

Examples of localizing international conventions into domestic merchant-shipping legislation

Merchant Shipping (Safety) (High Speed Craft) Regulation, Cap. 369AW

Section 4 of Cap. 369AW requires that every high speed craft to which the Regulation applies shall comply with the relevant chapters of the HSC Code in respect of its construction, equipment, operation and maintenance. The HSC Code is not set out in the Regulation. However Section 15 stipulates that when there is a contravention of section 4 in respect of any high speed craft, the master and owner shall be guilty of an offence and are liable to a fine at level 4 and to imprisonment for 2 years.

Under the Regulation there are other offences which carry the same penalty. These other offences are more specific, such as leaving a port without undergoing the necessary survey or having a certificate, operating a HSC without a Permit to Operate, failing to provide/carry technical manuals on board a HSC etc.

Merchant Shipping (Safety) (Safety Management) Regulation, Cap. 369 AX

Section 3 of Cap. 369AX provides that the company of a ship shall hold a Document of Compliance (DOC), the issue of which depends on the company satisfying the Issuing Authority on its compliance with the International Safety Management (ISM) Code.

Section 4 provides that the company and the master of a ship shall ensure that the ship has a Safety Management Certificate (SMC), the issue of which depends on the company is having a Document of Compliance, and that the ship is in all respects in compliance with the ISM Code. The Code is also not set out in the Regulation.

Non-compliance of the ISM Code is not an immediate offense in the Regulation. The offences provided in the Regulation include embarking a ship on a voyage outside Hong Kong without a valid certificate, failing to keep the DOC and the SMC on board the ship, and failure to produce the DOC by a company upon requested by a government surveyor.

Merchant Shipping (Safety) (High Speed Craft) Regulations, Cap. 369AW

4. Compliance with the HSC Code

(1) Subject to subsection (2), every high speed craft to which this Regulation applies shall be constructed, equipped, operated and maintained in accordance with the requirements relevant to it of Chapters 2 to 19 of the HSC Code.

(2) Without prejudice to [section 12](#), the Director may exempt-

(a) a high speed craft to which this Regulation applies by virtue of [section 3\(1\)\(b\)](#); or

(b) a high speed craft engaged in voyages specified in [section 3\(2\)\(b\)\(ii\)](#),

from any of the requirements of the HSC Code which are in the opinion of the Director inappropriate or impracticable.

7. Duration and validity of High Speed Craft Safety Certificate

(9) The craft to which an extension is granted under subsection (7) shall not, on its arrival to Hong Kong or the port in which it is to be surveyed, leave Hong Kong or that port (as the case may be) unless a new High Speed Craft Safety Certificate has been obtained.

8. Permit to Operate High Speed Craft

(1) No high speed craft shall operate commercially unless-

(a) a Permit to Operate High Speed Craft; and

(b) a High Speed Craft Safety Certificate,

are in force in respect of the craft.

9. Maintenance of conditions after survey

(1) The conditions of any high speed craft and its equipment shall be maintained to conform with the provisions of the HSC Code.

(2) After any survey of a craft under this Regulation has been completed, no important change shall be made to the structure, equipment, fittings, arrangements or materials covered by the survey without the sanction of the Director.

(3) Where, after any survey, an accident occurs to a high speed craft or a defect is discovered, either of which affects the safety of the craft or the efficiency or completeness of its structure, equipment, fittings, arrangements or materials, the master or owner of the craft shall immediately report the accident or the defect to the Director and if the craft is in a port of another State or territory, the master or owner shall also

report the accident or the defect immediately to the appropriate authority of the government of the State or territory in which the port is situated.

(4) The craft shall be subjected to an additional survey if the Director, upon receipt of a report under subsection (3) and the results of an investigation caused to be initiated by him, considers it necessary, and the craft shall not be operated until the Director is satisfied with the results of the survey.

10. Information to be made available

(1) Every high speed craft shall carry on board adequate information and guidance in the form of manuals to assist the craft to be operated and maintained safely by the crew. These manuals shall include a craft operating manual, a route operational manual, a training manual, and a maintenance and servicing manual.

(2) The manuals referred to in subsection (1) shall be updated as necessary, and shall include the information specified in 18.2.1 to 18.2.4 of the HSC Code.

(3) The manuals referred to in subsection (1) shall be written in a language understood by the crew. Where the language is neither Chinese nor English, a translation of the manuals into both Chinese and English shall be provided. Where the language is Chinese or English only, a translation into English or Chinese (as the case may require) shall be provided.

15. Penalties

(1) Where there is a contravention of sections [4](#), [7\(9\)](#), [8\(1\)](#), [9](#) or [10](#) in respect of any high speed craft, the master and owner of the craft concerned shall each be guilty of an offence and are liable to a fine at level 4 and to imprisonment for 2 years.

(2) It shall be a defence for a person charged with an offence under this Regulation to prove that he took all reasonable steps to ensure that the relevant provisions were complied with.

Merchant Shipping (Safety) (Safety Management) Regulations, Cap. 369AX

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.

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.

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.