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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**

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Dear Miss Chan,

**Merchant Shipping (Local Vessels)  
(Certification and Licensing) Regulation (L.N. 27 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:

Sections 18(2) and 20(2)

Is it intended that the power of the Director of Marine to amend any conditions or restrictions attached to a full licence or a temporary licence is exercisable at any time while the licence concerned is in force? If so, should this intention be expressed clearly in the sections concerned? You may wish to refer to a similar section (i.e. section 3(6)) in the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation (Cap. 548 sub. leg. A) ("the Dwelling Vessels Regulation").

Appeal against decisions made by the Director of Marine under the Regulation

- (a) To assist a person who is aggrieved by a decision made by the Director of Marine under section 19, 23, 26, 33, 34, 35 or 44 in lodging an appeal against the decision to the Administrative Appeals Board, should the Director be required to give reasons for his decision? If so, should this requirement be provided expressly under those sections? As you know, the requirement for the Director to give reasons for his decision is provided expressly in sections 10 and 15 of the Regulation when the Director decides to refuse to issue a certificate of ownership and refuse an application for the issue or renewal of a full licence respectively.

- (b) Is it intended that a person aggrieved by the Director's decision to amend any conditions or restrictions attached to a full licence or a temporary licence in respect of a local vessel under sections 18(2) and 20(2) respectively may appeal against the decision ? If so, please stipulate this clearly in section 53 of the Regulation? As you know, the Director's decision to make any amendment or addition to the conditions specified in a licence issued to a dwelling vessel under the Dwelling Vessels Regulation is appealable. Should the same apply to this Regulation?
- (c) Is there any reason why a person who is aggrieved by a decision made by the Director of Marine under sections 28 and 31 of the Regulation is not given the right of appeal?
- (d) Please confirm whether a consequential amendment will be made to the Administrative Appeals Board Ordinance (Cap. 442) to accommodate the appeal under section 53 of the Regulation, and if so, when.

#### Section 55 - Immunity

- (a) The immunity provision does not appear to fall within the scope of the regulation making power under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). Please clarify the legal basis of section 55? Given the important implications of the immunity provision, should it be provided in the principal Ordinance instead of in subsidiary legislation if such provision is considered necessary?
- (b) Why is it considered necessary to grant immunity to Government and officers in performing functions under the Regulation? As we understand it, there is no similar immunity for performing functions relating to the registration and licensing of motor vehicles under the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation. Is there any reason why different considerations should apply in the certification and licensing of local vessels?
- (c) What is the rationale for exempting Government from liabilities for tortious acts committed by public officers in performing functions under the Regulation, having regard to section 4 of the Crown Proceedings Ordinance (Cap. 300)? You may wish to note that in some existing legislation, for example, the Electronic Transactions Ordinance (Cap. 553), the Government's liability for the act or omission of public officers in the performance of functions under that Ordinance is expressly preserved.

### Section 57 - Transitionals

According to the LegCo Brief, the Merchant Shipping (Pleasure Vessels) Regulations (Cap. 313 sub. leg. G) ("the Pleasure Vessels Regulations") will be repealed upon commencement of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). As such, is there any reason why no transitional provisions are made in the Regulation for licences issued under the Pleasure Vessels Regulations?

### Drafting matters

- (a) There are a number of references to the "length overall" of a local vessel in the Regulation, for example, in section 13(1), 38(2), 47(4) and Schedule 3. How is the length overall of a vessel be determined? Is "length overall" the same as "length" referred to in section 11(2)(h)? Is it necessary to define the term in the Regulation? As you know, the term "length overall" is defined in the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (L.N. 28 of 2004).
- (b) In section 7(7), is it necessary to add "shore" before "address"?
- (c) In section 10(4)(a)(v), should "of the vessel" be added after "construction" to reflect the meaning of the Chinese text? You may wish to note that in a similar context in section 11(2)(f), reference is made to "the year and place of construction of the vessel". Should the same English text be adopted in section 10(4)(a)(v) for the sake of consistency?
- (d) Regarding the Chinese text of the Regulation, please refer to my comments marked up in the attached copies.

