

立法會
Legislative Council

LC Paper No. LS7/06-07

**Paper for the House Committee Meeting
on 3 November 2006**

**Further Report by Legal Service Division on
four pieces of Subsidiary Legislation made under
the Merchant Shipping (Local Vessels) Ordinance (Cap. 548)
and gazetted on 6 October 2006**

In the report of the Legal Service Division (LSD) of 11 October 2006 (LC Paper No. LS3/06-07) on the above subsidiary legislation, it was reported that clarification on certain drafting points was being sought from the Administration. The Administration has since provided its reply in its letter to LSD dated 31 October 2006. The letter from LSD dated 17 October 2006 and the Administration's reply are attached respectively as **Annex I** and **II** for Members' perusal.

2. The Administration is further considering some drafting points which LSD wishes to pursue. Since the first period of 28 days will expire after the sitting of LegCo held on 8 November 2006, it is recommended that the scrutiny period for the above subsidiary legislation be extended by resolution to 29 November 2006 pursuant to section 34(4)(a) of the Interpretation and General Clauses Ordinance (Cap. 1) to allow the Administration time to consider whether any amendment is necessary.

Encl.

Prepared by

KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
2 November 2006

LS/S/1/06-07

Annex I

LS/S/1(1)/06-07
2869 9467
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Secretary for Economic Development and Labour
Economic Development and Labour Bureau
(Attn: Mr Frederick W S YU
AS (Port, Marine & Logistics)1)
Room 3801, 38/F
Exchange Square Two
Connaught Place
Central, Hong Kong

By Fax (2523 0030)

17 October 2006

Dear Mr YU

Merchant Shipping (Local Vessels) (General) Regulation
Merchant Shipping (Local Vessels) (Safety and Survey) Regulation
Merchant Shipping (Local Vessels)
(Compulsory Third Party Risks Insurance) Regulation
Merchant Shipping (Local Vessels) (Works) Regulation

I am scrutinizing the captioned Regulations with a view to advising Members of the Legislative Council on their legal and drafting aspects.

My observations on the Regulations are set out in the attached schedule for your consideration. I would be grateful if you would let me have the Administration's reply at your earliest convenience, so that our Division may decide whether a further report to the House Committee is necessary.

Yours sincerely

(KAU Kin-wah)
Assistant Legal Adviser

Encl (8 pages)
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Schedule

Merchant Shipping (Local Vessels)(General) Regulation

Section 2

- (a) Many of the definitions of terms or expressions in the section are in fact references to areas of waters specified in the respective schedules of SAPCR. However, the definitions do not cover all the terms or expressions used in the Regulation, e.g. the reference to the Fairways. Please consider adding a subsection to section 2 to the effect that terms or expressions defined or specified in the SAPCR shall have the same meaning when used in the Regulation, so that all terms and expressions used will be covered.
- (b) Please consider adding a definition of “Hong Kong Garrison” which has not been defined and is used in sections 16, 22(2)(k) and 23(2)(b).

Section 4(5)

Please clarify how a concerned person could determine whether a certificate of registry is similar or equivalent in effect to a certificate of registry granted under the Merchant Shipping (Registration) Ordinance (Cap. 415).

Section 8(1)

- (a) Please clarify whether the 182 days need to be consecutive and uninterrupted.
- (b) The subsection seems to suggest that if the vessel is free to navigate in the waters of Hong Kong on and after the 183rd day of remaining in Hong Kong. Please clarify.

Section 8(2)

It seems that a vessel is always either on its way to its berth or is departing the waters of Hong Kong. The subsection seems to have negated the effect of subsection (1). Please clarify the legislative intent of this section.

Section 9(2)

The subsection has the unwitting effect that a local vessel which is not a high speed craft may exceed the 15 knots speed limit during the specified hours. Please consider whether the reference to high speed craft is really necessary.

Section 9(6)

The fine imposed may be too lower to penalize an aggravated case of speeding.

Section 85(7)

The offences described are unlikely to have been committed inadvertently or under any unavoidable circumstances. It is therefore questionable whether a defence of having taken all reasonable preventive measures should be available.

Section 88(9)(d)

“Civil works” has not been defined. It is not clear what are counted as civil works.

Section 91(1)

The present drafting seems to suggest that the delivery of bunker from a vessel that is not a local vessel to a local vessel would not be an offence for both. Please clarify whether this is the legislative intent.

Schedule 2 paragraph 2(d)(i)

The three Fairways have not been defined in the Regulation. Please consider adding a definition for each of the Fairways, or alternatively as above suggested adding a subsection to section 2 to the effect that terms or expressions being areas of water specified in the SAPCR shall have the same meaning when used in the Regulation.

