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30 May 2016

Ms Evelyn Lee
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Lee,

**Merchant Shipping (Safety) (Signals of Distress and Prevention of
Collisions) (Amendment) Regulation 2016 (L.N. 53)**

**Merchant Shipping (Safety) (Carriage of Cargoes)
(Amendment) Regulation 2016 (L.N. 54)**

Merchant Shipping (Safety) (IMSBC Code) Regulation (L.N. 55)

**Merchant Shipping (Safety) (High Speed Craft)
(Amendment) regulation 2016 (L.N. 56)**

Thank you for your letter dated 20 May 2016 on the captioned subjects. Our replies to the matters raised in your letter are set out below.

L.N. 53

Rule 31 in the amended Schedule to the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N) concerns both a seaplane and a Wing-In-Ground ("WIG") craft. Technically speaking WIG craft is not a kind of seaplane because it

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only flies in close proximity to the sea surface by utilizing surface-effect action. However, as this exercise to amend Schedule to Cap. 369N seeks to reflect the latest changes of the International Regulations for Preventing Collisions at Sea (International Regulations) and that only "Seaplanes" is adopted as the heading of Rule 31 thereunder, the heading of our Rule 31 in the Schedule should conform with the text and remain as it is now.

Section 4(17) amends paragraph 1(c) of Annex III in the Schedule to Cap. 369N. The two paragraphs after paragraph 1(c) in question are explanatory notes to the table therein regarding the range of whistles' audibility. The explanatory notes seek to provide further information regarding factors that might affect the range of audibility. Given that the two paragraphs are included in the International Regulations, they should be retained in both texts. We will amend the Chinese text accordingly as soon as practicable.

L.N. 54

Regarding the verification of container gross mass (VGM) requirements, while the SOLAS Convention requires container gross mass to be verified by one of the two accepted methods, and that containers cannot be loaded onboard without VGM data, detailed implementation of such requirement is left to the discretion of administrations and port states. The proposed section 3A sets out the VGM requirements for implementing regulation 2 of the Convention. The notice to be published in Gazette by the Director of Marine does not add mandatory requirements but seeks to provide guidance to the industry as to the procedures and documentation for complying with the VGM requirement.

We have considered the following main principles on whether the notice has "legislative effect"—

- (a) whether it extends or amends existing legislation (*Williams v. Government of Island of St. Lucia* [1970] AC 935);
- (b) whether it has general application to the public or a class as opposed to individuals (*Fowler v. AG* [1987] NZLR 56; *Jackson Standsfield & Sons v. Butterworth* [1984] 2 All ER 558);
- (c) whether it formulates a general rule of conduct without reference to particular cases (*The Commonwealth v. Grunseit* (1943) 67 CLR 58); and
- (d) the legislative intent.

Applying the above principles, the notice under section 3A of L.N. 54, being administrative guidelines for the verification of container

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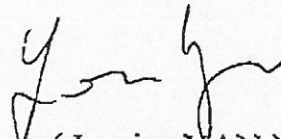
gross mass requirement, does not extend or amend existing legislation. It does not apply generally to the public or formulate a general rule of conduct but only provides guidance to individual shippers with containers to be loaded in Hong Kong for export. The express provision under section 3A(8) declaring that the notice is not subsidiary legislation is also a clear indicator of the legislative intent as to the nature of the notice. Given these factors, a notice published by the Director of Marine in Gazette pursuant to the new section 3A(7) of L.N. 54 has no legislative effect.

L.N. 55

Section 7(1) of L.N. 55 implements section 4.2.1 of the International Maritime Solid Bulk Cargoes Code to require shippers to provide certain cargo information as stipulated under section 7(2) "sufficiently in advance of loading". "Sufficiently in advance of loading" means that the information must be submitted before the loading of the cargo and that there must be enough time for preparatory works (eg. carrying out safety precautionary actions, making loading plans, etc.) to be done between the submission of the information and the beginning of cargo loading. What constitutes "sufficiently in advance of loading" might vary in different cases but this is determined by objective factors which are commonly accepted by and well known to the industry. For instance, availability of cargo loading instruments on the ship, quantities of the cargoes involved and danger of certain specific types of cargoes, etc. are some of the factors to be considered.

Should you have any enquiries, please feel free to contact me at 3509 8162. Thank you.

Yours sincerely,



(Louisa YAN)

Principal Assistant Secretary for Transport
and Housing (Transport)

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C.C.**Department of Justice**

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