

L.N. 195 of 2006**MERCHANT SHIPPING (LOCAL VESSELS) (COMPULSORY
THIRD PARTY RISKS INSURANCE) REGULATION****CONTENTS**

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MERCHANT SHIPPING (LOCAL VESSELS) (COMPULSORY THIRD PARTY RISKS INSURANCE) REGULATION

(Made by the Secretary for Economic Development and
Labour under section 89 of the Merchant Shipping
(Local Vessels) Ordinance (Cap. 548))

PART 1

PRELIMINARY

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of section 9 (except in so far as it relates to the new section 23B(1)(c)) of the Merchant Shipping (Local Vessels and Miscellaneous Amendments) Ordinance 2005 (24 of 2005).

2. Interpretation

In this Regulation—

“certificate of insurance” (保險證書) means a certificate of insurance issued for the purposes of section 13(1);

“certificate of ownership number” (擁有權證明書號碼), “class” (類別) and “type” (類型) have the respective meanings assigned to them by section 2(1) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D).

3. Application

This Regulation applies to local vessels to which Part VA of the Ordinance applies.

PART 2

APPROVAL OF, SUSPENSION AND REVOCATION OF APPROVAL OF, APPROVED INSURER

4. Application for approval as approved insurer

(1) Any protection and indemnity association may make an application in writing to the Director for approval to be an insurer for the purposes of the Ordinance.

(2) A protection and indemnity association that makes an application under this section shall furnish the Director with such information in such form as the Director may require for the purpose of determining the application.

(3) A protection and indemnity association shall notify the Director in writing of any change in the information furnished by it under subsection (2) within 14 days after the date of the change.

(4) A protection and indemnity association that contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 2.

(5) Any person who by virtue of section 20 is guilty of an offence under subsection (4) is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

5. Approval

(1) Upon application made by a protection and indemnity association under section 4, the Director may approve the protection and indemnity association as an insurer for the purposes of the Ordinance, subject to such conditions as he thinks fit.

(2) The Director shall not approve an application unless he is satisfied that the protection and indemnity association is a fit and proper body to be an insurer for the purposes of the Ordinance.

(3) If the Director approves a protection and indemnity association as an insurer for the purposes of the Ordinance, he shall notify in writing the protection and indemnity association and the Insurance Authority.

(4) If the Director refuses an application, he shall notify the applicant in writing of the refusal and the reasons for the refusal.

(5) For the avoidance of doubt, an approval granted under subsection (1) does not signify that an approved insurer is authorized to carry on any class or classes of insurance business under the Insurance Companies Ordinance (Cap. 41).

6. Change in information after approval

(1) An approved insurer shall notify the Director in writing of any change in the information furnished by it under section 4(2) within 14 days after the date of the change.

(2) An approved insurer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

(3) Any person who by virtue of section 20 is guilty of an offence under subsection (2) is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

7. Amendment of conditions

(1) Where the Director approves a protection and indemnity association as an insurer for the purposes of the Ordinance, he may, at any time thereafter, amend or revoke any condition subject to which the approval has been granted or impose new conditions.

(2) Where the Director amends or revokes any condition or imposes any new condition, he shall, by registered post addressed to the last known address of the approved insurer, give written notice of the amendment, revocation or imposition to the approved insurer and shall include in the notice a statement setting out the reasons for the amendment, revocation or imposition.

(3) The amendment, revocation or imposition shall take effect on the date of receipt by the approved insurer of the notice given under subsection (2) or on such later date, if any, as is specified in the notice.

8. Suspension or revocation of approval

(1) The Director may suspend or revoke the approval granted under section 5(1) of an approved insurer if he reasonably suspects that the approved insurer has failed to comply with—

- (a) any condition subject to which the approval has been granted; or
- (b) any provision of this Regulation or the Ordinance.

(2) The Director shall not, unless it appears to him that the interests of policy holders would otherwise be detrimentally affected, suspend or revoke the approval of an approved insurer without giving the approved insurer an opportunity to make representations (either orally or in writing or both) as to why the approval should not be suspended or revoked.

