

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping (Safety) Ordinance (Chapter 369)

**MERCHANT SHIPPING (SAFETY)
(SAFETY MANAGEMENT) REGULATION**

INTRODUCTION

Under Section 107 of the Merchant Shipping (Safety) Ordinance, the Secretary for Economic Services is empowered to make regulations for securing the safety of Hong Kong ships and persons on board these ships and make regulations to give effect to any international code, convention or agreement which is applicable to Hong Kong. In exercise of this power, the Secretary for Economic Services has made the relevant Regulation, as set out in the Annex.

BACKGROUND AND ARGUMENT

2. Formal Inquiries into the capsizing of ro-ro passenger ferry “Herald of Free Enterprise” in March 1987 and fire on board passenger ship “Scandinavian Star” in April 1990 revealed the need for an effective system for the safety management of ships, both ashore and on board.

3. As a result of these accidents, the International Maritime Organisation developed the International Management Code for the Safe Operation of Ships and for Pollution Prevention (the Code). The Code will become mandatory internationally in respect of passenger ships

including passenger high speed craft, bulk carriers, oil tankers, chemical and gas carriers, and cargo high speed craft of over 500 gross tonnage with effect from 1 July 1998, and other cargo ships and mobile offshore drilling units with effect from 1 July 2002.

4. To implement the provisions of the Code in Hong Kong, it is necessary to enact local legislation so that Hong Kong registered ships have to comply with the prescribed procedure and certification requirement.

HONG KONG POSITION

5. Hong Kong supports the decision of the International Maritime Organization (IMO) in strengthening safety management of ships. As an Associate Member of IMO, Hong Kong is obliged to give effect to the above international Code.

THE REGULATION

6. The Regulation has been prepared to implement the International Management Code for the Safe Operation of Ships and for Pollution Prevention. It stipulates the procedure of compliance and the certification requirement that Hong Kong registered ships and operating companies have to meet. The main provisions are -

- (a) section 4 which sets out the procedure that an operating company has to follow to obtain a Document of Compliance (DOC);
- (b) section 5 which sets out the procedure that an operating company and the master of a ship have to follow to obtain a Safety Management Certificate (SMC);
- (c) sections 6 and 7 which provide for an assessment system on safety management systems of operating companies and ships;

- (d) section 8 which sets out the procedure for the renewal of certificates; and
- (e) sections 9 and 10 which set out the procedure for the issuance interim DOC and SMC.

BILL OF RIGHTS IMPLICATIONS

- 7. There are no Bill of Rights implications.

BASIC LAW IMPLICATION

- 8. There are no Basic Laws implication.

FINANCIAL AND STAFFING IMPLICATIONS

- 9. There are no financial or staffing implications.

ECONOMIC IMPLICATIONS

- 10. There are no adverse economic implications.

PUBLIC CONSULTATION

- 11. We have consulted the Hong Kong Shipowners Association and the Hong Kong Shipping Register Consultative Committee. Both organisations expressed support for the proposed legislation.

ENQUIRY

12. For enquiry on this brief, please contact Mr S K Anand, Chief, Shipping Policy (Nautical) (2852 4606) or Mr Peter Kwok, Assistant Secretary for Economic Services (2537 2842).

Economic Services Bureau

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MERCHANT SHIPPING (SAFETY) (SAFETY MANAGEMENT) REGULATION

(Made under section 107 of the Merchant Shipping
(Safety) Ordinance (Cap. 369))

1. Interpretation

In this Regulation, unless the context otherwise requires -

“appointed organization” (指定機構) means an organization appointed as an appointed organization under section 13 for the purposes of this Regulation;

“bulk carrier” (散裝貨輪) means a ship constructed with a single deck, top-side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk, and includes an ore carrier or a combination carrier;

“cargo ship” (貨船) means a ship which is constructed or adapted primarily to carry cargoes;

“chemical tanker” (化學品液貨船) means a ship constructed or adapted primarily to carry a cargo of noxious liquid substances in bulk and includes an oil tanker when carrying a cargo or part cargo of noxious liquid substances in bulk;

“Code” (《規則》) means the International Management Code For The Safe Operation Of Ships And For Pollution Prevention adopted by the International Maritime Organization, as amended by the Organization from time to time;

“combination carrier” (油類/散貨兩用船) means a ship constructed or adapted primarily to carry either oil or solid cargoes in bulk;

“company” (公司) means the owner of a ship or any other person who has assumed responsibility for the operation of the ship and on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the Code;

