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9 March 2004

Dear Ms Fung,

**Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation
("Regulation")**

Thank you for your letter of 4 March. Our views are set out below-

Appeal

- (a) The powers vested in the Director of Marine under sections 4(6) to (8) may only be invoked under specific conditions which are clearly defined in law (e.g. when the presence of a vessel is likely to cause hazard in the typhoon shelter owing to its size or design, or because of the number of vessels in the typhoon shelter). The powers are fairly restrictive and are unlikely to be subject to abuse or excessive use. The decisions to be made by the Director of Marine under these subsections do not amount to determination of civil right and obligation. These provisions, as drafted, conform with human rights principles.

Section 4(8) is modeled on section 5(3) of the existing Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313D), but has been improved with clearly spelt out conditions under which the Director's power can be invoked. Under existing Cap. 313D, provisions which mirror sections 4(7) and (8) in the Regulation do not provide for any appeal mechanism.

Consequential amendments

- (b) We are now drafting the Local Vessels (Miscellaneous Provisions) Bill to incorporate consequential amendments to other Ordinances and subsidiary legislation affected by Cap. 548 and its subsidiary legislation. Amendments to Regulation 17 of Cap. 295C and Schedule 1 to Cap. 499 will be included in the Bill, along with other necessary consequential amendments. This Regulation will not commence until the above-mentioned Bill is enacted.

Chinese text of section 4(5)

- (c) In the Chinese language, we seldom repeat a long expression when the expression and the repeated expression are positioned too close to each other. The usual drafting convention is to adopt a contracted form. To avoid being repetitious, we have chosen to use the contracted form “而行” for “進入避風塘或在其內停留”. In so doing, it is clear to readers that the same subject matter is being referred to. You may wish to note that this provision follows section 3(2)(b) of the Shipping and Port Control (Dwelling Vessels) Regulations (Cap. 313C), where no confusion has been caused.

Chinese text of section 12(4)

- (d) In the English text, “remains unexpired” qualifies “the period” but not the permit, direction or endorsement. It seems that “尚未屆滿” is more often associated with licences and permits. The existing version adequately reflects our intention.

There are instances in Hong Kong legislation in which the Chinese equivalents for “unexpired” is “餘下的” or “尚餘的”. You may refer to the Chinese text of section 36(1) of Cap. 524 and section 2(i) of Schedule 8 to Cap. 562.

Yours sincerely,



(Miss Florence Chan)

for Secretary for Economic Development and Labour

c.c. DoJ (Attn.: Ms Lonnie Ng)
MD (Attn: Mr. Y N Chan)

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