

**For discussion
On 28 May 2001**

Legislative Council Panel on Economic Services

Subsidiary Legislations under the Merchant Shipping (Local Vessels) Ordinance, Cap. 548

INTRODUCTION

This paper sets out the regulations/rules we propose to make under the Merchant Shipping (Local Vessels) Ordinance, Cap. 548 to improve the safety, control and regulation of local vessels. We plan to table them into the Legislative Council shortly.

BACKGROUND

2. The port of Hong Kong has been served by vessels shuttling between different locations within Hong Kong waters for different purposes, e.g. carrying of passengers or cargoes. These are termed local vessels which are distinguished from the ocean-going vessels engaged in international voyages.

3. Over the years, local vessels have not been controlled or regulated systematically by a set of laws. Instead, the administration of them is governed by requirements in various Ordinances and their subsidiary legislations. This was not user-friendly to owners and operators of local vessels.

4. In July 1999, the Legislative Council enacted the Merchant Shipping (Local Vessels) Ordinance, Cap. 548 (the "Ordinance") which consolidated the provisions previously set out in different Ordinances into one piece of legislation dedicated for local vessels. Implementation of the Ordinance entails the introduction of a number of subsidiary legislations.

PROPOSAL

5. We plan to make a total of ten pieces of subsidiary legislation under the Ordinance. We now propose to table four of them into the

Legislative Council shortly (work on the other six is on-going). These are set out below –

(a) Merchant Shipping (Local Vessels) (**General**) Regulation

This new Regulation incorporates general provisions for the administration of local vessels and their safety requirements. The key new provisions are as follows –

- (i) To facilitate the operators of fishing vessels, it is proposed that annual multiple entry permits should be issued to fishing vessels;
- (ii) To improve safety of vessel operation within Hong Kong waters, the Regulation provides that:
 - the Director of Marine may specify the manning requirement of a local vessel on its license or permit;
 - the number of tiers of local vessels allowed to lie alongside a ship is reduced from five to not more than three abreast; and
 - a permission to tow is required from the Director of Marine before a local vessel can be used for towing purposes;
- (iii) For passenger safety, a new provision requiring the posting of a sign at the embarkation point of passenger vessels to indicate the number of passengers permitted to carry on the vessel is proposed;
- (iv) For safety purpose, a new provision makes clear that the number of persons permitted on board vessels engaging in cargo operation shall not exceed 12 passengers (other than the crew to be on board); and
- (v) Also for safety purpose, new requirements are introduced for the control of stowage and securing of cargoes.

(b) Merchant Shipping (Local Vessels) (**Dwelling Vessels**) Regulation

The purpose of this new Regulation is to set out requirements

for the regulation and control of dwelling vessels in the waters of Hong Kong. These requirements are currently provided for in the Shipping and Port Control (Dwelling Vessels) Regulations, Cap 313 ("DVR") and the Shipping and Port Control (Dwelling Vessels) (Closed Areas) (Consolidation) Order ("Order"). This new Regulation consolidates the DVR and the Order into one regulation. On the commencement of the new Regulation and other subsidiary legislations made under Cap. 548, the DVR and the Order will be repealed.

The new Regulation makes provisions for the following -

- (i) Matters relating to the regulation and control of dwelling vessels in Hong Kong waters, e.g. the renewal, transfer and cancellation of licence; change of vessel ownership; contravention of licence condition; replacement of an unsafe vessel; areas closed for entry and stay by a vessel; removal, seizure and detention of a vessel; and the sale of a detained vessel. The Regulation adopts largely existing provisions under the DVR for these matters, except the following:
 - under the DVR, the Director of Marine specifies through a declaration by order closed areas into which entry of dwelling vessels is prohibited. Such areas are scattered over various parts of Hong Kong waters but dwelling vessels are only permitted by licence to stay in two typhoon shelters not specified as closed areas, i.e. Causeway Bay Typhoon Shelter and Cheung Chau Typhoon Shelter. The new Regulation codifies this current arrangement;
 - under the DVR, the Director of Marine is not required to issue a detention notice for seizure or detention of a dwelling vessel after a removal notice ordering the removal of the vessel from a closed area or of an unlicensed vessel from a prescribed area has not been complied with. To increase the transparency of the process, the new Regulation requires the Director of Marine to issue a detention notice before he seizes or detains a dwelling vessel; and

- under the DVR, after the seizure and detention of a dwelling vessel the Director of Marine is empowered to proceed directly to the sale of the vessel by public auction or the forfeiture of the properties on board. It is proposed that under the new Regulation, the opportunity for claims of the vessel and property on board (within a period and at a place specified in the detention notice) will be provided before the Director of Marine takes the above actions; and

- (ii) Introduction of a new procedure for the appeal of decisions made under the new Regulation to the Administrative Appeals Board.

(c) Merchant Shipping (Local Vessels) (**Ferry Terminals**) Regulation

Currently, provisions for the control of local vessels and non-local vessels, and their connected persons within ferry terminals are laid down in the Shipping and Port Control (Ferry Terminals) Regulations, Cap. 313 ("FTR"). The new Regulation separates the control on local vessels from that on the non-local ones by drawing on provisions, without change, in respect of the following -

- (i) the control of ferry vessels' arrival and berthing at, and departure from a terminal declared under regulation 3 of the FTR, i.e. the Hong Kong-Macau Ferry Terminal and the China Ferry Terminal;
- (ii) requirements for the vessel owner, his agent or the coxswain to make a return showing the particulars of each voyage of a local vessel and to comply with directions given by the Director of Marine when entering, leaving or being in a terminal. The current practice will be codified in the new Regulation; and
- (iii) provisions governing the control of restricted areas and the fees for berthing and embarkation within a terminal. The current practice will be codified in the new Regulation.

(d) Merchant Shipping (Local Vessels) (**Conduct of Inquiries**)

Rules

Currently, there is no mechanism for the conduct of inquiries into the fitness or conduct of the holder of a Local Certificate of Competency working on a local vessel and the Director of Marine is empowered to cancel or suspend a Local Certificate of Competency at his own discretion. On the other hand, mechanism for the conduct of inquiries into the fitness or conduct of seafarers on ocean-going vessels is provided under the Merchant Shipping (Seafarers) (Conduct of Inquiries) Rules, Cap. 478 ("SCIR"). The new Regulation draws on the mechanism under the SCIR for application on local vessels' seafarers. It sets out that -

- (i) notice of the inquiry must be served by the Director of Marine on the holder;
- (ii) the inquiry is to be held in public;
- (iii) the person appointed to hold the inquiry shall be assisted by one or more assessors; and
- (iv) the above appointed person shall announce his decision in public at the end of the inquiry or as soon as possible thereafter and to make a report, which should be signed by him with or without reservations, to the Director of Marine.

CONSULTATION

6. The Provisional Local Vessel Advisory Committee and its relevant sub-committees/working group which comprise a wide-cross section of representatives from the local shipping industry are consulted during the drafting process. They give support to the proposed regulations/rules.

7. The full implementation of the Ordinance, Cap. 548 entails the enactment of six more subsidiary legislations to cover areas such as the use of typhoon shelters by local vessels; issue of certificates of ownership, operating licences and laid-up permits in respect of local vessels; the safety construction, machinery, equipment and survey of local vessels, and detailed technical requirements and specifications in the codes of practice; maritime insurance; the control of the safety of marine industrial

activities including repairs to, the breaking up of, and cargo handling on local vessels; the control of safety of marine construction related to local vessels; and the consolidation of fees and charges related to local vessels in a single regulation. We will consult Members on the details of these subsidiary regulations when the drafting of them is completed.

Economic Services Bureau
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