

**For discussion
On 25 February 2002**

Legislative Council Panel on Economic Services

**Subsidiary Legislations under the
Merchant Shipping (Local Vessels) Ordinance, Cap. 548 and
Shipping and Port Control Ordinance, Cap. 313**

INTRODUCTION

This paper sets out two regulations we propose to make under the Merchant Shipping (Local Vessels) Ordinance, Cap. 548 and the Shipping and Port Control (Amendment) Regulation ("SAPC(A)R"). We plan to table the regulations into the Legislative Council shortly.

REGULATIONS UNDER THE MERCHANT SHIPPING (LOCAL VESSELS) ORDINANCE, CAP. 548

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 been controlled and regulated under different pieces of laws. 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. We plan to make a total of ten pieces of subsidiary legislation under the Ordinance. In the 2001-02 legislative year, we introduced three of them, i.e. the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation, Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation and Merchant Shipping (Local Vessels) (Conduct of Inquiries) Rules, into this Council. The three regulations / rules have been enacted.

Proposals

5. We propose to table another two regulations made under the Ordinance to this Council shortly (drafting work on the remaining five regulations is on-going and it is our objective to complete the work as soon as possible). These two regulations are –

(a) **Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation ("MS(LV)(TS)R")**

The new MS(LV)(TS)R will incorporate all necessary provisions for the use of typhoon shelters currently in the Shipping and Port Control (Typhoon Shelters) Regulations, Cap. 313 sub. leg. ("TSR") including the demarcation of navigation areas in typhoon shelters, the use of typhoon shelters, and entry and anchor of vessels and the removal of vessels unlawfully in typhoon shelters, etc. The MS(LV)(TS)R will cover the above aspects with the following improved or new provisions concerning –

(i) matters relating to the entry, passage, use and exit of a typhoon shelter by local vessels:

- To distinguish navigation areas in a typhoon shelter from a normal fairway in waters outside typhoon shelters, the MS(LV)(TS)R will use the term "passage area" instead of "fairway" to refer to an

area within a typhoon shelter delineated for the passage of vessels;

- A new requirement will make available plans showing the passage areas for public inspection;
 - Through the imposition of licensing conditions, the Director of Marine at present prohibits three types of local vessels from entering and staying in a typhoon shelter: a vessel having on board any specified dangerous goods substance or article, a vessel with its length exceeding the restricted length in respect of the typhoon shelter, and a dwelling vessel except it is licensed to stay there. The MS(LV)(TS)R will codify the above licensing conditions; and
 - Under the TSR, no vessel is allowed to anchor in a position in a typhoon shelter which obstructs the passage of vessels or the free access of other vessels to an unoccupied space in the typhoon shelter. The MS(LV)(TS)R will include the entrance to a typhoon shelter to the list of positions prohibited from anchoring;
- (ii) circumstances under which a local vessel will be removed from or moved to another position within a typhoon shelter by the Director of Marine. To improve the control on maintaining clear passage to or in typhoon shelters which are very busy nowadays, the period which the Director of Marine should give notice to the owner of a local vessel before he may take possession of or remove a vessel if it anchors in a prohibited position will be shortened from 14 days to 7 days; and
- (iii) appeal of any person aggrieved by the decision of the Director of Marine to prohibit the entry or the stay of a local vessel in a typhoon shelter will be made to the

Administrative Appeals Board as provided in other regulations under the Ordinance, instead of to the Chief Executive under the existing TSR.

The TSR will be repealed upon commencement of the Ordinance and its subsidiary legislations.

(b) Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation ("MS(LV)(CL)R")

The purpose of the new MS(LV)(CL)R is to enact requirements for the issuance, suspension and cancellation of certificates of ownership, operating licences and laid-up permits in respect of local vessels, and for other related peripheral matters such as the duties applicable to certificated or licensed vessels, the carrying of competent coxswain and engine operator, and the use of pleasure vessels, etc. Most of these requirements will adopt relevant provisions under the existing Merchant Shipping (Miscellaneous Craft) Regulations, Cap. 313 sub. leg. ("MCR"), Merchant Shipping (Launches and Ferry Vessels) Regulations, Cap. 313 sub. leg. ("LFVR") and Merchant Shipping (Pleasure Vessels) Regulations, Cap 313 sub. leg. ("PVR"). The MCR, LFVR and PVR will be repealed upon commencement of the Ordinance and its subsidiary legislations.

