



# 保 護 海 港 協 會

## Society for Protection of the Harbour

灣仔駱克道 68 號偉信商業大廈 1103 室  
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The Honourable Mr. John Ka-chiu Lee,  
Chief Executive-in-Council,  
Hong Kong Special Administrative Region Government,  
Tamar, Central, Hong Kong.

**By Email & Post**

12<sup>th</sup> July 2024

Chief Executive-in-Council,

**Re: Proposed Amendment of the Protection of the Harbour Ordinance (“the Ordinance”)  
In respect of Government Large Scale Reclamation**

We respectfully refer to our Submissions to you and our exchanges of communications over the past year.

We very much regret to point out that, despite your many promises made over many months of a substantive reply to our Submissions, such promise has not been kept by you. Meanwhile your Government has taken advantage of the opportunity to proceed with your proposed amendments of the Ordinance. This is not fair.

Accordingly we are forced to seek recourse from your Secretary for Justice who is both “**your Government’s Legal Advisor**” and also a “**Guardian of Public Interest**”. We are pleased to enclose herewith for your kind attention a copy of our letter of even date to him.

We hope that our Society will receive his substantive reply within 30 calendar days in accordance with his **Official Pledge**.

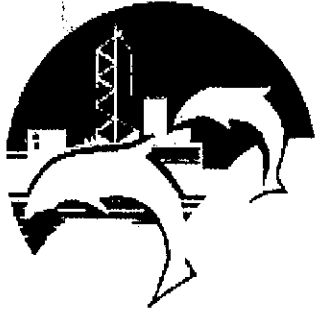
Yours faithfully,

c.c. Secretary for Justice  
Secretary for Development

Winston Ka-Sun Chu, Vice Chairman,  
Society for Protection of the Harbour

**Harbour Manifesto:** *To protect and preserve the harbour and enhance the harbour-front to provide a healthy environment and a good quality of life for the people of Hong Kong*

**維港宣言:** 保護及保存維港, 並優化海濱, 為香港市民, 提供一個健康及優質的生活環境



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The Secretary for Justice,  
Hong Kong Special Administrative Region,  
Department of Justice,  
5<sup>th</sup> Floor, Main Wing, Justice Place,  
18 Lower Albert Road, Central, Hong Kong.

**By Email & Post**

12<sup>th</sup> July 2024

Secretary for Justice,

**Re: Proposed Amendment of the Protection of the Harbour Ordinance  
("the Ordinance") In respect of Government Large Scale Reclamations**

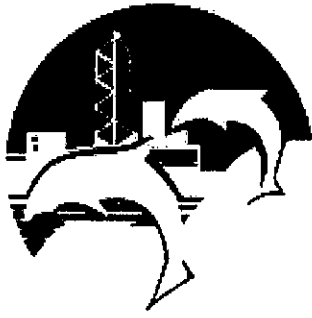
Our Society is a legally constituted charity. In the public interest, we have successfully protected Hong Kong's Victoria Harbour from Government's Reclamation Plan for Large Scale Reclamations totalling 1,297 hectares over the past almost 30 years with the support of the Law Courts including the Court of Final Appeal.

We now respectfully submit to you, in your capacity as the "**Independent and professional legal advisor of the Government**" and a "**Guardian of Public Interest**", the following 6 questions which we are asking for the public benefit and in response to the Public Consultation undertaken by the Government over the past year.

- A. What is the Government's justification for abolishing the legal protection of the harbour by the Law Courts against Government's reclamation proposal as provided by Section 3(1) of the Ordinance? Is it the Government's proposal in effect to repeal the Ordinance?
- B. How can the Government justify reversing the purpose and intention of the Ordinance, which is to control Government's reclamation proposals, but instead converting itself from being "**The Controlled**" into "**The Controller**" of reclamation thus achieving the opposite?

*Harbour Manifesto: To protect and preserve the harbour and enhance the harbour-front to provide a healthy environment and a good quality of life for the people of Hong Kong*

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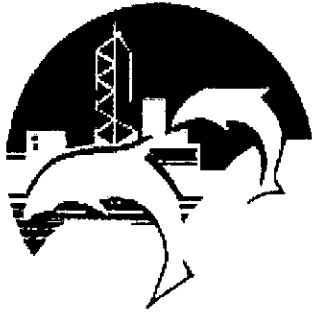
- C. How can the Government justify the proposed drastic amendments to the Ordinance just because of its need for a mere “**Precedural Mechanism**” which only requires Government’s own internal administrative arrangements by **Government Circulars** and **Practice Directives** without any need to amend the Ordinance.