Chinese Version

Section 2

“到達”

- (a) “At anchor” is rendered in this definition as “碇泊”, but in other subsidiary legislation, it is rendered as “錨泊”. Please consider whether there is need to maintain consistency in the Chinese rendering.
- (b) Since the corresponding English word is placed alongside the twice appearing “到達”, it seems that the additional words in Chinese indicating the nature of the phrase may be omitted.

Sections 3(1) & 40(1),

按中文行文的習慣，在“24 小時”後似應加入“內”，語氣方為完整。請考慮。

Section 5(3)

若把“送達”移至“第(2) 款”後，“就”一字似可省略。

Section 11(1)(a)

“屬人數足夠”似可代以“足夠人數”。

Section 11(1)(b)

“在”和“下屬”似皆可刪去，而在“足夠裝備”前加一“的”字似更合中文習慣，語意也較清晰。

Section 37(1)(b) & (2)(b)

“Clear atmosphere” has all along been rendered as “清朗” in other legislation, e.g. sections 37, 39, 40, 59 and 68 of Cap. 313A and section 7 of Cap.353A. Here it is rendered as“高能見度”. It does not seem to be a literal rendering of the English phrase. Please clarify.

Section 59(1)

“儘量”一詞似並無在英文版中出現。加增該詞使中文版的意思的強制性較弱，因而與英文版略有出入。請考慮是否可省略該詞。

Merchant Shipping (Local Vessels) (Safety and Survey) Regulation

Section 19(5)

There does not appear to be any sanctions for non-compliance with the direction. Please clarify.

Section 22(2)

Please clarify whether allowing the surveyor to decide whether to submit a declaration of survey would have any impact on the ability of the Director to monitor the most update conditions of a local vessel and the prompt exercise of his powers to prevent any hazard from occurring.

Section 23(1)

The legislative intent is clear but there is nothing in the subsection to suggest that another document submitted by the authority has anything to do with the survey that it has carried out. Please consider making clear the nature of the “another document”.

Section 27(1)(b)

The paragraph appears to contradict what is stated at the beginning of subsection (1). Please clarify.

Section 71(3)

The situation described in paragraph (b) may suggest foul play. No only no sanction is imposed but the owner is in fact favoured with non-payment of prescribed fees. Please clarify how such situation could legitimately arise. Please also clarify how the situation described in subsection (1) would normally arise.

Section 79(3)

In respect of Class II vessels not fitted with any propulsion engine, it seems strange that the owner and coxswain of the vessel towing those vessels are not subject to any sanction. Please clarify.

Section 80

Please clarify whether any approval of plan, issue of certificate or report in respect of the vessels specified in subsection (1) will include the compliance with the requirements of this section.

Section 86(1)

Please move “temporarily” in paragraphs (a), (f), (g), and (k) to immediately after “withholding”. The present drafting has the meaning that the refusing to issue is only temporarily, which is not at all the case.

Section 86(1)(h)

The close bracket is missing at the end of the paragraph.

Section 86(2)

The date from which the 14 days are to be counted is uncertain. Please consider making it clear which of the dates should be the latter date from which the 14 days are to be counted. Please also consider replacing “after 14 days” with “later than”.

Schedule 1 Note (5)

Please clarify to what class of vessel a kitchen boat, which is not a new vessel, belongs.

Schedules 3 & 4

The Tables in the Schedules frequently have the provision that quantity, type, location, arrangement &etc. shall be in accordance with the relevant plans approved under Part 3 of the Regulation. However, Part 3 does not contain any specific provisions on those matters. Please clarify what standards or regulations that the plans must follow and whether they are legal requirements or only so indirectly through the plan approval procedure.

Schedule 4 Part 1 item 2(5)(b)

Judging from the Chinese version, it seems that “any space” should perhaps rather be “a space”. “Any space” in the context could mean every space in the vessel and it follows that the requirement of the one portable fire extinguisher being placed near the entrance to the space cannot be complied with.

Schedule 4 Part 2 Table 2 Note (1)

Please clarify whether the stipulation in Note (1) is an exception to the provisions in Table 4 in respect of kitchen boats.

Schedule 8

Section 6(3)

Present drafting seems to suggest that the continuing application of regulation 45C of the repealed Miscellaneous Craft Regulations is not limited in time. The legislative intent must, however, be that such application will continue only until the expiry of the assignment of freeboard certificate issued under regulation 45B(2)(b). Please consider making this clear.

Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation

Section 1

The words “except in so far as it relates” appears to render the meaning of the section

unclear. The purpose of the section is to specify the relevant commencement date. Since section 1 of the Merchant Shipping (Local Vessels and Miscellaneous Amendments) Ordinance 2005 (24 of 2005) is so drafted that there will not be a commencement date specifically appointed for section 9 so far as it relates to the new section 23B(1)(c), it seems that the words “in so far as it relates” may be replaced by “as relating”.

Section 2

General

Terms and expressions, e.g. “Class I vessel” specified or defined in other regulations are not defined in the Regulation. Please consider adding a provision to the effect that terms or expressions defined or specified in relevant subsidiary legislation made under Cap. 548 shall have the same meaning when used in the Regulation.

Part 3

General

The provisions in this part do not seem to have contemplated that the third party risks insurance could as in the case of motor insurance be part of a “comprehensive” insurance policy in respect of a local vessel. Please clarify (a) whether a separate self-standing policy of insurance must be issued in respect a local vessel for the purposes of Part VA of Cap. 548 and (b) whether the third party risks insurance could be part of a master insurance policy or an insurance policy covering other risks, e.g. fire or theft.

Section 15

Please clarify how is a certificate of insurance is to be duly authenticated prior to issue by an authorized insurer.

Section 17

- (a) “Void” could have the meaning of void *ab initio*. Subsection (2) and (3) suggests that it is not so intended. If that is the case, please consider adding a “for the avoidance of doubt” provision to make this beyond doubt.
- (b) Subsection (1) puts a policy holder to election. If he does nothing, then it seems that the policy already issued by the approved insurer whose approval as such insurer has been suspended or revoked will continue to have effect and be binding on the parties. Please confirm that this is the effect of not giving notice under subsection (2) to the insurer.

Section 18

Subsection (3) seems to suggest in this case the policy becomes void *ab initio*. Please clarify whether the insurer is liable for any claims by the policy holder for events arising before the service of the notice in accordance with subsection (2). If not, a policy holder would put himself at risk if he serves such notice. Please clarify whether this accords with the Administration’s legislative intent.

Section 22(1)

The deeming under the subsection appears to be absolute. Its effect seems to be that a protection and indemnity association being an approved insurer under section 107B(2) of Cap. 281 is to be grandfathered from the provisions of the Part 2 of the Regulation. Consequently, the Director would not be able to exercise his power under section 7 or 8 in respect of such insurers. Please clarify whether this is the Administration's legislative intent. It may be preferable to limit the deeming for the purposes of the unexpired certificates of insurance referred to in subsection (2).

Chinese version

Section 20

請考慮是否需在“高級人員”後，重複“的同意或縱容而犯的”。現在的草擬方式似乎把這兩部份字句分隔過遠，以致其接續關係不大清晰。

Merchant Shipping (Local Vessels) (Works) Regulation

General

- (a) The current definition of “the person in charge of works” appears to allow more than one person to be in charge of works, e.g. the principal contactor that supplies the appliance and carries out the work through its subcontractor and the subcontractor that supplies the labour and carries out the work, and the owner or coxswain having control of the vessel. Please clarify whether it is intended that all such person are responsible and will be held liable. If not, please clarify the legislative intent and whether further provisions need to be added to make clear such intent. In view of the likelihood of uncertainty as to the person in charge of works arising, please consider whether it will help to clarify the line of accountability by imposing a statutory obligation to appoint a “person in charge of works” for works carried out on a local vessel.
- (b) A number of sections contain provisions to the effect that the requirements of the section would not be applicable if it is safe or the requirements are unnecessary, e.g. section 4(7), 6(7), 14(4), 58(3) and 59(2). All such provisions require some degree of subjective judgment and a judgment different from that of the Director may result in criminal liability. Please clarify whether the Director will provide guideline or practice directions to assist persons in charge to arrive at the appropriate judgment.
- (c) Please clarify whether the criminal liability of the person in charge of works is strict liability. If not, please clarify whether due delegation by the person in charge of works to works supervisors would discharge his duty under the statute and a complete defence to a charge under, for example, section 21(3).

Section 7

Holds only refer to spaces for storage of goods under the deck of a vessel. Please clarify whether there is any need to have provisions covering other spaces below deck.

Section 10

The provision is technically sufficient to cover fume resulting from smoking cigarettes or other products of tobacco. Please clarify whether smoking should be prohibited in all work places and parts of a local vessel so as to comply with the requirements of this section.

Sections 30(2) & 31(1) and (3)(a)

The end effect of section 31(1) and (3)(a) reading together appears to render section 30(2) superfluous. Please clarify whether section 30(2) still serves any purposes.

Sections 33(1) & 34(1)

Please clarify the difference between “thoroughly examined” and “inspected”.

Section 57(4)

The requirement has no time specification. Please clarify the legislative intent and consider whether any modification is required.