Although the provisions under the MS(LV)(CL)R will mainly consolidate from the MCR, LFVR and PVR, the following improvements are proposed -

- (i) a new system for licensing vessels with the classes of local vessels streamlined from eleven to four (see Annex A), thus simplifying the classification of vessels;
- (ii) a new certificate of ownership. This will make it easier to identify the owner of a local vessel and hence the responsibility of breach of the law and of blame in the case of civil claims;

- (iii) a new type of permit to allow a local vessel to lay-up without the need for an operating licence. This would allow a vessel, whose owner due to valid reasons like the lack of employment does not want to operate the vessel for an extended period of time, to be temporarily exempted from compliance of safety survey standards required for operation of the vessel. Such standards will be re-applied to the vessel once it resumes service under a new or renewed operating licence; and

- (iv) a new provision specifying that Class IV vessels, i.e. pleasure vessels, should be of "private use" solely and for "pleasure purpose" only. At present, the use of pleasure vessels is not clearly stipulated under the PVR. The Marine Department has experienced difficulties in prosecuting pleasure vessel owners who carry passengers on their vessels for commercial gain. To address this problem, the MS(LV)(CL)R will specify that a pleasure vessel will be permitted to be used exclusively for pleasure purpose only, and by limited categories of persons who have private relationship with the owner or charterer of the vessel only. In the case of chartering, a charter agreement in writing shall be kept on board for inspection. If the vessel is used to carry any passenger (i.e. any persons on board other than crew members), a valid certificate of survey shall also be kept on board for inspection.

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 have been consulted during the drafting process. They give support to the proposed regulations.

SHIPPING AND PORT CONTROL (AMENDMENT) REGULATIONS

7. The SAPC(A)R aims to enhance the safety of marine traffic within Hong Kong waters by imposing a restricted area in the Kap Shui Mun Fairway and by applying the statutory requirement for tendering "Pre-arrival Notice" ("PAN"), which mainly applies to vessels exceeding 300 tons gross at present, to vessels of 300 tons gross or less and river trade vessels as well. Opportunity will also be taken to update certain items of information requested on a PAN.

Background

Imposing a restricted area in the Kap Shui Mun Fairway

8. At present, through traffic to and from the northwestern approaches of Hong Kong waters are free to be conducted in either the Kap Shui Mun Fairway or Ma Wan Fairway (see the locations at Annex B), and such traffic can be both southeast- and northwest-bound. The average navigational width of the Kap Shui Mun Fairway and Ma Wan Fairway are 210 metres and 680 metres respectively.

9. In 1999, eight out of the 97 accidents between two moving vessels within Hong Kong waters took place in the Kap Shui Mun area, ranking the area the third highest in accident rate. In view of this, the Marine Department conducted in 2000 an internal study on the traffic using the area with a view to developing measures to improve navigational safety there.

10. The study recommends, inter alia, that in order to reduce the chances of head-on vessel collision, the two-bound traffic flow in the northern part of the much narrower Kap Shui Mun Fairway should be restricted to vessels with an overall length of ≤ 10 metres. This has taken into account that there are practical needs for kaitoes and work boats etc. with an overall length of ≤ 10 metres to go to and from Ma Wan Island and small fishing boats to go to and from the Ma Wan mariculture zones. For vessels with an overall length exceeding 10 metres, they should be allowed to travel southeast-bound only. The two-bound traffic arrangement in both the southern part of the Kap Shui Mun Fairway and the entire Ma Wan Fairway can remain unchanged.

Applying the requirement for tendering PAN to the Director of Marine to vessels of any tons gross and river trade vessels

11. At present, vessels exceeding 300 tons gross are statutorily required to tender a PAN (Annex C) to the Marine Department before entering Hong Kong waters under regulation 6A of the Shipping and Port Control Regulations, Cap. 313 sub. leg. ("SAPCR"). The same requirement does not apply to vessels of 300 tons gross or less and river trade vessels which are generally referred to as "small-sized vessels". This arrangement has been in place since 1989. It was considered acceptable because the number of arrivals of small-sized vessels at Hong Kong waters has been much lesser than nowadays. Besides, the small-sized vessels have not been required under the relevant international maritime regulations to be equipped with marine Very High Frequency ("VHF") radio to allow for communication between the Marine Department and the vessels for the purpose of tendering PAN.