“Document of Compliance” (符合證明) means a document certifying that the company of a ship complies with the requirements of the Code with respect to the type of ship to which the ship belongs and -

- (a) in the case of a ship registered in Hong Kong, the document is issued under section 3(2); and
- (b) in the case of any other ship, the document is issued in conformity with the Code by or on behalf of the government of the state whose flag the ship is entitled to fly;

“gas carrier” (氣體運輸船) means a ship constructed or adapted primarily to carry any liquefied gas in bulk;

“Government surveyor” (政府驗船師) means a person appointed under section 5(1) of the Ordinance;

“high speed craft” (高速船) means a craft capable of a maximum speed equal to or exceeding $3.7 \nabla^{0.1667}$ metres per second where ∇ is the displacement in cubic metres corresponding to the design waterline;

“Interim Document of Compliance” (臨時符合證明) means -

- (a) in the case of a ship registered in Hong Kong, an Interim Document of Compliance issued under section 8(1); and

- (b) in the case of any other ship, an Interim Document of Compliance issued in conformity with the Code by or on behalf of the government of the state whose flag the ship is entitled to fly;

“Interim Safety Management Certificate” (臨時安全管理證書) means -

- (a) in the case of a ship registered in Hong Kong, an Interim Safety Management Certificate issued under section 9(1); and
- (b) in the case of any other ship, an Interim Safety Management Certificate issued in conformity with the Code by or on behalf of the government of the state whose flag the ship is entitled to fly;

“Issuing Authority” (發證當局) means -

- (a) the Director;
- (b) an appointed organization; or
- (c) the government of a state to which the Convention applies and has been requested by the Director to perform a function or exercise a power under this Regulation,

as the case may be;

“mobile offshore drilling unit” (移動式近海鑽井裝置) means a vessel capable of engaging in drilling operations for the exploration or exploitation of resources beneath the sea-bed, including liquid or gaseous hydrocarbon substances, sulphur and salt;

“noxious liquid substance” (有毒液體物質) means any substance designated in Appendix II to Annex II of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the International Maritime Organization from time to time;

“oil tanker” (油輪) means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes a combination carrier and a chemical tanker when it is carrying a cargo or part cargo of oil in bulk;

“ore carrier” (礦石船) means a single deck ship having 2 longitudinal bulkheads and a double bottom throughout the cargo region and intended for the carriage of ore cargoes in the centre holds only;

“safety and environmental protection policy” (安全及環境保護政策) means a policy which is established by a company for the purpose of achieving the objectives of the Code as expressly stipulated in the Code;

“Safety Management Certificate” (安全管理證書) means a certificate certifying that a ship is in all respects in compliance with the requirements of the Code and -

- (a) in the case of a ship registered in Hong Kong, the certificate is issued under section 4(3); and
- (b) in the case of any other ship, the certificate is issued in conformity with the Code by or on behalf of the government of the state whose flag the ship is entitled to fly;

“safety management system” (安全管理制度) means a structured and documented system enabling a company to effectively implement the safety and environmental protection policy of the company;

“senior officer” (高級船員) means the chief officer, chief engineer or second engineer or any similar officer of a ship.

2. Application

(1) This Regulation applies to the company of a ship to which this Regulation applies.

(2) Subject to subsections (3) and (4), this Regulation applies to

- (a) a passenger ship to which the Convention applies;
- (b) a high speed craft engaged on voyages between Hong Kong and a place outside the waters of Hong Kong, other than a passenger ship referred to in paragraph (a);
- (c) a ship to which the Convention applies, other than a passenger ship, which is of 500 gross tonnage or above.

(3) Subject to subsections (2) and (4), this Regulation applies to

- (a) ships registered in Hong Kong wherever they may be; and
- (b) other ships while they are within the waters of Hong Kong.

(4) This Regulation does not apply to a ship operated by a government for non-commercial purposes.

(5) Subject to subsections (2), (3) and (4), this Regulation applies to -

- (a)
 - (i) passenger ships;
 - (ii) oil tankers;
 - (iii) gas carriers;
 - (iv) chemical tankers;
 - (v) bulk carriers;
 - (vi) high speed craft which are cargo ships,

with effect from 1 July 1998; and

- (b)
 - (i) cargo ships other than ships referred to in paragraph (a);
and
 - (ii) mobile offshore drilling units,

with effect from 1 July 2002.

3. Document of Compliance

(1) The company of a ship shall hold a Document of Compliance or an Interim Document of Compliance which relates to the type of ship to which the ship belongs.

