have been implemented by the MERCHANT SHIPPING (PREVENTION AND CONTROL OF POLLUTION) ORDINANCE (Chapter 413) and its sub-legislations. The definition of “ship” used in the Ordinance is given in the above.
- (n) The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, 1988 was implemented by the FUGITIVE OFFENDERS (MARITIME SAFETY) ORDER (Chapter 503AD). There is no separate definition of “ship” in the Order and therefore the definition in the Convention should apply directly.

9. We have located two judgments where inconsistent or conflicting definitions of “vessels” or “ships” have impacted on the result of a proceeding. They are:

- (a) *The LIAN SHUN* a copy of which is here:
www.hklii.hk/eng/hk/cases/hkcfi/2004/933.html
- (b) *R v Keung Siu Wah* a copy of which is here:
www.hklii.hk/eng/hk/cases/hkca/1984/122.html .

Yours faithfully



Edward Alder

HKMLA Secretary