

**For discussion
On 27 January 2003**

Legislative Council Panel on Economic Services

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

INTRODUCTION

We propose to make three regulations under the Merchant Shipping (Local Vessels) Ordinance, Cap. 548, and one regulation under the Shipping and Port Control Ordinance, Cap. 313.

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

Background

2. The port of Hong Kong is served by vessels, some of which come from other parts in the region, operating within Hong Kong waters for various purposes, including the carrying of passengers and cargoes. We refer to them as local vessels to distinguish them from ocean-going vessels engaged in international voyages.

3. The control and regulation of local vessels has been governed by requirements set out in various Ordinances and their subsidiary legislation. This was not user-friendly to owners and operators of local vessels as they often have to refer to different pieces of law.

4. In July 1999, the Legislative Council enacted the Merchant Shipping (Local Vessels) Ordinance, Cap. 548 (“LVO”), which consolidated the provisions previously set out in different Ordinances into one piece of legislation dedicated for local vessels. The implementation of LVO entails the introduction of ten pieces of subsidiary legislation. In the

2001-02 legislative session, we completed the processing of three of them, namely the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation, the Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation and the Merchant Shipping (Local Vessels) (Conduct of Inquiries) Rules.

5. At the meetings of the Panel on Economic Services on 25 February and 22 April 2002, we briefed Members on another four regulations made under LVO, namely the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation, the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, the Merchant Shipping (Local Vessels) (General) Regulation and the Merchant Shipping (Local Vessels) (Safety Survey) Regulation. Members supported these proposed regulations. They are now being drafted and will be tabled in the Legislative Council in the 2002-03 session. The major proposals in the remaining three regulations, namely the Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation, the Merchant Shipping (Local Vessels) (Fees) Regulation and the Merchant Shipping (Local Vessels) (Works) Regulation, are set out in paragraphs 6 to 21 below.

Proposals

(a) Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation (“LV(CTPRI)R”)

6. The purpose of LV(CTPRI)R is to prescribe requirements for compulsory third party risks insurance for local vessels, including requirements related to insurance policy, certificate of insurance, termination of policy and application for approval as approved insurer, etc. LV(CTPRI)R will incorporate relevant provisions in the Merchant Shipping Ordinance, Cap. 281, and the Merchant Shipping (Compulsory Third Party Risks Insurance) Regulations, Cap. 281 sub. leg (“MS(CTPRI)R”). Part XIVA of the Merchant Shipping Ordinance and MS(CTPRI)R will be repealed upon commencement of the LV(CTPRI)R. In addition to consolidating the relevant provisions, LV(CTPRI)R will also introduce a number of improvements as set out in paragraphs 7 to 10.

(i) Extension of compulsory third party risks insurance requirement

7. Under existing legislation, only pleasure vessels, launches and ferry vessels which are mechanically propelled are required to take out third party risks insurance. LV(CTPRI)R will extend the compulsory insurance requirements to all local vessels certificated under LVO except laid-up vessels and small non-mechanically propelled vessels. Laid-up vessels are not covered because they do not get underway in Hong Kong waters. Small non-mechanically propelled vessels are not likely to cause injury to third party on any other vessels, and are thus exempted.

(ii) Increase in the minimum liability amount

8. The existing minimum amount of third party risks insurance is \$0.6 million for pleasure vessels and \$3 million for launches and ferries. Under the new LV(CTPRI)R, the minimum cover will be increased to \$5 million for local vessels carrying not more than 12 passengers and to \$10 million for local vessels carrying more than 12 passengers. The increase in minimum cover will better protect passengers and operators injured in marine accidents.

(iii) Suspension or revocation of approval as approved insurers

9. Under the existing legislation, any insurer authorized to carry on class 12 of general business (liability for ships) under the Insurance Companies Ordinance, Cap. 41, and any protection and indemnity associations (P&IAs) approved by the D of M may provide third party risks insurance to local vessels. LV(CTPRI)R will provide for the D of M to suspend or revoke his approval for P&IAs as approved insurers if they fail to comply with the Regulation or with a condition to which the approval is subject.