Section 60(1)

Please clarify what staging is considered adequate.

MA 70/18, MA70/16, MA 70/9,
MA 70/14

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31 October 2006

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By Fax: 2877 5029

Dear Mr. Kau,

Merchant Shipping (Local Vessels) (General) Regulation
Merchant Shipping (Local Vessels) (Safety and Survey) Regulation
Merchant Shipping (Local Vessels)
(Compulsory Third Party Risks Insurance) Regulation
Merchant Shipping (Local Vessels) (Works) Regulation

I refer to your letter of 17 October and set out our response to your questions at the attached schedule. Please contact us if you have further enquiries.

Yours sincerely,

(Frederick YU)
for Secretary for Economic Development
and Labour

Encl. (13 pages)

Schedule

Merchant Shipping (Local Vessels) (General) Regulation ("General Regulation")

Section 2

- (a) Most of the terms used in the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) ("SAPCR") which are relevant to the interpretation of the General Regulation have been defined in section 2 or the relevant sections of the General Regulation. The three specific Fairways specified in Schedule 2 of the General Regulation are referred to as "principal fairways", and the term "principal fairway" is defined in section 2 of the General Regulation by reference to the SAPCR, where the boundaries of those 3 fairways are specified. The 3 specific fairways can therefore be identified without uncertainty.
- (b) The term "Hong Kong Garrison" is used in other legislation without a definition. Given the uniqueness of the term, it is unlikely that misinterpretation will arise. We consider it inappropriate to create a definition of "Hong Kong Garrison" only for the General Regulation.

Section 4(5)

A certificate of registry is the vessel's identity document issued by the relevant government authority where the vessel is registered. A certificate of registry normally contains the particulars of the ship, such as its name, type, tonnage, length, breadth, power, engine type, year and place of built and ownership.

The coxswains of a vessel would possess the necessary knowledge with regard to the contents of a certificate of registry or its equivalent. In any case, if the coxswain is in doubt, he may clarify with the Marine Department before proceeding into Hong Kong waters.

Section 8(1)

- (a) The "182 days" in the section refers to the total number of days that a vessel remains in Hong Kong waters, which does not need to be consecutive or uninterrupted.
- (b) After "182 days" of remaining, the vessel is required to comply with Part IV of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) ("LVO") to apply for the certificate of ownership and operating licence for remaining in Hong Kong waters.

Section 8(2)

Section 8(1) provides that except with the permission of the Director of Marine (“the Director”), a local vessel which is a pleasure vessel from a place outside Hong Kong and which does not remain in the waters of Hong Kong for more than 182 days out of 365 consecutive days shall not navigate in the waters of Hong Kong.

Section 8(2) set out the conditions where section 8(1) does not apply, that is, where the vessel is on its way to its berth immediately after its entry into the waters of Hong Kong or departing the waters of Hong Kong. Where the vessel navigates within the waters of Hong Kong on any other occasion after it has left its first berthing since that entry, section 8(1) shall apply.

The legislative intent of section 8(1) and section 8(2) is to prohibit a pleasure vessel that falls under the description of section 8(1)(a) and section 8(1)(b) from navigating in Hong Kong waters except when it is approaching a berth right after entering Hong Kong waters or departing the waters of Hong Kong.

Section 9(2)

Section 9(1) and Schedule 2 of the General Regulation impose the general speed limits for local vessels in specified areas. In the light of the high speed of a high speed craft and the fact that it is mostly used as a passenger carrying vessel in the waters of Hong Kong, section 9(2) seeks to impose a further limit on the speed of a high speed craft within specified hours in areas other than those specified in Schedule 2. Section 9(2) is in line with the existing requirement stipulated in regulation 19(1) of the SAPCR.

Section 9(6)

The proposed fine level draws reference to regulation 19(5)(b) of the SAPCR for regulating speeding of vessels. According to our record, there were 31 cases of conviction of the offence during the 3 year period from 2003 to 2005. We therefore consider the existing penalty level provided is sufficient. In addition, if a person endangers the safety of any other person in the sea by breaching the relevant speed limit, he may be prosecuted under section 32 of the LVO and is liable to a maximum penalty of a fine of \$200,000 and 4 years’ imprisonment.

Section 85(7)

Section 85(7) provides a defence for an offence under sections 85(5) or 85(6) which may be committed by the owner or agent of a local vessel.

It is considered the defence should be made available to the owner or agent of a local vessel who is not directly involved in the loading or unloading of log or timber but has done everything he can do to avoid commission of the offence.