### Consequential amendments to existing legislation containing references to the repealed regulations made under the Shipping and Port Control Ordinance (Cap. 313)

According to the LegCo Brief, the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap. 313 sub. leg. E) ("the Launches and Ferry Vessels Regulations"), Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 313 sub. leg. F) ("the Miscellaneous Craft Regulations") and the Pleasure Vessels 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 these Regulations, and if so, when? You may wish to note that the Launches and Ferry Vessels Regulations and the Miscellaneous Craft Regulations are referred to in section

6E(5) of the Import and Export Ordinance (Cap. 60). Other examples of provisions where references to these Regulations are found are section 5 of the Ferry Services Ordinance (Cap.104) and regulation 2 of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg. C). Please also consider whether consequential amendments need to be made to the definition of "shipping purpose" in regulation 2 of the Waterworks Regulations (Cap. 102 sub. leg. A).

I would appreciate it if you could let us have the Administration's response to the above matters in both languages as soon as possible, preferably on or before 8 March 2004.

Yours sincerely,

(Connie Fung)  
Assistant Legal Adviser

Encl.

cc: DoJ (Attn: Miss Betty Cheung SGC)  
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- (2) 除非符合以下條件，否則不得收取租金或報酬而將第 IV 類別船隻出租——
- 該船隻根據書面租船協議或書面租購協議的條款出租；
  - 上述協議載有一項清楚述明以下事宜的警告——
    - 承租該船隻的人如不遵守《商船(本地船隻)(證明書及牌照事宜)規例》(2004 年第 27 號法律公告)第 6(5)(b) 條，即屬犯罪；
    - 承租該船隻的人應仔細閱讀該規例第 6 條(第(1)、(2)及(4)款除外)；及
    - 上述協議內何處載有該等條文的全文；
  - 上述協議的內文或附件載有本條(第(1)、(2)及(4)款除外)的全文；
  - (b) 及 (c) 段提述的警告及條文全文採用上述協議餘下部分所採用的同一語文，並且須以顯著方式於上述協議內呈示；及
  - 上述協議由船東及承租該船隻的人簽署。
- (3) 除非有以下文件就作為某類型而領有證明書的第 IV 類別船隻具有效力，否則不得收取租金或報酬而將該船隻為擬用於涉及載客的服務的用途出租——
- 根據《驗船規例》規定屬該類型的第 IV 類別船隻須有的、證明該船隻適合用於該服務的有效期證明書；及
  - 在顧及上述擬用於的服務下，根據《保險規例》規定屬該類型的第 IV 類別船隻須有的第三者風險保險單。
- (4) 如第(1)、(2)或(3)款在沒有合理辯解的情況下遭違反，有關船隻的船東、其代理人及船長每人均屬犯罪，一經定罪，可處第 3 級罰款。
- (5) 凡收取租金或報酬而將第 IV 類別船隻出租——
- 船東、其代理人及船長須確保——
    - 有關書面租船協議或書面租購協議存放於該船隻上；及
    - (如該船隻運載任何乘客)第(3)款提述的檢查證明書及保險單、或它們的核證副本存放於該船隻上；

The meaning of "有效" does not appear in the corresponding English text. Should the term be repealed?

