

立法會

Legislative Council

LC Paper No. LS 129/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 29 June 2001**

**Legal Service Division Further Report
on Legal Notices No. 104 to 114 of 2001
Gazetted on 1 June 2001**

Members may recall that the Legal Service Division made a report on the subsidiary legislation relating to merchant shipping (L.N. 104 to 110) and freight containers (L.N. 111 to 114) on 6 June 2001 (LC Paper No. LS111/00-01). For Members' information, L.N. 104 to 110 will come into operation on 13 July 2001 while L.N. 111 to 114 will come into operation on a day to be appointed by the Secretary for Economic Services by notice published in the Gazette.

2. We have raised queries with the Administration on some technical matters regarding these items of subsidiary legislation. In gist, the Administration has replied as follows -

Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passenger Ships-
Training) Regulation (L.N. 105)

3. The Administration confirms that the new Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passengers Ships - Training) Regulation applies to non-Hong Kong registered passenger ships from the Mainland plying within river trade limits if they are within waters of Hong Kong. Any exemption from all or any of the provisions of the Regulation for these ships will be granted by the Seafarers' Authority under regulation 3(2) if necessary.

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) Regulation 2001 (L.N. 106)

4. The Administration agrees that it will amend a Chinese term through a future exercise to be conducted under section 4D of the Official Languages Ordinance (Cap. 5) to achieve consistency between that term and a term currently used in the principal Regulations.

Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) (Amendment) Regulation 2001 (L.N. 107)

5. The Administration agrees that there is a mis-match of the scope of application between Part IIB and the new regulation. It will rectify this technical matter in the next omnibus exercise conducted by the Department of Justice to deal with miscellaneous legislative amendments.

6. For details, members may refer to the attached correspondences between the Legal Service Division and the Administration. In the light of the Administration's undertaking to rectify the technical matters referred to in paragraphs 4 and 5 above in a future exercise, it is recommended that intervention by the Legislative Council is not necessary at this stage.

Freight Containers (Safety) (Application for Approval of Containers) Regulation (L.N. 111)

7. The Administration confirms that fees will be charged for applications for approval of individual containers and container design types and such fees will be prescribed by regulation by the Secretary for Economic Services. The commencement date of the relevant fees provisions would not be later than that of the principal Ordinance and L.N. 111.

8. Despite an express provision in the Freight Containers (Safety) Ordinance (Cap. 506) which stipulates that the Director of Marine may by order in the Gazette provide for arrangements concerning, among other things, the duties of applicants after being granted approval, the Administration considers it more effective and user-friendly to place such duties in L.N. 111 made under the general power of the Secretary for Economic Services under the Ordinance to make regulations for the purpose of the Ordinance. The reason for this is that the duties of persons having been issued with an approval in respect of a container type are closely related to the production of containers in accordance with the approved design type which is one of the subject matters under the Regulation.

Freight Containers (Safety) (Examination Procedure) Order (L.N. 114)

9. In relation to the English and Chinese texts of section 4(1)(b)(ii) and (2)(b)(ii) of the Order, which read respectively as "a date is specified under section 8(b)(i)" and "合資格人士根據第 8(b)(i)條指明某日期", we have asked the Administration to explain why the Chinese text contains more particulars than the English text. The Administration explains that the term "合資格人士" is deliberately added to the Chinese text. Under section 8(b)(i) of the Order, the date for the next examination of the container is to be specified by the "competent person". The Chinese text conveys absolutely the same policy and legal effect as the English text does. The subject "合資格人士" is added to section 4(1)(b)(ii) and (2)(b)(ii) to cater for the grammatical correctness of the Chinese text, which may require its structure to be slightly different from the English text.

10. Having considered the Administration's reply set out in paragraph 9 above, we are of the view that the Administration does not appear to have considered the option of changing the structure of the English text to make it consistent with that of the Chinese text. It would therefore appear that the drafting approach adopted in the two texts of the provision concerned does not conform to the drafting policy agreed upon at the meeting of the LegCo Panel on Administration of Justice and Legal Services on 20 March 2001. At that meeting, it was agreed that as part of the drafting policy, the Chinese and English texts should match as far as possible.

11. Except for the above drafting point, we are satisfied that L.N. 111 to L.N. 114 are legally in order.

Encls.