Section 88(9)(d)

Section 88(9)(d) models after regulation 66B of the SAPCR where the term “civil works” is used without a definition. It appears that the use of the term has not caused any enforcement problem. The term "civil works" is generally understood to mean civil engineering works, particularly in the civil engineering field. In addition, the term is also used under the definition of "railway work" in section 2 of Eastern Harbour Crossing Ordinance (Cap. 215) without a definition. We consider that the term can be interpreted by reference to its ordinary meaning.

Section 91(1)

The purpose of section 91 is to control bunkering activities involving a local vessel. Meanwhile, regulation 45(1) of the SAPCR prohibits a vessel to lie alongside any other vessel which is berthed anywhere in a port. By prohibiting a vessel to lie alongside another vessel, regulation 45(1) of SAPCR can effectively prohibit bunkering activities between a non-local vessel and any other vessel.

Schedule 2, paragraph 2(d)(i)

Please see paragraph (a) of our reply to section 2 above.

Chinese version

Section 2

- (a) The term "at anchor" is rendered both as “碇泊” and “錨泊” in the existing laws of Hong Kong. But since there is no appearance of “錨泊” in the subsidiary legislation of LVO, we do not have the immediate consistency concern. It is decided to use “碇泊” rather than “錨泊” as the latter conveys a narrower usage confining to the “use of an anchor” while the former one can be more flexibly applied without that confinement. We would adopt the rendition of “碇泊” for a similar context in the future in the LVO.
- (b) As a matter of format and practice, the Chinese term is normally kept in the brackets with its English counterpart “in pairs” to facilitate the necessary comparison in reading. For your reference, an example

is also found in section 2 of the Land Titles Ordinance (Cap. 585) in the term "register".

Sections 3(1) & 40(1)

The English text of section 3(1) and section 40(1) reads that “..... not later than 24 hours after ...” and not “... within 24 hours ...” in which case “在24小時內” would be used. We therefore consider the existing rendition is accurate.

Section 5(3)

Section 5(3) of the English text reads that “... is served ... in respect of a pleasure vessel ...” which is framed in the structure of “... 就...的遊樂船 ... 送達 ...”. If the word “就” is omitted, then “in respect of” will not be properly rendered. We therefore consider the existing rendition is accurate.

Section 11(1)(a) and 11(1)(b)

We are of the view that the two queries with respect to section 11(1)(a) and section 11(1)(b) should be considered at the same time. In the English text, the words “... having regard to ...” qualifies both paragraphs (a) and (b), therefore it is considered “... 在顧及 ... 下”+ “屬” in the Chinese text can more aptly correspond to the English text.

Section 37(1)(b) & (2)(b)

We rendered “清朗” for the term “clear atmosphere” in the past, but we have since improved the rendition to “能見度高” as it is considered that the term “能見度高” renders a more accurate meaning in the context. To elaborate, the words “清朗” will not be used if the air contains unpleasant odour, although the atmosphere can still be clear. On the other hand, “能見度高” conveys a more neutral meaning relating to “visibility” only. We would adopt the new rendition in the LVO in the future for a similar context.

Section 59(1)

The laws of Hong Kong frequently render “so far as practicable” as “在切實可行的範圍內盡量” (please see regulation 6 of SAPCR, regulation 6 of the Factories and Industrial Undertakings (Woodworking Machinery) Regulations (Cap. 59G) and regulation 7 of the Building (Demolition Works) Regulations (Cap. 123C)). In addition, we consider that without the words “盡量” the meaning of “so far as” will not be completely reflected in the Chinese text.

Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (“Safety and Survey Regulation”)

Section 19(5)

According to section 19(3), a Certificate of Inspection (CoI) may be subject to such reasonable conditions or restrictions as the Director or competent surveyor may impose and section 19(6) provides that a certificate shall be in the specified form.

It will be a condition in the CoI that an owner of a Class IV vessel or his agent is required to deliver the CoI to the Director or competent surveyor if directed to do so under section 19(5). If the CoI is not delivered to the Director or the competent surveyor in accordance with such direction, it will be a contravention of a condition imposed under section 19(3). In this case, the Director may suspend or cancel the CoI under section 28(2)(a)(vi).

Section 22(2)

The provision will not affect the Director’s power to monitor the most updated conditions of a local vessel because the Director monitors the conditions of a local vessel through the issue of certificate of survey.

According to section 24(1), the Director will issue a certificate of survey and hence allow the local vessel to operate if he considers the information stated in the declaration of survey submitted according to section 22(2) shows that it is fit for service intended and in good condition. If a competent surveyor considers it is not appropriate to submit a declaration of survey, the vessel will not be able to obtain a certificate of survey and operate in the waters in Hong Kong.

Section 23(1)

In section 23(1), “another document” means a document that is equivalent to a declaration of survey. We consider the existing text has reflected the policy intent clearly.