(3) If the Director suspends or revokes the approval of an approved insurer, he shall, by registered post addressed to the last known address of the approved insurer, give written notice of the suspension or revocation to the approved insurer and shall include in the notice a statement setting out the reasons for the suspension or revocation.

(4) If the Director suspends or revokes the approval of an approved insurer, he shall give written notice of the suspension or revocation to the Insurance Authority as soon as practicable thereafter.

(5) The suspension or revocation of the approval of an approved insurer shall take effect on the date of receipt by the approved insurer of the notice given under subsection (3) or on such later date, if any, as is specified in the notice.

(6) Subject to section 17, the suspension or revocation of the approval of an approved insurer—

(a) shall not affect the validity of any policy of insurance or certificate of insurance issued by the approved insurer and which is still in force at the time the suspension or revocation takes effect under subsection (5); and

(b) shall not affect the rights, liabilities or obligations of the approved insurer under sections 6, 10, 11, 12 and 16 and sections 23D, 23E, 23F, 23G, 23H and 23I of the Ordinance.

(7) The Director may rescind a suspension if it appears to him that it is no longer necessary for the suspension to continue.

9. Obligation of approved insurer on suspension or revocation of approval

(1) Upon receipt of a notice given under section 8(3), the approved insurer shall—

(a) cease to issue new policies of insurance for the purposes of the Ordinance; and

(b) cease to renew existing policies of insurance issued for the purposes of the Ordinance.

(2) As soon as practicable after receipt of a notice given under section 8(3), the approved insurer shall notify its policy holders insured for the purposes of the Ordinance of the suspension or revocation of the approval.

(3) An approved insurer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6.

(4) Any person who by virtue of section 20 is guilty of an offence under subsection (3) is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

(5) An approved insurer who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.

(6) Any person who by virtue of section 20 is guilty of an offence under subsection (5) is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

10. Appeal

(1) Any person who is aggrieved by a decision made in respect of him by the Director under section 5(1), 7(1) or 8(1) may, within 14 days after the day on which he is informed of the decision, appeal to the Administrative Appeals Board against that decision.

(2) An appeal made under subsection (1) shall not affect the operation of the decision that is appealed against.

PART 3

RECORDS AND CERTIFICATE OF INSURANCE

11. Records of insurance

(1) Every authorized insurer by whom a policy of insurance is issued for the purposes of the Ordinance shall keep a record of the following particulars relating to that policy—

- (a) the full name and address of the person to whom the policy is issued;
- (b) the description of the class and type of the local vessel to which the policy relates and, where known, the name and certificate of ownership number of the vessel;
- (c) the date on which the policy comes into force and the date on which it expires or ceases to have effect; and
- (d) the conditions subject to which the persons or classes of persons specified in the policy will be indemnified.

(2) The record mentioned in subsection (1) shall be preserved for 1 year from the date of expiry of the policy of insurance or the date it ceases to have effect.

(3) Every authorized insurer by whom records are required to be kept under subsection (1) shall, free of charge, furnish to the Director or the Commissioner of Police on request any particulars of the records.

(4) An authorized insurer who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 2.

(5) Any person who by virtue of section 20 is guilty of an offence under subsection (4) is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

12. Termination of policy

(1) Where to the knowledge of an authorized insurer a policy of insurance issued by him for the purposes of the Ordinance ceases to be effective without the consent of the person to whom it was issued otherwise than by effluxion of time or by reason of his death, the authorized insurer shall forthwith notify the Director and the Commissioner of Police of the date on which the policy ceased to be effective.

(2) Any authorized insurer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

(3) Any person who by virtue of section 20 is guilty of an offence under subsection (2) is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

13. Certificate of insurance

(1) When an authorized insurer issues a policy of insurance for the purposes of the Ordinance, he shall at the same time issue with it a certificate of insurance.

(2) A certificate of insurance shall be in the form set out in the Schedule and shall contain particulars of any conditions subject to which the policy of insurance is issued.

