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Secretary for Economic Development and Labour
(Attention : Miss Florence CHAN, Assistant Secretary)
Port, Maritime and Logistics Development Unit
Economic Development and Labour Bureau
38/F Two Exchange Square
Connaught Place
Central
Hong Kong

4 March 2004

BY FAX

Fax No. : 2523 0030
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Dear Miss Chan,

**Merchant Shipping (Local Vessels)
(Typhoon Shelters) Regulation (L.N. 28 of 2004)**

We are scrutinizing the above Regulation with a view to advising Members and should be grateful if you would clarify the following matters:

- (a) Is there any reason why no provisions are made in the above Regulation to allow a person aggrieved by a decision made by the Director of Marine under section 4(6), (7) or (8) to appeal against the decision? As you know, there is an appeal provision (i.e. section 13) in the existing Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313 sub. leg. D) ("the Typhoon Shelters Regulations"). Is there any reason for not retaining that provision in this Regulation?
- (b) According to the LegCo Brief, the Typhoon Shelters Regulations will be repealed upon commencement of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and its subsidiary legislation. As such, will consequential amendments be made to provisions in existing legislation which contain references to the Typhoon Shelters Regulations? Examples of these provisions are regulation 17 of the Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg. C) and the definition of "typhoon shelter" in Schedule 1 to the Environmental Impact Assessment Ordinance (Cap. 499).

My comments on the Chinese text of the Regulation are marked up on the attached copies for your consideration.

I would appreciate it if you could let us have your reply in both languages by 8 March 2004.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

Encl.

cc: DoJ (Attn: Ms Lonnie NG, SGC)
LA

4. 避風塘的使用

- (1) 除本規例的條文另有規定外，本地船隻可進入避風塘並在其內停留。
- (2) 本地船隻如載有《危險品(適用及豁免)規例》(第295章，附屬法例A)的附表第1、2或5類指明的任何物質或物品，則不得進入避風塘或在其內停留，但獲處長允許者除外。
- (3) 為施行第(2)款，該款所提述的物質或物品並不包括——
- 構成有關的船隻的設備、貯存品或燃料的一部分的；及
 - 是操作該船隻所需的，或是該船隻在其航行時需使用的，任何物質或物品。
- (4) 本地船隻的總長度如超過附表第3欄內於與提述該附表第2欄內所指明的某避風塘相對之處就該避風塘而指明的允許總長度，則不得進入該避風塘或在其內停留，但獲處長允許者除外。
- (5) 任何住家船隻除非按照《商船(本地船隻)(住家船隻)規例》(第548章，附屬法例A)及按照根據該規例就該船隻有效的牌照所指明的條件而行，否則不得進入避風塘或在其內停留。
- (6) 處長如認為由於某本地船隻的大小或設計，該船隻處於某避風塘內構成或相當可能構成該避風塘內的危險，則處長可藉——
- 批註其運作牌照；
 - 批註其根據本條例第89(2)條訂立的規例有效的許可證；或
 - 指示，
- 禁止該船隻進入該避風塘或在其內停留。
- (7) 處長如認為由於某避風塘內的船隻的數目，某本地船隻處於該避風塘內構成或相當可能構成該避風塘內的危險，則處長可藉指示禁止該船隻進入該避風塘或在其內停留。
- (8) 如有以下情況，處長可藉指示禁止任何如非因本款本可進入某避風塘並在其內停留的本地船隻進入該避風塘或在其內停留——
- 該船隻處於該避風塘內危及或相當可能危及人、其他船隻或財產的安全；

It appears from the English text that a dwelling vessel may enter or remain in a typhoon shelter in accordance with the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation, etc. As such, should "而行" be replaced by "進入避風塘或在其內停留"?