Section 27(1)(b)

This is to cover the case where a local vessel has already had a current CoI issued in respect of it and is surveyed before its current CoI (i.e. the certificate ‘in force’) expires. Under section 27(1)(b), the validity period of the renewed CoI will start to run from the expiry date of the current certificate for a period specified in the certificate, which in any event will not exceed 12 months from the expiry date of current certificate.

Section 71(3)

If a Class IV vessel is solely used for private leisure, it is required to hold an operating licence only (which can be obtained without inspection and whereby the number of passengers contained therein is provided by the vessel owner subject to a builder or stability document indicating the safe carriage of such number passengers). However, if the vessel is to let for hire or reward, a certificate of inspection will be required. To issue the certificate of inspection, the Director will determine the number of passengers the vessel is allowed to carry based on the material considerations. A vessel initially used for private leisure may subsequently be used for hire or reward. As such, the Director will have to determine the number of passengers that the vessel is allowed to carry when issuing the certificate of inspection or certificate of survey. It is possible that the number of passengers that the Director specifies in the certificate of inspection or certificate of survey is different from that contained in the operating licence.

Section 71(1) will therefore apply when the number of passengers that a local vessel may carry as shown in its existing operating licence is different from that contained in the certificate of inspection or certificate of survey. Section 71(2) further prescribes that the owner of the local vessel concerned has to return the operating licence to the Director for the issue of a new licence so that the number of passengers that is specified in the in the operating licence will tally with that specified in the certificate of inspection or the certificate of survey. The purpose of section 71(3) is to specify the amount of fees that an owner of local vessel should pay for the issue of a new operating licence as a result of section 71(2).

Section 79(3)

Sections 79(1)(b) & 79(2)(b) specify the types of vessels which are not permitted to ply beyond Hong Kong waters and the owner or the agent shall commit an offence if the vessel is towed outside Hong Kong. We consider it sufficient to penalize the owner and coxswain of a Class II vessel which is prohibited from plying beyond Hong Kong waters but not the owner and coxswain of the vessel towing it. In fact, for the past three years, no prosecution has been filed for a vessel without propulsion engine being towed outside Hong Kong waters.

Section 80

By virtue of sections 9(1)(l) and 18(2)(a) of the Safety and Survey Regulation, if a vessel is equipped with radar, it is subject to inspection at the plan approval stage and survey for the issue of a certificate of inspection or certificate of survey, which shall carry the major particulars

and the essential items which are directly related to safety. The approval of plan and the issue of certificate will require compliance with the requirements set out in section 80.

Section 86(1)

Section 86(1) sets out that a person may appeal to the Administrative Appeal Board if he is aggrieved by a decision made by the Director of the provisions in section 86(1)(a) to 86(1)(l). As such, the subject of which an aggrieved person will appeal against is the specific decision made under the relevant substantive provision.

Section 86(1)(h)

We note that a close bracket is missing and will amend the regulation accordingly when we next review the Regulation.

Section 86(2)

According to the present section 86(2), after 14 days after the date on which the person aggrieved has received notice of the decision or he otherwise comes to know of it, he cannot make an appeal. In other words, the 14 days period will start to run either when the person aggrieved (i) has received notice of the decision or (ii) he otherwise comes to know of it. Therefore, we consider the date from which the 14 days are to be counted is sufficiently clear.

Schedule 1 Note (5)

A kitchen boat, which is not a new vessel, is classified as a stationary vessel of Class II according to Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D) (“Certification and Licensing Regulation”).

Schedule 3 & 4

Under the section 8 of the LVO, the Director may issue code of practice (CoP) as practical guidance. With the implementation of the LVO, two CoPs will be issued that specifies, among other things, the relevant provisions that set out the quantities, types, locations and arrangements that are prescribed in the tables of Schedule 3 and 4. We have consulted Provisional Local Vessels Advisory Committee on the details of the CoPs which contain applicable technical and safety standards for various vessels and obtained their support. These safety standards will be followed for plan approval and ship survey.

Schedule 4 Part 1 item 2(5)(b)

Schedule 4 Part 1 item 2(5)(b) reads that

“All portable fire-fighting apparatus (other than the firemen’s outfits) carried on board a local vessel shall be –

- (a) arranged in accordance with the relevant plans approved under Part 3 of this Regulation; and
- (b) placed in a position where they will be easily accessible from the spaces in which they are intended to be used and, in particular, one of the portable fire extinguishers intended to be used in any space shall be placed near the entrance to that space.”

In this context, at least one portable fire extinguisher shall be placed at somewhere near the entrance of any space where fire extinguishers are intended to be used. We consider the English text is sufficiently clear and there is no discrepancy in the meaning between the English text and the Chinese text.