Prepared by

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Assistant Legal Advisers

Legislative Council Secretariat

27 June 2001

Annex

LS/S/32/00-01

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2877 5029

By Fax No. 2523 0030

20 June 2001

Secretary for Economic Services
(Attention: Miss Polly CHOY,
Assistant Secretary (ES)3)
Economic Services Bureau
38/F Two Exchange Square
Connaught Place,
Central
Hong Kong

Dear Miss Choy,

**Subsidiary legislation gazetted on 1 June 2001
in relation to merchant shipping (L.N. 104 to 110)**

I refer to the above subsidiary legislation and our telephone conversation over them during the past two weeks. I would be grateful if you can clarify the following in writing:

On L.N.105

2. This is a new regulation and it shall apply to all passenger ships which are Hong Kong ships while engaged on international voyages and which are non-Hong Kong ships while within the waters of Hong Kong (ro-ro passenger ships excluded). Please clarify whether it applies to non-Hong Kong registered passenger ships from the mainland that are plying within river trade limits.

On L.N. 106

3. In the Chinese version of new regulation 70B(1) (a), please confirm that the Chinese version of the word "trim" as "吃水差" and that "500 米的範圍以外" are correct.

On L.N. 107

4. The new Regulation 13A is added into Part IIB which is a part that applies to some tankers (regulation 9). But this new regulation 13A applies to oil tankers and bulk carriers. Please clarify.

On L.N. 110

5. In the new regulation 2(2), please confirm that the Chinese version for "tankers" is "油輪" and not "液貨船".

6. In the new regulation 6(3), should the two words "任何" in "任何船舶" be deleted since it refers to a ship of certain class and not any ship?

I shall be grateful if you can let me have a reply as soon as possible so that I can prepare a further report to the House Committee. Please be reminded that any notice for a resolution to amend these subsidiary legislation will have to be submitted on or before 26 June 2001.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

cc: Department of Justice (Miss Monica LAW, SALD and
Ms Carmen Chu, SGC)

LA

Annex

TI/H/1/1/VII

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22 June 2001

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Dear Miss HO,

**Subsidiary legislation gazetted on 1 June 2001 in relation to
Merchant Shipping (L.N. 104 to 110)**

Thank you for your letter of 20 June 2001 on the above. I provide the following responses to the matters raised -

L.N. 105

By virtue of regulation 3(1) under the new Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passenger Ships - Training) Regulation, the new Regulation applies to all passenger ships which are not Hong Kong ships while they are within the waters of Hong Kong. These ships include the non-Hong Kong registered passenger ships from the Mainland plying within river trade limits if they are within the waters of Hong Kong. Any exemption from all or any of the provisions of the Regulation for these ships will be granted by the Seafarers' Authority under regulation 3(2) if necessary.

L.N. 106

(a) The Chinese rendition of "trim"

After consulting the Department of Justice and Marine Department, we agree that the word "trim" should be rendered as "縱傾" as adopted in the existing regulation 101(3) instead of "吃水差" in the newly added regulation 70B(1)(a). We will make the correction through future exercise to be conducted under section 4D of the Official Languages Ordinance, Cap. 5.

(b) "500 米的範圍以外"

I confirm that "以外" is correct.

L.N. 107

We confirm that it is our intention to apply the new regulation 13A to both oil tankers and bulk carriers. The regulation is inserted in Part IIB because the subject matter of seawater ballast tank corrosion prevention system falls within "construction" matters dealt with by Part IIB. However, as the title of Part IIB confines its application to tankers only, we agree that there is a mis-match of the scope of application between Part IIB and the new regulation. We will ratify this in the next omnibus exercise conducted by Department of Justice to deal with miscellaneous legislative amendments.

L.N. 110

I confirm that the Chinese version of "tankers" is "油船" which is the rendition for "tankers" in the Chinese version of the 1974 SOLAS Convention.

I also confirm that "任何船舶" in regulation 6(3) is correct since our intention is to apply the requirements under that regulation to all ships to which the Regulations apply instead of a certain class of ships (such as that in regulation 6(1) which are engaged on voyages during which passengers are scheduled to be on board for more than 24 hours).

(Miss Polly CHOY)
for Secretary for Economic Services

c.c.

D of J (LD)

D of M (Attn: Mr Raymond TANG
Mr B B RAO)