12. Over the years, however, the number of marine accidents within Hong Kong waters involving small-sized vessels have increased significantly. Different means of communication between these vessels and the Marine Department have also become available. The Director of Marine considers it both necessary and viable to strengthen the effective control over the small-sized vessels by way of also applying the PAN requirement to them. Based on the PAN, the Director of Marine will be able to give early direction on routing to a vessel on its way to Hong Kong waters, or refuse the vessel's entry into Hong Kong waters on

safety grounds.

13. On the other hand, the Director of Marine considers that locally licensed vessels should continue to be exempted from the statutory PAN requirement because these vessels are already regulated by their licensing conditions. Besides, there is no need for applying the statutory PAN requirement to ferry vessels plying regularly between Hong Kong and Macau / the Mainland within river trade limits because these vessels are already required to report information included in a PAN through other channels to the Marine Department.

Proposals

14. To impose the directional requirement on vessels with an overall length over 10 metres in paragraph 10 above, we propose to specify in the SAPCR that such vessels should not enter the restricted area in the northern part of the Kap Shui Mun Fairway from the south (thus the vessels would only travel southeast-bound from the north). This formulation would achieve the purpose of the study's recommendation because due to physical constraint, a vessel with an overall length over 10 metres would be very difficult to enter the restricted area from directions other than the north and south, or to make a U-turn within the restricted area under normal circumstances, unless for emergency reasons.

15. To extend the application of the statutory PAN requirement to small-sized vessels as explained in paragraph 12 above, we propose to amend regulation 4 of the SAPCR to the effect that vessels of any tons gross intended to enter Hong Kong waters shall tender a PAN to the Director of Marine. Corresponding to the extended application of the PAN requirement, the PAN will need to be amended to include "Marine Department (MD) reference" and "official number" in addition to "call sign" as identification for the vessel. This is because a small-sized vessel may not be equipped with radio communication device and may not have a call sign which is the identity used for radio communication. For such vessel, the Director of Marine will accept "MD reference", which is assigned to a vessel after it applies for permission to enter or leave Hong Kong waters, as the identification to be reported on the PAN.

For vessels which have not entered Hong Kong waters before, the Director of Marine will accept "official number" which is assigned by the Flag State of the vessel and contained in the register of the vessel. However, official number will only be acceptable in respect of vessels not assigned with a call sign or MD reference. For vessels of over 300 tons gross, the requirement for call sign is to remain unchanged.

16. We also propose to take the opportunity to update the information requirement on the PAN in respect of two items -

- (a) To replace "gross registered tonnage" in item 5 of the PAN to "gross tonnage". This is to reflect the different sets of measurement for "gross tonnage" and "registered tonnage" adopted in regulations 4 and 8 of the Merchant Shipping (Registration) (Tonnage) Regulations, Cap. 415 sub. leg.; and
- (b) In addition to the purpose of call, to facilitate the planning of the Customs and Excise Department for search assignments, we propose to amend item 8 of the PAN to also include "intended berth or anchorage on arrival" to the information to be reported.

17. All the amendments to items on a PAN proposed in paragraphs 15 and 16 above are reflected at Annex C.

Consultation

18. The amendments proposed in paragraph 14 above concerning the restricted area in the northern part of the Kap Shui Mun Fairway are supported by the Port Operations Committee, the Provisional Local Vessel Advisory Committee and the Pilotage Advisory Committee.

19. For the amendments proposed in paragraphs 15 and 16 above related to the PAN requirement, the Marine Department has consulted local shipping agents of vessels of 300 tons gross or less and river trade vessels. The agents supported the proposed extension of the PAN requirement to small-sized vessels and the updated content of a PAN. The PAN requirement reflecting the updated content took immediate

effect administratively on 5 April 2000. Implementation and enforcement have been smooth so far.

Economic Services Bureau

February 2002

Existing and Proposed Classification of Local Vessels

Existing 11 classes of vessels (defined by size/use/mechanical type)

[Provided under the Merchant Shipping (Launches and Ferry Vessels) Regulations, Cap. 313 sub. leg.]