4. Use of typhoon shelters

- (1) Subject to the provisions of this Regulation, a local vessel may enter and remain in a typhoon shelter.
- (2) Except with the permission of the Director, a local vessel shall not enter or remain in a typhoon shelter if the vessel has on board any substance or article specified in Category 1, 2 or 5 in the Schedule to the Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg. A).
- (3) For the purposes of subsection (2), the substance or article referred to in that subsection does not include any substance or article which—
- forms part of the equipment, stores or fuel of the vessel concerned; and
 - is required for the operation of the vessel or for use by the vessel during its passage.
- (4) Except with the permission of the Director, a local vessel the length overall of which exceeds the permitted length overall specified in column 3 of the Schedule in relation to a typhoon shelter specified in column 2 of that Schedule opposite the reference to that permitted length overall shall not enter or remain in the typhoon shelter.
- (5) A dwelling vessel shall not enter or remain in a typhoon shelter except in accordance with the Merchant Shipping (Local Vessels)(Dwelling Vessels) Regulation (Cap. 548 sub. leg. A) and with the conditions specified in the licence which is in force in respect of the vessel under that Regulation.
- (6) If the Director is of the opinion that the presence of a local vessel in a typhoon shelter constitutes or is likely to constitute a hazard in the typhoon shelter owing to the size or design of the vessel, the Director may prohibit the vessel from entering or remaining in the typhoon shelter by—
- endorsement on its operating licence;
 - endorsement on its permit which is in force under regulations made under section 89(2) of the Ordinance; or
 - a direction.
- (7) If the Director is of the opinion that the presence of a local vessel in a typhoon shelter constitutes or is likely to constitute a hazard in the typhoon shelter owing to the number of vessels in the typhoon shelter, the Director may by a direction prohibit the vessel from entering or remaining in the typhoon shelter.
- (8) The Director may by a direction prohibit a local vessel, which apart from this subsection could enter and remain in a typhoon shelter, from entering or remaining in the typhoon shelter if—
- the presence of the vessel in the typhoon shelter endangers or is likely to endanger the safety of persons, other vessels or property;

(3) 凡有根據已廢除規例第 5(4) 條作出的批註或發出的指示在緊接本規例生效之前就某本地船隻有效，則自本規例生效起，該批註或指示在猶如它是根據第 4(6) 條作出的批註或發出的指示的情況下具有效力，而本規例其他條文亦須據此適用。

(4) 凡憑藉第 (1)、(2) 或 (3) 款具有效力的許可證、指示或批註是就一段指明期間而批出、發出或作出(視屬何情況而定)的，則自本規例生效起，該許可證、指示或批註在該指明期間的尚餘部分維持有效。

(5) 在本條中，“已廢除規例”(repealed Regulations) 指《船舶及港口管制(避風塘)規例》(第 313 章，附屬法例 D)。

To reflect the meaning of "unexpired" in the English text, should "尚餘部分" be amended to read "尚餘未屆滿部分"?

附表

[第 2、4、5 及 11 條]

避風塘內本地船隻的允許總長度

項	避風塘	允許總長度 (以米為單位)
1.	香港仔南避風塘	30.4
2.	香港仔西避風塘	30.4
3.	銅鑼灣避風塘	30.4
4.	長洲避風塘	50
5.	喜靈洲避風塘	50
6.	觀塘避風塘	50
7.	新油麻地避風塘	50
8.	藍巴勒海峽避風塘	50
9.	三家村避風塘	30.4
10.	筲箕灣避風塘	30.4
11.	船灣避風塘	30.4
12.	土瓜灣避風塘	50
13.	屯門避風塘	50
14.	鹽田仔避風塘	30.4

經濟發展及勞工局局長
葉樹堃

2004 年 2 月 19 日

(3) Where an endorsement made or direction given under regulation 5(4) of the repealed Regulations is in force immediately before the commencement of this Regulation in respect of a local vessel, the endorsement or direction shall have effect from such commencement as if it were an endorsement made or direction given under section 4(6), and the other provisions of this Regulation shall apply accordingly.

(4) Where a permit, direction or endorsement that has effect by virtue of subsection (1), (2) or (3) has been granted, given or made, as the case may be, in respect of a specified period, the permit, direction or endorsement shall remain in force for so much of the period as remains unexpired from the commencement of this Regulation.

(5) In this section, "repealed Regulations" (已廢除規例) means the Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313 sub. leg. D).

SCHEDULE

[ss. 2, 4, 5 & 11]

PERMITTED LENGTH OVERALL FOR LOCAL VESSELS IN
TYPHOON SHELTERS

Item	Typhoon shelters	Permitted length overall (in metres)
1.	Aberdeen South Typhoon Shelter	30.4
2.	Aberdeen West Typhoon Shelter	30.4
3.	Causeway Bay Typhoon Shelter	30.4
4.	Cheung Chau Typhoon Shelter	50
5.	Hei Ling Chau Typhoon Shelter	50
6.	Kwun Tong Typhoon Shelter	50
7.	New Yau Ma Tei Typhoon Shelter	50
8.	Rambler Channel Typhoon Shelter	50
9.	Sam Ka Tsuen Typhoon Shelter	30.4
10.	Shau Kei Wan Typhoon Shelter	30.4
11.	Shuen Wan Typhoon Shelter	30.4
12.	To Kwa Wan Typhoon Shelter	50
13.	Tuen Mun Typhoon Shelter	50
14.	Yim Tin Tsai Typhoon Shelter	30.4

Stephen IP
Secretary for Economic
Development and Labour

19 February 2004