(3) A certificate of insurance shall specify in relation to the policy of insurance to which it relates—

- (a) the full name of the person to whom the policy is issued;
- (b) the class and type of the local vessel;
- (c) the name of the vessel insured, if any;
- (d) the certificate of ownership number of the vessel insured or, where the certificate of ownership number is not known, the description of the vessel;
- (e) the dates of commencement and expiry of the period of insurance;
- (f) the date of issue of the policy;
- (g) the name of the authorized insurer;
- (h) the policy number;
- (i) the number of the certificate of insurance;
- (j) the amount of the liability insured;
- (k) the persons or classes of persons specified in the policy as being entitled to have charge of the vessel; and
- (l) the circumstances in which the persons or classes of persons so specified in the policy will be indemnified.

(4) An authorized insurer who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

(5) Any person who by virtue of section 20 is guilty of an offence under subsection (4) is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

14. Display of certificate of insurance

(1) The owner, charterer (if any) and coxswain of a Class I vessel shall ensure that whenever the vessel is in use, the original of the current certificate of insurance relating to the vessel, or a copy thereof certified by the Director to be a true copy, is displayed on the vessel in a place where it is conspicuous and is easily legible.

(2) Any person who in compliance or purported compliance with subsection (1) displays on any local vessel—

(a) any document which is not the original of the current certificate of insurance of the vessel or not a copy thereof certified by the Director to be a true copy; or

(b) the original of the current certificate of insurance of the vessel or a copy thereof certified by the Director to be a true copy that has been falsified in any material particular,

commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(3) The owner, charterer (if any) or coxswain of a Class I vessel who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 1 month.

(4) Where a certificate of insurance ceases to be current during the period for which it is expressed to be valid, no prosecution shall be brought under subsection (3) in respect of anything done or omitted to be done within 7 days of such cesser.

(5) For the purposes of subsection (4), a certificate of insurance ceases to be current if the policy of insurance to which it relates ceases to be in force in relation to the vessel concerned.

15. Authentication of certificate

A certificate of insurance shall be duly authenticated prior to issue by or on behalf of the authorized insurer by whom it is issued.

16. Loss or destruction of certificates

Where an authorized insurer by whom a certificate of insurance has been issued is satisfied that the certificate has become defaced or has been lost or destroyed, the authorized insurer shall, if requested so to do by the person to whom the certificate was issued, issue to him a fresh certificate.

PART 4**MISCELLANEOUS****17. Policy of insurance issued before approval is suspended or revoked**

(1) Where the approval of an approved insurer is suspended or revoked under section 8, the policy holder of any policy of insurance issued by that approved insurer for the purposes of the Ordinance before the approval is suspended or revoked, may opt to—

- (a) enforce the policy notwithstanding the suspension or revocation; or
- (b) void the policy by reason of the suspension or revocation.

(2) A policy holder who opts to void a policy of insurance pursuant to subsection (1) shall, before the expiration of the policy, by registered post addressed to the last known address of the approved insurer, give written notice of his decision to the approved insurer and the policy shall cease to have effect on the date of the receipt of the notice by the approved insurer or on such later date, if any, as is specified in the notice.

(3) A policy holder who opts to void a policy of insurance pursuant to subsection (1) shall be entitled to recover any consideration paid by him under the policy on a pro-rata basis by reference to the number of days of the remaining part of the validity period of the policy.

18. Policy of insurance issued in contravention of section 9(1)

(1) Where a policy of insurance is issued by any person in contravention of section 9(1), the policy holder may opt to—

- (a) enforce the policy notwithstanding the contravention; or
- (b) void the policy by reason of the contravention.

(2) A policy holder who opts to void a policy of insurance pursuant to subsection (1) shall, before the expiration of the policy, by registered post addressed to the last known address of the person referred to in subsection (1), give written notice of his decision to the person.

(3) A policy holder who opts to void a policy of insurance pursuant to subsection (1) shall be entitled to recover any consideration paid by him under the policy.