(2) A Document of Compliance may on the application of a company be issued by the Issuing Authority.

(3) A Document of Compliance shall not be issued under this section unless the company applying for it has shown to the satisfaction of the Issuing Authority that the company complies with the requirements of the Code.

(4) A Document of Compliance issued under this section shall specify the type of ship to which the Document of Compliance relates.

(5) Subject to sections 5(4) and 11(1), a Document of Compliance issued under this section shall remain valid for 5 years from its date of issue or for such shorter period as may be specified in the Document of Compliance by the Issuing Authority.

4. Safety Management Certificate

(1) The company and the master of a ship shall ensure that there is in existence a Safety Management Certificate or an Interim Safety Management Certificate issued in respect of the ship.

(2) No ship shall embark on a voyage outside the waters of Hong Kong unless there is in existence a Safety Management Certificate or an Interim Safety Management Certificate issued in respect of the ship.

(3) A Safety Management Certificate may on the application of a company be issued by the Issuing Authority.

(4) A Safety Management Certificate shall not be issued in respect of a ship under this section unless the company applying for it -

- (a) has a Document of Compliance which relates to the type of ship to which the ship belongs; and
- (b) has shown to the satisfaction of the Issuing Authority that the ship is in all respects in compliance with the requirements of the Code.

(5) Subject to subsection (6) and sections 6(3) and 12(1), a Safety Management Certificate issued under this section shall remain valid for 5 years from its date of issue or for such shorter period as may be specified in the Safety Management Certificate by the Issuing Authority.

(6) A Safety Management Certificate issued in respect of a ship under this section shall cease to be valid as soon as the company of the ship ceases to hold a Document of Compliance which relates to the type of ship to which the ship belongs.

5. Assessment on safety management system

(1) A company to which a Document of Compliance has been issued under section 3 shall have the safety management system of the company assessed annually by the Issuing Authority for the purpose of verifying that the company complies with the requirements of the Code.

(2) An assessment under subsection (1) shall be conducted within the period commencing 3 months before and ending 3 months after each anniversary date of the issue or the renewal of the Document of Compliance.

(3) The Issuing Authority shall endorse the result of an assessment under subsection (1) on the Document of Compliance.

(4) A Document of Compliance issued under section 3 shall cease to be valid if it is not endorsed in accordance with subsection (3).

6. Assessment on ships

(1) The company and the master of a ship in respect of which a Safety Management Certificate has been issued under section 4 shall have the ship assessed by the Issuing Authority at least once between the second and third anniversary date of the issue or the renewal of the Safety Management Certificate for the purpose of verifying that the ship is in all respects in compliance with the requirements of the Code.

(2) The Issuing Authority shall endorse the result of an assessment under subsection (1) on the Safety Management Certificate.

(3) A Safety Management Certificate issued under section 4 shall cease to be valid if it is not endorsed in accordance with subsection (2).

7. Renewal of Document of Compliance or Safety Management Certificate

(1) The Issuing Authority may on the application of a company renew a Document of Compliance issued under section 3 or a Safety Management Certificate issued under section 4 for a period of 5 years or for such shorter period as the Issuing Authority may specify in the Document of Compliance or the Safety Management Certificate, as the case may be.

(2) A Document of Compliance issued to a company under section 3 shall not be renewed unless -

- (a) the safety management system of the company has been assessed by the Issuing Authority within 6 months before the expiry date of the Document of Compliance; and
- (b) the assessment shows to the satisfaction of the Issuing Authority that the company complies with the requirements of the Code.

(3) A Safety Management Certificate issued in respect of a ship under section 4 shall not be renewed unless -

- (a) the company applying for its renewal has a Document of Compliance which relates to the type of ship to which the ship belongs;

- (b) the ship has been assessed by the Issuing Authority within 6 months before the expiry date of the Safety Management Certificate; and
- (c) the assessment shows to the satisfaction of the Issuing Authority that the ship is in all respects in compliance with the requirements of the Code.

8. Interim Document of Compliance

(1) An Interim Document of Compliance may on the application of a company be issued by the Issuing Authority.

(2) An Interim Document of Compliance shall not be issued under this section unless the company applying for it has shown to the satisfaction of the Issuing Authority that -

- (a) the company has a safety management system; and
- (b) if an Interim Document of Compliance is issued, the company will put the safety management system into full operation before the Interim Document of Compliance expires.