- (2) A Class IV vessel shall not be let for hire or reward unless—
- it is let under the terms of a written charter agreement or written hire-purchase agreement;
  - the agreement contains a warning that states clearly—
    - that the person to whom the vessel is let commits an offence if he does not comply with section 6(5)(b) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (L.N. 27 of 2004);
    - that the person to whom the vessel is let should read carefully section 6 (except subsections (1), (2) and (4)) of the Regulation; and
    - where in the agreement the full text of those provisions may be found;
  - the agreement contains, either in its body or as its attachment, the full text of this section (except subsections (1), (2) and (4));
  - the warning and text referred to in paragraphs (b) and (c) are in the same language as that of the remaining parts of the agreement and are presented prominently in the agreement; and
  - the agreement is signed by the owner and the person to whom the vessel is let.
- (3) A Class IV vessel shall not be let for hire or reward for an intended service that involves the carriage of passengers unless there is in force in respect of the vessel—
- such certificate of inspection certifying that the vessel is fit for the intended service as is required under the Survey Regulation for a Class IV vessel of the type for which the vessel is certificated; and
  - such policy of insurance in respect of third party risks as is required under the Insurance Regulation for a Class IV vessel of the type for which the vessel is certificated, having regard to the intended service.
- (4) If, without reasonable excuse, subsection (1), (2) or (3) is contravened the owner of the vessel, his agent and the coxswain each commits an offence and is liable on conviction to a fine at level 3.
- (5) Where a Class IV vessel is let for hire or reward—
- the owner, his agent and the coxswain shall ensure that there is kept on board the vessel—
    - the relevant written charter agreement or written hire-purchase agreement; and
    - if any passenger is carried in the vessel, the certificate of inspection and the policy of insurance referred to in subsection (3), or certified copies of them;

(4) 如第 IV 類別船隻或第 IV 類別船隻的附屬船隻的總長度大於 3 米或已裝設總推進功率大於 3 千瓦的引擎，則除非在該船隻上有人掌管該船隻，而該人持有遊樂船隻操作人本地合格證明書或《本地合格證明書規則》所指明的任何同等證明書，否則該船隻或附屬船隻不得在航。

(5) 如第 (1) 或 (4) 款遭違反，有關本地船隻的船東及船長每人均屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月。

#### 48. 未滿 16 歲的人禁止操作某些船隻

(1) 任何未滿 16 歲的人不得在已裝設推進引擎的本地船隻上操舵、亦不得駕駛或運作該等船隻。

(2) 如任何人違反第 (1) 款，該人、有關本地船隻的船東及船長每人均屬犯罪，一經定罪，可處第 3 級罰款。

#### 49. 動力承托的航行器的船長及輪機操作員額外需要的證明書

(1) 屬動力承托的航行器的第 I 類別船隻除非符合以下規定，否則不得於香港水域在航——

- (a) 在該船隻上有人掌管該船隻，而該人除持有任何其他合適的船長本地合格證明書外，亦持有根據《本地合格證明書規則》所發出、名為類型級別證明書的本地合格證明書；及
- (b) 在該船隻上有人掌管輪機，而該人除持有任何其他合適的輪機操作員本地合格證明書外，亦持有根據《本地合格證明書規則》所發出、名為類型級別證明書的本地合格證明書。

(2) 如第 (1) 款遭違反，船隻的船東及船長每人均屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月。

Should "有關" be added here as the English text refers to "the vessel" specifically rather than any vessel? Please refer to the Chinese text of a similar provision (i.e. section 47(t)) above.

(4) A Class IV vessel or an ancillary vessel of a Class IV vessel that is more than 3 metres in length overall or is fitted with engines of more than 3 kilowatts total propulsion power shall not be underway unless there is on board a person in charge of the vessel who is the holder of a local certificate of competency as a pleasure vessel operator, or any equivalent certificate as specified in the Local Certificate of Competency Rules.

(5) If subsection (1) or (4) is contravened, the owner and the coxswain of the local vessel each commits an offence and is liable on conviction to a fine at level 3 and imprisonment for 6 months.

#### 48. Person under 16 prohibited from operating certain vessels

(1) A person under the age of 16 shall not steer, navigate or operate a local vessel that is fitted with a propulsion engine.

(2) If subsection (1) is contravened by any person, that person, the owner and the coxswain of the local vessel each commits an offence and is liable on conviction to a fine at level 3.

#### 49. Additional certificates required for coxswains and engine operators of dynamically supported craft

(1) A Class I vessel that is a dynamically supported craft shall not be underway in the waters of Hong Kong unless there is—

- (a) on board and in charge thereof a person who, in addition to holding any other appropriate local certificate of competency as a coxswain, holds a local certificate of competency issued under the Local Certificate of Competency Rules and known as a Type Rating Certificate; and
- (b) on board a person in charge of the engines who, in addition to holding any other appropriate local certificate of competency as an engine operator, holds a local certificate of competency issued under the Local Certificate of Competency Rules and known as a Type Rating Certificate.