The following four precedents which specifically concern the harbour and the Ordinance are ready examples:-

Date	Title of Documents
8 <sup>th</sup> September 1997	Planning, Environment and Lands Bureau Technical Circular No. 3/97  Works Bureau Technical Circular No. 13/97  Revised <b>Administrative Arrangements for Reclamation Works</b>
4 <sup>th</sup> May 2001	Works Bureau Technical Circular (WBTC) No. 9/2001  Procedures for Gazetting under the <b>Foreshore and Sea-bed (Reclamations) Ordinance</b> (Chapter 127)
19 <sup>th</sup> August 2004	Housing, Planning and Lands Bureau Technical Circular No. 1/04  Environment, Transport and Works Bureau Technical Circular No. 1/04  <b>Protection of the Harbour Ordinance</b>
8 <sup>th</sup> July 2010	General Circular No. 3/2010  <b>Harbourfront Enhancement</b>

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- D. How can the Government justify its proposal to become both “the **Applicant** of Reclamation” and “the **Decision-maker** of Reclamation” thus becoming “**A Judge of its own cause**” contrary to the **Fundamental Principle of Natural Justice and the Rule of Law accepted by all Common Law Jurisdictions**?
- E. Under the present Ordinance, in any Judicial Review challenge by the public, the Government must prove to the Law Court’s satisfaction that its reclamation proposal is lawful. Why should the proposed amendments **reverse the burden of proof** and impose upon the public objector the heavy legal burden of proving that the Government’s reclamation proposal is unlawful and that the Government’s decision is wrong?
- F. Having regard to the above and the proposed drastic amendments to the Ordinance, kindly explain the legal logic and clarify the reasoning behind the Government’s well-published statement repeatedly made to the Legislative Councillors and the public that: “**The Government’s proposal would not affect the right of the public to apply for judicial review**”, while in reality such right and chances of a successful Judicial Review will become merely illusory.

We shall be grateful for your early reply in view of the importance and urgency of this matter.

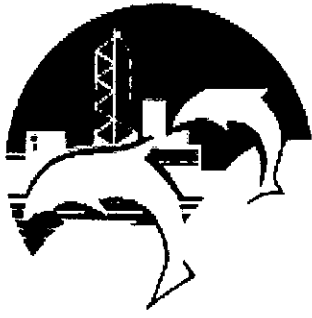
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12th July 2024

### PRESS RELEASE

#### **Do Not Let Government Take-away Protection of the Harbour by the Law Courts Without Enforcement by the Law Courts, the Ordinance is Meaningless**

Our Society have this morning issued the enclosed two letters to the Government:

- A. Letter to the Chief Executive-in-Council (“CE-in-C”).
- B. Letter to the Secretary for Justice.

Under the present Ordinance, the Law Courts make the legal decision and exercise control over the Government’s Large Scale Reclamations.

This is necessary because historically the danger comes from the Government which had already reclaimed more than half of the harbour and made it less than half of the original width.

Without the Ordinance, the Government would have already completed its Reclamation Plan to further reclaim a further 1,297 hectares (5 square miles) of the harbour which by now would have already become like a river.

The Government is now proposing an Amended Ordinance which takes away the control by the independent Law Courts of Government’s Large Scale Reclamations and gives complete control of harbour reclamation back to the Government as before the Ordinance.

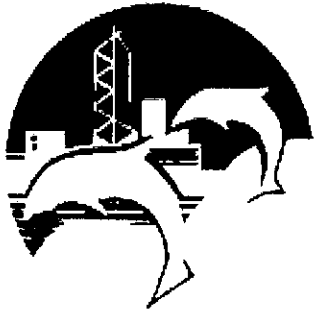
The result is that the Government will be both the **Applicant** and the **Judge** in deciding the legality of its own application. This is contrary to the Fundamental Principle of Law and Natural Justice accepted by all Common Law jurisdictions that “**One cannot be the Judge of his own cause**”.

Over the past year, our Society have made important legal submissions to the CE-in-C seeking clarifications of the reasons for the Government’s proposed amendments of the Ordinance. These questions are summarized in our present letter to the Secretary for Justice.

We have received numerous promises from the CE-in-C to give us a substantial reply to our formal queries, but up to now, despite the lapse of many months, our Society have not received any substantive reply from the Government.

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Our fundamental question is: “Why should the Government abolish the protection of the Harbour by the independent Law Courts as provided in Section 3(1) of the Ordinance?”

The Ordinance, supported and enforced by the Law Courts, is the only effective way of protecting the Harbour from Government’s Large Scale Reclamations which had almost destroyed the Harbour.

The Government’s proposed amendments will leave the Harbour entirely unprotected and will make the whole process completely incestuous:-

- (1) Government applies for permission to undertake a Large Scale Reclamation;
- (2) Government produces evidence to support its reclamation application; and
- (3) Government as the decision-maker approves its own reclamation application based upon its own evidence.

The Government runs the whole “One-Man” show as (a) The Applicant; (b) The Witness; and (c) The Judge.

Therefore our Society is jokingly calling Government’s proposed Amended Ordinance as “**The Fox Protecting the Chickens Ordinance**”.

**NO COURT PROTECTION = NO HARBOUR**

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