(3) An Interim Document of Compliance issued under this section shall specify the type of ship to which the Interim Document of Compliance relates.

(4) Subject to section 11(2), an Interim Document of Compliance issued under this section shall remain valid for 12 months from its date of issue or for such shorter period as may be specified in the Interim Document of Compliance by the Issuing Authority.

(5) An Interim Document of Compliance issued under this section may be renewed on one occasion, and only on one occasion at the absolute discretion of the Director.

9. Interim Safety Management Certificate

(1) An Interim Safety Management Certificate may on the application of a company be issued in respect of a ship by the Issuing Authority.

(2) An Interim Safety Management Certificate shall not be issued in respect of a ship under this section unless the Issuing Authority is satisfied that -

- (a) the company applying for it holds either a Document of Compliance or an Interim Document of Compliance which relates to the type of ship to which the ship belongs;
- (b) the master and the senior officers of the ship are familiar with the safety management system of the company and the planned arrangements for its implementation;
- (c) instructions that are material to the implementation of the safety management system will be given to the crew of the ship before the ship embarks on a voyage;
- (d) the company will carry out within 3 months after the date of applying for the Interim Safety Management Certificate an internal assessment for the purpose of verifying that the safety management system has been complied with; and

- (e) material information on the safety management system has been given to the crew of the ship in a language understood by them.

(3) Subject to subsection (4) and section 12(2), an Interim Safety Management Certificate issued under this section shall remain valid for 6 months from its date of issue or for such shorter period as may be specified in the Interim Safety Management Certificate by the Issuing Authority.

(4) An Interim Safety Management Certificate issued in respect of a ship under this section shall cease to be valid as soon as the company of the ship holds neither a Document of Compliance nor an Interim Document of Compliance which relates to the type of ship to which the ship belongs.

(5) An Interim Safety Management Certificate issued under this section may be renewed on one occasion, and only on one occasion, at the absolute discretion of the Director.

10. Certificates, etc. to be kept on board a ship

(1) The company and the master of a ship shall ensure that the Document of Compliance or the Interim Document of Compliance which has been issued to the company and relates to the type of ship to which the ship belongs (or a copy of the Document of Compliance or the Interim Document of Compliance) is kept on board the ship at all times.

(2) The company and the master of a ship shall ensure that the Safety Management Certificate or the Interim Safety Management Certificate issued in respect of the ship is kept on board the ship at all times.

(3) A company to which a Document of Compliance or an Interim Document of Compliance has been issued shall upon request produce the Document of Compliance or the Interim Document of Compliance, as the case may be, for inspection by a Government surveyor or a surveyor appointed by the Issuing Authority.

11. Cancellation of Document of Compliance or Interim Document of Compliance

(1) The Director may cancel a Document of Compliance issued to a company under section 3 if he has reason to believe that -

- (a) the company does not comply with the requirements of the Code; or
- (b) the Document of Compliance has been issued upon false or erroneous information.

(2) The Director may cancel an Interim Document of Compliance issued to a company under section 8 if he has reason to believe that it is unlikely that the company will put its safety management system into full operation before the Interim Document of Compliance expires.

(3) If the Director has reasons to believe that a company to which a Document of Compliance has been issued under section 3 does not comply with any requirement of the Code, he may issue to the company a direction in writing to take corrective actions.

(4) A direction issued under subsection (3) must specify the period within which it is to be complied with. That period must be a reasonable one that allows the company to complete the corrective actions.

(5) Without prejudice to the generality of subsection (1), the Director may cancel the Document of Compliance if the direction issued under subsection (3) is not complied with to the satisfaction of the Director within the specified period.

12. Cancellation of Safety Management Certificate or Interim Safety Management Certificate

(1) The Director may cancel a Safety Management Certificate issued in respect of a ship under section 4 if he has reason to believe that -

- (a) the ship is not in all respects in compliance with the requirements of the Code; or
- (b) the Safety Management Certificate has been issued upon false or erroneous information.

(2) The Director may cancel an Interim Safety Management Certificate issued in respect of a ship under section 9 if he has reason to believe that -

- (a) the master and the senior officers of the ship are not familiar with the safety management system of the company of the ship and the planned arrangements for its implementation;
- (b) instructions that are material to the implementation of the safety management system have not been given to the crew of the ship before the ship embarks on a voyage;
- (c) the company has not carried out within 3 months after the date of applying for the Interim Safety Management

Certificate an internal assessment for the purpose of verifying whether the safety management system has been complied with; or

- (d) material information on the safety management system has not been given to the crew of the ship in a language understood by them.