19. Register of approved insurer

(1) The Director shall establish and maintain a register of approved insurers and keep the register in his office.

(2) The register referred to in subsection (1) shall be in such form and shall contain such information as the Director may determine.

(3) The register referred to in subsection (1) shall be made available for inspection by the public free of charge during office hours at the office of the Director.

20. Liability of directors, managers, etc.

Where an offence under this Regulation is committed by a body of persons, whether corporate or unincorporate, and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, partner, member, manager, secretary or other officer concerned in the management of such body, or any person who was purporting to act in any such capacity, the director, partner, member, manager, secretary, other officer or person shall be guilty of the like offence.

21. Amount of insurance cover

(1) The Director may, by notice published in the Gazette, specify the amount of insurance cover for the purposes of section 23D(3)(c) of the Ordinance.

(2) A notice under subsection (1) may specify different amounts for different classes, types or descriptions of local vessels and for different circumstances.

22. Transitional

(1) A protection and indemnity association that was an authorized insurer approved under section 107B(2) of the Merchant Shipping Ordinance (Cap. 281) immediately before the commencement of this section shall be deemed to be an insurer approved under section 5.

(2) A policy of insurance that is in compliance with section 107C(1) of the Merchant Shipping Ordinance (Cap. 281) immediately before the commencement of this section shall be deemed to be a policy of insurance in compliance with section 23C(1) of the Ordinance until—

- (a) the date of expiry of the policy;
- (b) the expiry of 1 year from the date of the commencement of this section; or
- (c) the terms or conditions of the policy are altered in any way which would, if section 107C(1) of the Merchant Shipping Ordinance (Cap. 281) was still in force, cause the policy to cease to be in compliance with that section,

whichever is the earliest.

23. Amendment of Schedule

The Director may, by notice published in the Gazette, amend the Schedule.

SCHEDULE

[ss. 13 & 23]

CERTIFICATE OF INSURANCE

(Issued pursuant to section 13 of the Merchant Shipping
(Local Vessels) (Compulsory Third Party Risks
Insurance) Regulation (Cap. 548 sub. leg.))

Certificate No.:

Policy No.:

Issued on:

1. Name of policy holder(s)

2. Class and type of local vessel

Name of local vessel (if any)

Certificate of ownership number or description of local vessel

- 3. Period of Insurance from to
- 4. Amount of liability insured
- 5. Name of authorized insurer
- 6. Persons or classes of persons entitled to have charge of the local vessel
- 7. The circumstances in which that person (or persons) will be indemnified

I hereby certify the above particulars in respect of a policy of insurance issued by me.

And I further certify that the policy is issued in accordance with the provisions of the Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation (Cap. 548 sub. leg.).

.....
Authorized Insurer

Date:

Stephen IP
Secretary for Economic Development
and Labour

3 October 2006

Explanatory Note

The object of this Regulation is to prescribe for matters incidental to or relating to insurance that is required to be taken out for the purposes of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

- 2. Part 1 provides for preliminary matters (commencement, interpretation and application).
- 3. Part 2—
 - (a) empowers the Director of Marine (“Director”) to approve a protection and indemnity association for the purposes of the Ordinance;
 - (b) empowers the Director to suspend or revoke the approval in specified circumstances; and

- (c) provides for matters arising from the suspension or revocation of such approval.

4. Part 3 imposes duties on an authorized insurer to keep records of insurance, to issue certificates of insurance and to notify the Director if a policy of insurance ceases to be effective otherwise than by effluxion of time or by reason of death.

5. Part 4—

- (a) sets out the effect on a policy of insurance if an approval given to an approved insurer is suspended or revoked or if a policy of insurance is issued by a person in contravention of section 9(1);
- (b) prescribes the liability of directors and managers if the offence in the Regulation is committed by a body of persons, whether corporate or unincorporated;
- (c) empowers the Director to specify the amount of insurance cover for different classes, types or descriptions of local vessels and for different circumstances;
- (d) sets out the transitional arrangements; and
- (e) empowers the Director to amend the Schedule.