(iv) Appeal mechanism

10. Under LV(CTPRI)R, any person aggrieved by the decision of the D of M related to approval as an approved insurer may appeal to the Administrative Appeals Board against that decision.

(b) Merchant Shipping (Local Vessels) (Fees) Regulation (“LV(F)R”)

11. The primary objective of LV(F)R is to consolidate, simplify and rationalize the fee structure applicable to local vessels, so that the number of fee items will be reduced and the new fee structure will be more user-friendly.

12. LV(F)R will consolidate fees currently provided under the Merchant Shipping (Fees) Regulations, Cap. 281 sub. leg., the Shipping and Port Control Regulations, Cap. 313 sub. leg., and the Shipping and Port Control (Ferry Terminals) Regulations, Cap. 313 sub. leg. These existing regulations will either be repealed or will no longer be applicable to local vessels when LVO and LV(F)R come into force. The fees cover five types of services. The major changes and financial impacts on vessel owners and operators under each type of services are set out in paragraphs 13 to 18 below -

(i) Fees for the survey of vessels and the examination of their plans

13. The new fee structure reflects the re-classification of vessels from over ten classes into four classes. The financial impacts on vessel owners and operators are -

- The survey fee levels are set based on the principle of “revenue neutral”. 87% of vessels will not be affected, 8% of vessels will pay less (ranging from \$10 to \$1,730) , and only 5% of vessels will pay more (ranging from \$20 to \$865).
- While some new cargo vessels which carry dangerous goods will pay lower fees for plan examination, all other new vessels will pay higher fees (ranging from \$370 to \$13,050). The new fees are set to achieve full cost recovery gradually. Existing vessels will not be affected.
- For safety purpose, non-mechanised stationary vessels will be required to undergo a biennial inspection by the Marine Department (MD). A fee (\$1,145) will be charged for the

inspection. About 175 vessels will be affected.

(ii) *Fees for the examination of crew members*

14. To keep in pace with the changes of the shipping industry, a new system for certification and examination for crew on board local vessels will be introduced. The structure and application of the certification system and the examination syllabuses of the new local certificate of competency will be different. The major changes and the respective impacts are -

- Under the present system, applicants of certificates who hold equivalent qualification are subject to the same level of fees as those who have to take examination before qualifying for the certificates. For fair treatment, these two types of applicants will pay different amounts under LV(F)R. About 10% candidates will enjoy fee reduction (ranging from \$15 to \$755). About 90% of candidates will pay more (ranging from \$165 to \$1,030). Of these, 85% of the candidates will pay \$250 more for sitting for the pleasure vessel operator grade 2 written examination.
- The fees for issuing, revalidating or endorsing of Type Rating Certificate without examination will be increased from \$150 to \$700 to achieve full cost recovery. The number of people applying for this service is small (about 70 per annum).

(iii) *Licence fees*

15. The changes in licence fees mainly arise from the re-classification of vessels and standardization of the unit used to calculate the fees, and are based on the principle of “revenue neutral”. The standardized charging unit, i.e. overall length x extreme breadth, will reflect truly the size of vessel and the water area to be occupied, and also remove outdated and complicated charging unit such as “picul”. The impact on owners or operators of different classes of vessels are analysed below -

	Percentage of vessels affected		
	No change / subject to less than 1% change	Pay less	Pay more
<i>Class I</i> (<i>passenger</i> <i>vessels</i>)	69%	11% ^{Note 1} (\$55 - \$1,475)	20% ^{Note 1} (\$300 - \$2,485)
<i>Class II</i> (<i>cargo vessels</i>)	52%	15% (\$255 - \$3,650)	33% ^{Note 2} (\$65 - \$2,448)
<i>Class III</i> (<i>fishing vessels</i>)	66%	11% (\$24 - \$589)	23% (\$72 - \$155)
<i>Class IV</i> (<i>pleasure vessels</i>)	81%	7% (\$355 - \$1,400)	12% (\$345 - \$2,800)

(iv) *Fees for use of ferry terminals*

16. No change is proposed for fees related to the use of ferry terminals.

(v) *Port charges*

17. Based on the principle of “revenue neutral”, various fee charges are incorporated into a “permit to enter into Hong Kong waters” and a “permit to remain in Hong Kong waters”. As a result of the simplification, 77% of the vessel calls will pay more by \$5 to \$74 for a “permit to enter into Hong Kong waters”, and 82% of the vessels calls will pay less by \$20 to \$60 for a “permit to remain in Hong Kong waters”. The impact of the fee increase for a permit to enter will be offset by the fee reduction for a permit to remain. Except the above changes, other fees related to port charges will remain unchanged.