(3) If the Director has reason to believe that a ship in respect of which a Safety Management Certificate has been issued under section 4 is in any respect not in compliance with the requirements of the Code, he may issue to the company or the master of the ship a direction in writing to take corrective actions.

(4) A direction issued under subsection (3) must specify the period within which it is to be complied with. That period must be a reasonable one that allows the company or the master to complete the corrective actions.

(5) Without prejudice to the generality of subsection (1), the Director may cancel the Safety Management Certificate if the direction issued under subsection (3) is not complied with to the satisfaction of the Director within the specified period.

13. Appointed organization

The Director may in writing appoint an organization as an appointed organization for the purposes of this Regulation.

14. Director to issue instructions, etc.

The Director may issue instructions or codes of practice providing practical guidance with respect to specifications, standards or requirements of any assessment referred to in this Regulation.

15. Delegation

(1) The Director may, in writing, delegate to any public officer or class of public officers his powers, functions or duties under this Regulation and may at any time revoke any such delegation.

(2) No delegation under subsection (1) shall preclude the Director from exercising or performing at any time any power, function or duty so delegated.

16. Form

The form of any certificate, report, notice, record or any other document required under this Regulation shall be in such form as may be approved by the Director.

17. Offences and penalties

(1) If section 4(2) is not complied with in relation to any ship, the company and the master of the ship shall be guilty of an offence and each is liable to a fine at level 3.

(2) If section 10(1) or (2) is not complied with in relation to any ship, the company and the master of the ship shall be guilty of an offence and each is liable to a fine at level 1.

(3) If a company to which a Document of Compliance or an Interim Document of Compliance has been issued contravenes section 10(3), the company shall be guilty of an offence and is liable to a fine at level 1.

18. Appeals

If a company is aggrieved by -

- (a) the refusal by the Director or an appointed organization to issue -
 - (i) a Document of Compliance under section 3(2);
 - (ii) a Safety Management Certificate under section 4(3);
 - (iii) an Interim Document of Compliance under section 8(1);
 - (iv) an Interim Safety Management Certificate under section 9(1);
- (b) the refusal by the Director or an appointed organization to renew a Document of Compliance or a Safety Management Certificate under section 7(1);
- (c) the cancellation by the Director of -
 - (i) a Document of Compliance or an Interim Document of Compliance under section 11;
 - (ii) a Safety Management Certificate or an Interim Safety Management Certificate under section 12,

the company may appeal, in the manner prescribed by the Merchant Shipping (Court of Survey) Regulations (Cap. 369 sub. leg.), to a court of survey.

Secretary for Economic Services

1998

Explanatory Note

The main purpose of this Regulation is to give effect to the International Management Code For The Safe Operation Of Ships And For Pollution Prevention adopted by the International Maritime Organization.

2. Section 1 defines the terms and expressions used in the Regulation.
3. Section 2 sets out the time and scope of application of the Regulation.
4. Sections 3 and 4 require the relevant person to hold the Document of Compliance and the Safety Management Certificate. Those documents certify compliance with the requirements of the Code.
5. Sections 5 and 6 provide for assessments conducted for the purpose of verifying compliance with the requirements of the Code.
6. Section 7 provides for the renewal of the Document of Compliance and the Safety Management Certificate.

7. Sections 8 and 9 provide for the issue of the Interim Document of Compliance and the Interim Safety Management Certificate.
8. Section 10 requires the relevant person to ensure that the Document of Compliance or Interim Document of Compliance (or a copy of such document) and the Safety Management Certificate or Interim Safety Management Certificate are kept on board a ship, and provides that the Document of Compliance or the Interim Document of Compliance shall be produced for inspection upon request.
9. Sections 11 and 12 provide for the cancellation of the Document of Compliance, Interim Document of Compliance, Safety Management Certificate or Interim Safety Management Certificate on prescribed grounds.
10. Section 13 empowers the Director of Marine to appoint an organization as an appointed organization for the purposes of the Regulation.
11. Section 14 empowers the Director to issue instructions or codes of practice concerning assessments referred to in the Regulation.
12. Section 15 provides for the delegation by the Director of his powers, functions and duties.
13. Section 16 provides for the form of documents.
14. Section 17 creates offences and prescribes penalties.
15. Section 18 provides for appeals against the refusal to issue or renew, or the cancellation of, the Document of Compliance, Interim Document of Compliance, Safety Management Certificate or Interim Safety Management Certificate.