(2) If subsection (1) is contravened, the owner and the coxswain of the vessel each commits an offence and is liable on conviction to a fine at level 3 and imprisonment for 6 months.

54. 擁有權證明書、正式牌照、臨時牌照或  
閑置船隻允許書的複本

(1) 如——

- (a) 處長接獲任何本地船隻的船東或其代理人作出的申請，而該申請示明該“written”船隻的擁有權證明書、正式牌照、臨時牌照或閑置船隻允許書遭損毀、*in the English text?* 污損或遺失並令處長信納該情況；及
- (b) 訂明費用已獲繳付；

則處長可向該船東或其代理人發出上述證明書、牌照或允許書的複本。

(2) 根據第(1)款發出的每份證明書、牌照或允許書的複本上須在顯眼處批註有英文字“DUPLICATE”及中文字“複本”。

(3) 根據第(1)款發出的證明書、牌照或允許書的複本取代有關正本，而有關正本即不再有效，並且——

- (a) (如有關正本遭污損)須於根據第(1)款提出申請時將有關正本交還處長；或
- (b) (如有關正本遭遺失)須於尋回有關正本後盡快將它交還處長。

(4) 如證明書、牌照或允許書的正本在無合理辯解的情況下沒有按第(3)款的規定而交還，有關本地船隻的船東及其代理人每人均屬犯罪，一經定罪，可處第3級罰款。

Should “書面” be added here to reflect the meaning?

English text?

Alternatively, amend the

English text to make

both

texts

match.

55. 豁免權；不保證資料正確

(1) 如任何錯誤或遺漏是在正常執行本規例所訂職能過程中出於真誠而犯的，不得就任何人因該項錯誤或遺漏所蒙受的損失或損害而針對政府、處長或任何其他人員提起訴訟。

(2) 在不限制第(1)款的一般性的原則下——

- (a) 現宣布根據本規例的條文或本條例第 66 條發出、給予、續期或批註的擁有權證明書、正式牌照、臨時牌照、閑置船隻允許書或任何其他文件均是僅為本條例的施行而發出、給予、續期或批註的，而——
  - (i) 處長不得視作保證該等文件所載任何資料正確；及

Since the English text refers to “this Regulation”, there is no need to include “的條文” in the Chinese text.

54. Duplicate certificate of ownership, full licence, temporary licence or permission for a laid-up vessel

(1) The Director may—

- (a) on written application made by the owner of a local vessel or his agent, showing to the Director’s satisfaction the destruction, defacement or loss of any certificate of ownership, full licence, temporary licence or permission for a laid-up vessel in respect of the vessel; and
- (b) on payment of the prescribed fee,

issue to the owner or his agent a duplicate of the certificate, licence or permission.

(2) Every duplicate certificate, licence or permission issued under subsection (1) shall be clearly endorsed in a conspicuous place with the English word “DUPLICATE” and the Chinese characters “複本”.

(3) A duplicate certificate, licence or permission issued under subsection (1) shall supersede the original which shall cease to have effect and shall be returned to the Director—

- (a) if the original is defaced, on the making of an application under subsection (1); or
- (b) if the original is lost, as soon as it is found.

(4) Where without reasonable excuse an original certificate, licence or permission is not returned as required by subsection (3), the owner of the local vessel concerned and his agent each commits an offence and is liable to a fine at level 3.

55. Immunity; no warranty as to correctness of information

(1) No action shall lie against the Government, the Director or any other officer in respect of any loss or damage suffered by any person as a result of any error or omission that was made in good faith and in the ordinary course of the performance of any function under this Regulation.

(2) Without limiting the generality of subsection (1)—

- (a) it is declared that a certificate of ownership, full licence, temporary licence, permission for a laid-up vessel or any other document issued, granted, renewed or endorsed under this Regulation or section 66 of the Ordinance is issued, granted, renewed or endorsed for the purposes of the Ordinance only; and—

(i) the Director shall not be taken to warrant the correctness of any information contained in the document; and