- (1) Launch (any mechanically propelled vessel of European type not exceeding 300 tons which is designed or used for -
 - (a) the conveyance of persons or things;
 - (b) towing or pushing; or
 - (c) any other purpose,and does not carry passengers beyond the waters of Hong Kong)
- (2) Ferry Vessel (any steam or motor vessel which plies regularly for the conveyance of persons and things between 2 or more points within the waters of Hong Kong)

New 4 classes of vessels (defined by use)

[To be provided under the Merchant Shipping (Certification and Licensing) Regulation]

- (1) Class I: Any vessel, other than a Class IV vessel, which is permitted to carry more than 12 passengers (passenger vessels)
- (2) Class II: Any vessel, other than a Class IV vessel, which is permitted to carry not more than 12 passengers (cargo vessels)
- (3) Class III: Any vessel used exclusively for fishing and related purposes (fishing vessels)

[Provided under the Merchant Shipping (Miscellaneous Craft) Regulations, Cap. 313 sub. leg.]

- (3) Class I Vessel: Sampans not exceeding 150 piculs in capacity used for the carriage of passengers in any typhoon shelter and in any port other than the port of Victoria
- (4) Class II Vessel: Vessels plying as mechanically propelled vessels, sailing vessels, dumb lighters, cargo boats or water boats
- (5) Class III Vessel: Vessels used as fish drying vessels and vessels, other than Class VII and Class VIII vessels and vessels used, constructed or adapted principally for dwelling purposes, that tend to remain stationary in any part of the waters of Hong Kong
- (6) Class IV Vessel: Miscellaneous types, such as pilot boats, trading boats, fishing boats, hawker boats, coolie boats, ash boats, pleasure boats hired from beaches, salvage boats and other vessels which do not fall clearly within any other class
- (7) Class V Vessel: Mechanically propelled trading junks or sailing trading junks, exceeding 150 piculs in capacity plying anywhere within the waters of Hong Kong:
Provided that vessels plying solely within harbour limits shall not be included in this class
- (8) Class VI Vessel: Mechanically propelled fishing junks or sailing fishing junks exceeding 150 piculs in capacity plying anywhere within the waters of Hong Kong

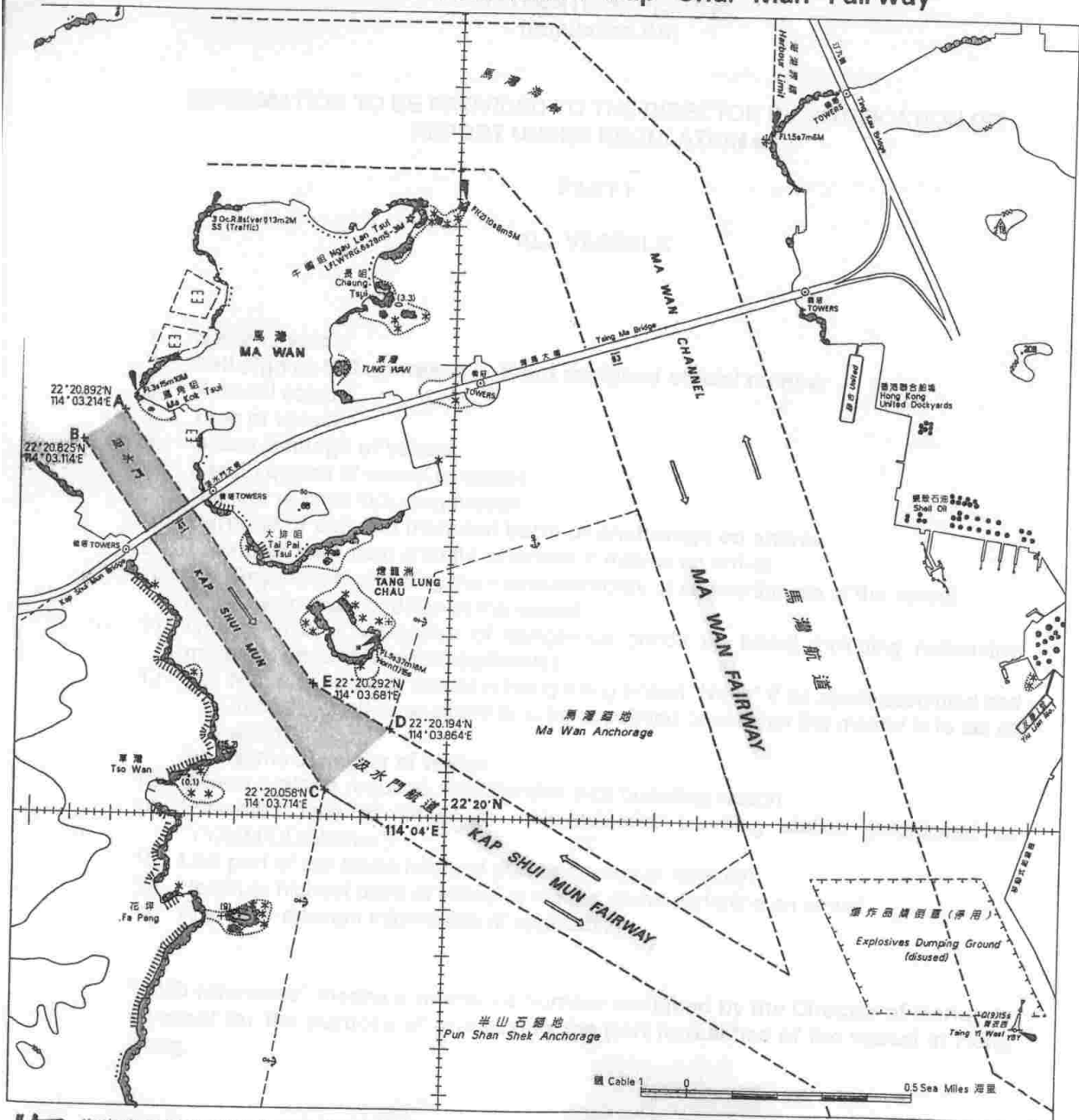
- (4) Class IV: Any vessel used exclusively for pleasure purposes (pleasure vessels)