Schedule 4 Part 2 Table 2 Note (1)

Schedule 4 Part 2 Table 2 Note (1) prescribes that a fire pump on board a floating restaurant shall be capable of delivering at least one jet of water to the kitchen boat if no independent fire pump is installed on a kitchen boat while Schedule 4 Part 2 Table 4 Note (2) sets out that if the fire main installed on the floating restaurant is extended to the kitchen boat, then the requirement for a floating kitchen to have a fire pump maybe waived.

Schedule 4 Part 2 Table 2 Note (1) and Schedule 4 Part 2 Table 4 Note (2) have effectively the same implication. As such, the stipulation in Schedule 4 Part 2 Table 2 Note (1) is not an exception to the provisions in Table 4 in respect of kitchen boats.

Schedule 8

Section 6(3)

The Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 313 sub. leg. F) (“repealed Miscellaneous Craft Regulations”) will be repealed according to section 91(1) of the LVO upon its commencement. As such, no new assignment of freeboard certificate (FA certificate) would be issued under section 45C of the repealed Miscellaneous Craft Regulations after the LVO come into operation.

Under Schedule 8 section 6(3), a FA certificate issued under the repealed Miscellaneous Craft Regulations before the commencement of LVO shall continue to apply to the vessel concerned until its expiry. As new FA certificates would be issued according to requirements of the Safety and Survey Regulation after the commencement of LVO, this section will be of no use when all existing FA certificates issued under the repealed Miscellaneous Craft Regulations expire.

Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation
(“Compulsory Third Party Risks Insurance Regulation”)

Section 1

The words "except in so far as it relates" echo with the wording used in section 1(3) of the Merchant Shipping (Local Vessels and Miscellaneous Amendments) Ordinance (No. 24 of 2005) ("Miscellaneous Amendment Ordinance"). This Regulation provides for the detailed technical and procedural requirements relating to new Part VA of the LVO. Hence, the commencement date should be linked with section 9 of the Miscellaneous Amendment Ordinance which adds the new Part VA into the LVO. As there are two commencement dates for section 9, it is logical to use the wording "except in so far as it relates" to exclude the date specified under section 1(3) of the Miscellaneous Amendment Ordinance.

Section 2

General

Section 2 of the Regulation provides that “class” has the meaning assigned by section 2(1) of the Certification and Licensing Regulation. Section 2(1) of the Certification and Licensing Regulation provides that "class" means a class of local vessel specified in column 1 of Schedule 1 of that Regulation. "Class I vessel" should be construed in accordance with this definition. We consider there is no ambiguity and it is not necessary to provide a definition.

Part 3

General

- (a) There is no requirement that a separate self-standing policy of insurance must be issued in respect a local vessel for the purposes of Part VA of LVO.

- (b) It is acceptable that the third party risks insurance become part of a master insurance policy, which may cover other liabilities, provided that the third party death and injury liability coverage is stated explicitly and unambiguously and that it meets the minimum amount specified by the Director for the vessel concerned.

Section 15

According to section 13 of the Compulsory Third Party Risks Insurance Regulation, when an authorized insurer issues a policy of insurance for the purposes of the LVO, he shall at the same time issue with it a certificate of insurance, the format of which is set out at the Schedule of the Regulation. To authenticate the certificate of insurance, an authorized insurer is required to sign on the certificate by ascertaining that the contents required in the certificate of insurance is the same as those contained in the policy of insurance.

Section 17

- (a) In the text, "void" simply means having no legal effect and does not imply "void ab initio". In the Chinese text, "void" is rendered as "無效" and does not have any implication of "void ab initio". It accords with the legislative intent in section 17(2) and (3) and we consider the meaning is sufficiently clear.
- (b) We confirm that if a policy holder does not give notice under section 17(2), the policy will continue to have effect and be binding on the parties.

Section 18

Section 18 is modelled on section 6A of the Insurance Companies Ordinance (Cap.41). According to section 18(3), if the policy holder opts to void the policy in pursuant to section 18(1), he will be entitled to recover any consideration paid by him under the policy and the policy concerned will have no legal effect. Upon the service of the notice in accordance with section 18(2), the insurer will not be liable for claims by the policy holder for events arising before the service of the notice. The policy holder could choose to enforce the policy to avoid putting himself at risk. This section accords with our legislative intent.

Section 22(1)

Section 22(1) deems a protection and indemnity association that was an authorized insurer approved under the Merchant Shipping Ordinance (Cap.281) to be an insurer approved under section 5 of the Compulsory Third Party Risks Insurance Regulation. Hence, section 22(1) has the

effect of putting the protection and indemnity association approved under the Merchant Shipping Ordinance in the same position as those approved under section 5. In that way, the protection and indemnity associations approved under the Merchant Shipping Ordinance will be subject to the same provisions in Part 2 as any insurer approved under section 5.

