

LN271E

L.N. 271 of 2001

Merchant Shipping (Local Vessels)

(Conduct of Inquiries) Rules

(Made under section 20 of the Merchant Shipping

(Local Vessels) Ordinance (Cap. 548))

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of section 20 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

2. Interpretation

In these Rules, unless the context otherwise requires---

"allegation" (指稱) means an allegation by the Director that a prescribed person's conduct falls within section 17(1)(a) or (b) of the Ordinance;

"notice of inquiry" (研訊通知書) means a notice served under rule 4(1);

"person appointed" (獲委任人) means the person or persons appointed by the Chief Justice to hold an inquiry under section 17 of the Ordinance;

"prescribed person" (訂明人士) means the holder of a local certificate of competency.

3. Application

These Rules apply to---

(a) any inquiry under section 17 of the Ordinance; and

(b) any re-hearing of such an inquiry under section 19 of the Ordinance.

4. Notice of inquiry

(1) Where the Director causes an inquiry under section 17 of the Ordinance to be held, he shall cause a notice of inquiry to be served on the prescribed person concerned who shall be made a party to the inquiry.

(2) Service of a notice of inquiry shall be effected not less than 30 days before the date fixed for the inquiry to which it relates.

(3) A notice of inquiry shall state---

(a) the facts giving rise to the inquiry;

(b) the allegation made against the prescribed person to whom the notice is addressed and the grounds therefor;

(c) the time and date when and the place where the inquiry is to be held; and

(d) the prescribed person's rights as set out in rule 7(2), (3), (4) and (5).

5. Appointment of assessors

(1) The person appointed to hold the inquiry shall conduct it with the assistance of one or more assessors who shall be appointed by the Director.

(2) Where possible at least one of the assessors appointed shall have had

experience in the same capacity and in the same type of local vessel as the prescribed person concerned.

6. Holding of inquiry

(1) At the time and the place fixed for holding the inquiry the person appointed may proceed with the inquiry whether the party upon whom the notice of inquiry was served, any other party, any person who has applied to become a party to the inquiry, or any of them, are present or not:

Provided that where the prescribed person concerned has been served with the notice of inquiry by post the person appointed shall not proceed with the inquiry in his absence unless satisfied that the prescribed person has been served in accordance with the requirements of rule 4(1) and (2).

(2) Any other person, not being the prescribed person concerned, may, with the leave of the person appointed, become a party to the inquiry.

(3) The inquiry shall be held in public save to the extent to which the person appointed is satisfied that in the interests of justice, or for other good and sufficient reason in the public interest, any part of the evidence or any argument relating thereto should be heard in private.

7. Procedure at inquiry

(1) The proceedings at the inquiry shall commence with the presentation on behalf of the Director of the case against the prescribed person concerned.

(2) The prescribed person concerned shall have the right---

(a) to defend himself against the allegation, in person or otherwise; and

(b) to admit before or at any time after the commencement of the inquiry the allegation or any part of it made against him.

(3) Where more than one allegation is made against a prescribed person, his admission of an allegation or any part of it pursuant to subrule (2)(b) shall be without prejudice to his right to defend himself against any other allegation which he does not admit.

(4) Any party to the inquiry shall have the right in person or by a representative to make an opening statement, call witnesses, cross-examine witnesses called by other parties, tender evidence other than oral evidence and address the person appointed in such order as the person appointed may direct.

(5) Where a party does not appear in person at the inquiry and is not represented by another person he may make representations in writing to the person appointed and such written representations shall be read out at the inquiry by or on behalf of the person appointed.

(6) Without prejudice to the admission of documents as secondary evidence allowed by any enactment or otherwise, affidavits, depositions, statutory declarations and

other written evidence shall, unless the person appointed considers it unjust, be accepted as evidence at the inquiry.

(7) The person appointed may postpone or adjourn the hearing of the inquiry for such period as he thinks fit either of his own motion or upon the application of any party.

8. Decision of person appointed

(1) The person appointed shall, at the conclusion of the inquiry or as soon as possible thereafter, announce his decision in public and make a report to the Director pursuant to section 17(4)(c) of the Ordinance.

(2) Each assessor shall either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent, and such reservations or dissent and reasons (if any) shall be forwarded to the Director with the report.

(3) The Director shall inform the prescribed person concerned, in writing, of the decision of the person appointed if the prescribed person was not present when that decision was announced and make a copy of the report available to him.

(4) A copy of the report shall be made available to any party to the inquiry upon request to the Director.

9. Re-hearing of inquiry

Any re-hearing of an inquiry under section 17 of the Ordinance pursuant to section 19 of the Ordinance shall be conducted in accordance with the provisions of rules 4, 5, 6, 7 and 8.

Andrew LI

Chief Justice

20 August 2001

Explanatory Note

These Rules are made under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and shall come into operation on the commencement of section 20 of the Ordinance (rule 1). They are based on the Merchant Shipping (Seafarers) (Conduct of Inquiries) Rules (Cap. 478 sub. leg.).

2. The Rules prescribe the procedure to be followed at any inquiry under section 17 of the Ordinance into the fitness or conduct of the holder of a local certificate of competency (referred to as a "prescribed person" in the Rules) and at any re-hearing of such an inquiry. Notice of the inquiry must be served by the Director of Marine on the prescribed person concerned (rule 4(1)) and the inquiry is to be held in public (rule 6(3)). The person appointed to hold the inquiry shall be assisted by one or more assessors (rule 5(1)). He is required to announce his decision in public at the conclusion of the inquiry or as soon as possible thereafter and to make a report

to the Director of Marine (rule 8(1)). An assessor may sign the report with or without reservations (rule 8(2)).