- (9) Class VII Vessel: Floating dry docks and floating workshops that tend to remain stationary in the waters of Hong Kong
- (10) Class VIII Vessel: Floating restaurants, that is to say, vessels that tend to remain stationary in any part of the waters of Hong Kong and that are constructed for use or are used primarily for the purpose of a food business involving the sale of meals to the general public for consumption on board, together with any kitchen boats, fish carriers, storage barges, separation barges, landing pontoons or other vessels that tend to remain stationary and are ancillary thereto

[Provided under the Merchant Shipping (Pleasure Vessels) Regulations, Cap. 313 sub. leg.]

- (11) Pleasure Vessel

Limited Traffic Area within Kap Shui Mun Fairway



海軍處海道測量部於2000年11月繪製
Prepared by the Hydrographic Office,
Marine Department, November 2000

基準 WGS84
Datum

圖則編號 2000MAR100
Drawing No.

**SIXTEENTH SCHEDULE
(regulation 6A)**

**INFORMATION TO BE PROVIDED TO THE DIRECTOR BY NOTIFICATION OR
REPORT UNDER REGULATION 6A**

PART I

ALL VESSELS

1. Name of vessel
2. **Call sign or MD reference * , if not assigned official number**
3. National colours
4. Type of vessel
5. **Gross tonnage of vessel**
6. Length overall of vessel in metres
7. Number of crew including master
8. **Purpose of call and intended berth or anchorage on arrival**
9. Estimated maximum draught of vessel in metres on arrival
10. (a) Any defects affecting the maneuverability or seaworthiness of the vessel
(b) Any special condition of the vessel
11. Quantities and categories of dangerous goods on board including radioactive materials (insert "None" if applicable)
12. (a) Name of agent of vessel in Hong Kong (insert "None" if no agent appointed and indicate whether an agent is to be appointed or whether the master is to act as agent)
(b) Name of master of vessel
13. Where a pilot is required, the intended pilot boarding station
14. Estimated time of arrival at intended pilot boarding station (expressed as "YY/MM/DD/hh/mm")
15. Last port of call (state name of port or country or territory)
16. Height to highest point of vessel in metres above waterline on arrival
17. Any other relevant information (if applicable)

* "MD reference" means a reference number assigned by the Director of Marine to a vessel for the purpose of processing the port formalities of the vessel in Hong Kong.