

立法會
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**Paper for the House Committee Meeting
on 5 March 2004**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 February 2004**

Date of tabling in LegCo : 3 March 2004

Amendment to be made by : 24 March 2004 (or 21 April 2004 if extended by resolution)

Merchant Shipping (Local Vessels) Ordinance (Cap. 548)

Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (L.N. 27)

Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (L.N. 28)

The Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (L.N. 27) ("the LV(C&L) Regulation") and Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (L.N. 28) ("the LV(TS) Regulation") are made under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) ("the Ordinance"). The Ordinance, which was enacted in 1999, provides for the regulation and control of local vessels in Hong Kong or in the waters of Hong Kong and for other matters affecting local vessels, including their navigation and safety at sea, whether within or beyond the waters of Hong Kong. The implementation of the Ordinance requires the introduction of ten pieces of subsidiary legislation. Three of them were made in 2001, namely, the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation (Cap. 548 sub. leg. A), Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Cap. 548 sub. leg. B) and Merchant Shipping (Local Vessels) (Conduct of Inquiries) Rules (Cap. 548 sub. leg. C). The LV(C&L) Regulation and LV(TS) Regulation are among the ten pieces of subsidiary legislation required to be made for the implementation of the Ordinance.

2. The LV(C&L) Regulation provides for the certification and licensing of local vessels and other related matters, such as restrictions on the maximum number of passengers, restrictions on the use of pleasure vessels and the requirement for vessels to carry competent coxswain and engine operator. Most of the requirements are modelled on the provisions of the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap. 313 sub. leg. E) ("the Launches and Ferry Vessels Regulations"), Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 313 sub. leg. F) ("the

Miscellaneous Craft Regulations") and Merchant Shipping (Pleasure Vessels) Regulations (Cap. 313 sub. leg. G) ("the Pleasure Vessels Regulations"). According to the Administration, these Regulations will be repealed upon commencement of the Ordinance and its subsidiary legislation. Apart from adopting the existing provisions of the Launches and Ferry Vessels Regulations, the Miscellaneous Craft Regulations and the Pleasure Vessels Regulations, some major changes have been introduced to the LV(C&L) Regulation highlighted as follows:

- (a) Instead of classifying local vessels into eleven classes, the LV(C&L) Regulation reduces the classes of local vessels to four with a view to streamlining the classification system for local vessels.
- (b) The LV(C&L) Regulation introduces a new documentation system for local vessels similar to that applicable to motor vehicles under which each local vessel is required to have both a certificate of ownership and an operating licence. This, according to the Administration, will facilitate the tracing of vessel owners in case of prosecution for breach of law.
- (c) The LV(C&L) Regulation provides for the grant of a new permission for a laid-up vessel to enable a local vessel to be laid up without the need for an operating licence if it is not in use for operation for an extended period of time.
- (d) The LV(C&L) Regulation requires a pleasure vessel to be used by its owner or person to whom it is let exclusively for pleasure purposes and imposes on the owner of a pleasure vessel, his agent and the coxswain certain requirements when the vessel is let for hire or reward. It also provides that contravention of these requirements is an offence.
- (e) The LV(C&L) Regulation introduces a new arrangement which allows a person, on the death of the owner of a local vessel, to act as the interim owner and operate the vessel pending disposal of the vessel according to the deceased's will or letters of administration.
- (f) Under the LV(C&L) Regulation, a person who is aggrieved by certain decisions of the Director of Marine made under the Regulation may appeal to the Administrative Appeals Board established under the Administrative Appeals Board Ordinance (Cap. 442).
- (g) Immunity from civil action is granted to the Government and officers in respect of any loss or damage suffered by any person as a result of any error or omission that was made in good faith and in the ordinary course of performing the functions under the LV(C&L) Regulation.

3. The LV(TS) Regulation provides for the regulation and control of local vessels in typhoon shelters. The Regulation adopts from the existing Shipping and Port Control (Typhoon Shelters) Regulations (Cap. 313 sub. leg. D) ("the Typhoon Shelters Regulations") the necessary provisions for the management of typhoon shelters, including the setting aside of passage areas in typhoon shelters, use of typhoon shelters, entry and anchoring of local vessels, removal of local vessels unlawfully remaining in typhoon shelters, etc. According to the Administration, the Typhoon Shelters Regulations will be repealed upon the commencement of the Ordinance and its subsidiary legislation. Apart from adopting the existing provisions of the Typhoon Shelters Regulations, the LV(TS) Regulation also introduces some new provisions to improve the control by the Director of Marine over the use of typhoon shelters.

4. The LV(C&L) Regulation will come into operation on the day appointed for the commencement of Part IV of the Ordinance, which deals with matters relating to the certification and licensing of local vessels. The LV(TS) Regulation will come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

5. Members may refer to LegCo Brief (File Ref : MA 70/17, MA 70/13) dated 27 February 2004 issued by the Economic Development and Labour Bureau for background information.

6. According to the LegCo Brief, the Administration has consulted the Provisional Local Vessel Advisory Committee and its relevant sub-committees/working group, which comprise a wide cross-section of representatives from the local shipping industry, and obtained their support. The Administration has also consulted the Panel on Economic Services on the two Regulations at its meeting on 25 February 2002. Regarding the LV(C&L) Regulation, members of the Panel expressed concern that the Regulation might affect pleasure vessel owners who carried passengers on their vessels for commercial gain. They enquired about the related fees and whether sufficient qualified personnel were available in the market for undertaking the required inspection of the vessel. As for the provision relating to the application for and grant of permission for a laid-up vessel, members were concerned about the related monitoring mechanism to prevent abuse. As for the LV(TS) Regulation, a member asked the Administration to review the design of typhoon shelters in Hong Kong so as to allow longer vessels from the Mainland to enter and remain in a typhoon shelter. Members may wish to refer to the minutes of meeting of the Economic Services Panel on 25 February 2002 (LC Paper No. CB(1)1380/01-02) for details.

7. The Legal Service Division has asked the Administration to clarify certain technical and drafting issues on the two Regulations. A further report will be made after we receive the Administration's reply.

**Interpretation and General Clauses Ordinance (Cap. 1)
Rectification of Errors Order 2004 (L.N. 29)**

8. This Order rectifies a number of typographical errors appearing in various Ordinances and subsidiary legislation. No changes to the effect of any of the affected provisions are intended by this Order.

**Tax Reserve Certificates Ordinance (Cap. 289)
Tax Reserve Certificates (Rate of Interest) (No. 2) Notice 2004 (L.N. 30)**

9. This Notice fixes the rate of interest payable on tax reserve certificates issued on or after 1 March 2004 at 0.010% per annum.

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