We therefore consider that the Director would be able to exercise his power under sections 7 and 8 in respect of such insurers.

Chinese version

Section 20

It is clear from the sentence structure that “的同意或縱容而犯的” also qualifies “任何董事、合夥人、成員、經理、秘書或與該團體管理有關的其他高級人員”. It will not make sense if the former part is left dangling after “高級人員”. Section 19 of the Interpretation and General Clauses Ordinance (Cap.1) provides that an Ordinance shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit. Based on the above, we consider there is not any ambiguity in the provision and it is not necessary to make any amendment.

Merchant Shipping (Local Vessels) (Works) Regulation (“Works Regulation”)

General

- (a) It is possible that there are more than one “person in charge of works” (as defined in section 2 of Miscellaneous Amendment Ordinance) in a particular case, and in such case, it is our intention that all of them should be responsible because each of them exercises different levels of control over the work process and/or has the responsibility to monitor works. We do not consider it appropriate to impose a statutory obligation to appoint a “person in charge of works” for works carried out on a local vessel as it is our intention, as reflected in the existing definition of “person in charge of works”, to catch those who have control over works, not those who are merely “appointed”.
- (b) Objective criteria are already provided in sections 4(7), 6(7), 14(4), 58(3) and 59(2). For example, section 58(3) provides that the section does not apply to a process of unloading that is *completed*

within half an hour. It is a question of fact as to whether a particular case would be covered by those provisions.

In addition, the Director may issue codes of practice to provide practical guidance if necessary to assist persons in charge to arrive at the appropriate judgment.

(c) The liability of a person in charge of works is strict liability.

Section 7

Works that are carried out in any other places below the deck, e.g. void spaces, machinery spaces and cofferdam, will generally be covered by section 5(1) which provides for safe means of access to a “workplace”.

Section 10

Section 10(1) provides that effective and suitable arrangements shall be made for the adequate ventilation of every “workplace” and every other part of a local vessel to which a person employed is permitted or required to proceed in the course of his employment. In addition, section 10(3) provides that all practicable measures shall be taken to protect a person who is in a place mentioned in section 10(1) against inhalation of any fume, gas, vapour, dust or other impurity in the air that may be injurious to health.

To the extent that the prohibition from smoking is for the adequate ventilation referred to in section 10(1) or that such prohibition is made in the circumstances where inhalation of the smoke may be injurious to health, sections 10(1) and/or 10(3) may be relied on to prohibit smoking in work places in a local vessel.

Sections 30(2) and 31(1) and (3)(a)

Sections 30 and 31 provide for two different kinds of examinations.

Section 30 generally requires a lifting appliance to be "duly tested and examined" before it is used. A lifting appliance is "duly tested and examined" only if it is tested and examined in accordance with section 30(5). Particularly, section 30(2) requires a lifting appliance to be "duly tested and examined" within the 4-year period immediately preceding the day on which it is to be used again.

Section 31(1) generally requires another examination to be conducted in respect of a lifting appliance. Unlike a "test and examination" under section 30, an examination under section 31 need not be conducted in

accordance with section 30(5). Notwithstanding, the provisions in sections 2(5) and 2(6)(a) of the Regulation should be read with section 31 to determine whether a lifting appliance has been thoroughly examined.

If a lifting appliance has been "duly tested and examined" as required under section 30 and the test and examination is conducted within the 12-month period immediately before the appliance is used, by virtue of section 31(3)(a), an examination under section 31 need not be conducted in respect of the appliance before using the appliance.

Sections 33(1) and 34(1)

Under the Regulation, a lifting gear is "thoroughly examined" if the requirements under section 2(5) (as read with section 2(6)(a)) are satisfied. An "inspection" of a lifting gear would however involve visual inspection, carried out carefully by "competent person" as defined in section 2, to see, for example, if there is any damage or excessive wear and tear of the lifting gear.

Section 57(4)

Section 57(4) requires in general the replacement of hatch coverings on hatches of a local vessel after they have been removed from the hatches. Although no time is specified in section 57(4), the requirement in that provision must be complied with where reasonably practicable subject to the exceptions in section 57(1).

Section 60(1)

Whether adequate staging has been provided is a matter of fact.

The provision of any staging that is securely fenced and can effectively prevent the fall of persons employed from the skeleton deck; or the fact that the staging has sufficient strength to support the possible weight it may have to support, will have a bearing on whether or not adequate staging has been provided in a particular case.