^{Note 1:} Among all Class I vessels, there are three exceptions. Of the three floating restaurants in Hong Kong, one will pay \$1,688 less, one will pay \$8,250 less, and the remaining one will pay \$11,155 more.

^{Note 2:} Among all Class II vessels, there are three exceptions. All of them are stationary vessels. They will pay \$9,560, \$11,880 and \$13,382 more.

18. The introduction of LV(F)R will significantly reduce the total number of fee items from 324 to 198, thus rendering the overall fee structure more user-friendly. In sum, LV(F)R has been designed in a way that will leave most fee payers unaffected or paying less. Where a fee increase will be incurred, the increase is justified by either the new examination system for crew, or the new unified charging basis which better represents the level of services provided. The level of increase on items that will affect larger number of vessels will be kept to the minimal and, where a fee increase is relatively significant, it will affect only the owners and operators of new vessels and / or a relatively small number of existing owners and operators.

(c) Merchant Shipping (Local Vessels) (Works) Regulation
("LV(W)R")

19. LV(W)R aims to regulate safety at work, including cargo handling, ship repairing and breaking, and marine construction carried out on local vessels. In addition, we propose to improve the safety of workers engaged in marine work activities and increase the penalty charges for certain offences. The major improvements are set out below -

- The repairing and breaking of local vessels and marine construction in which local vessels are used will also be brought under the ambit of LV(W)R.
- The safe means of access to and from a local vessel and on board a local vessel will be enhanced.
- The qualifications of a competent examiner for lifting equipment will be clearly specified.
- Derricks will be subject to the requirement for thorough examination by a competent examiner at least once every 12 months. Also, lifting appliances will be subject to the requirement for test and examination by a competent examiner not only when first taken into use but also periodically

thereafter.

- The mandatory safety training courses for persons engaged in works carried on local vessels will be specified. D of M will be empowered to approve the training and certificate-issuing authorities.
- The occupational safety requirements (e.g. provision and wearing of protective equipment, maintenance of first aid equipment, appointment of works supervisors, etc.) will be prescribed.
- The owner of a lifting gear or the coxswain of a local vessel will need to appoint a competent person in writing for the purposes of inspecting lifting gear.

20. Penalty will also be specified for contravention of various provisions in the LV(W)R. The penalty for contravention of some provisions in the LV(W)R will be increased from \$2,000 or \$5,000 to level 2 (max. \$5,000) or level 3 (max. \$10,000) respectively.

Consultation

21. The Provisional Local Vessel Advisory Committee and its relevant sub-committees / working groups which comprise a wide-cross section of representatives from the local shipping industry have been consulted. In addition, the insurance industry has been consulted on LV(CTPRI)R. All the above parties support the proposed regulations.

REGULATION UNDER THE SHIPPING AND PORT CONTROL ORDINANCE, CAP 313

22. At present, the Shipping and Port Control (Cargo Handling) Regulations (Cap. 313 sub. leg.) (SAPC(CH)R) regulate workers' activities on board both local and ocean-going vessels. With the enactment of the LVO, regulation of work activities on board local vessels will be moved to the new LV(W)R. The SAPC(CH)R will therefore have a reduced scope. We also want to take the opportunity to enhance the safety

of workers engaged in marine work activities on board ocean-going vessels. In this respect, the improvements will mirror those introduced by LV(W)R and detailed in paragraph 19 and 20 above. With all these amendments, the SAPC(CH)R will be re-titled Shipping and Port Control (Works) Regulation (SAPC(W)R).

Consultation

23. We have consulted the relevant industries and interested parties including the Labour Advisory Board and the Provisional Local Vessel Advisory Committee. They all agree to the proposed amendments.

Advice sought

24. Members are invited to give their views and support to the above proposals.

Economic Development and Labour Bureau
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