

立法會
Legislative Council

LC Paper No. CB(4)814/14-15(04)

Ref: CB4/SS/9/14

**Subcommittee on Merchant Shipping
(Control of Harmful Anti-Fouling Systems on Ships) Regulation and
Merchant Shipping (Prevention and Control of Pollution) (Fees)
(Amendment) Regulation 2015**

Background brief

Purpose

This paper provides information on the background of the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) ("the AFS Regulation") and Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2015 ("the Fees Amendment Regulation") made under the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) ("the Ordinance"). It also summarizes the views and concerns expressed by Members on related issues.

Background

International Convention on the Control of Harmful Anti-fouling Systems on Ships

2. Anti-fouling paints are used to coat the bottoms of ships to prevent sealife such as algae and molluscs attaching themselves to the hull – thereby slowing down the ship and increasing fuel consumption. In the early days of sailing ships, lime and arsenic were respectively used to coat ships' hulls, until the modern chemicals industry developed effective anti-fouling paints using metallic compounds. But studies have shown that these chemicals persist in the water, killing sealife, harming the environment and possibly entering the food chain.

3. On 5 October 2001, the International Maritime Organization ("IMO") adopted the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 ("the Convention") which prohibits the use of organotin compounds in anti-fouling systems of ships for the protection of

marine environment. The Convention entered into force on 17 September 2008. China ratified the Convention in March 2011. Subject to the enactment of the AFS Regulation, the Administration will request the Central People's Government to notify the IMO the extension of the Convention to Hong Kong.

The AFS Regulation

4. The AFS Regulation is made by the Secretary for Transport and Housing ("the Secretary") under section 3(2) of the Ordinance to implement the Convention in Hong Kong by setting out the relevant requirements that are applicable to non-Hong Kong ships within Hong Kong waters as well as Hong Kong ships¹ wherever they are.

5. Under the AFS Regulation, a ship must not bear any organotin compounds in its anti-fouling system. The AFS Regulation sets out the requirement for certain types of ships to carry on board a valid International Anti-fouling System Certificate ("IAFS Certificate") or a declaration in respect of anti-fouling system, and the penalty of failing to comply with the requirements. It also provides for the issuance or endorsement of an IAFS Certificate to Hong Kong ships by the Director of Marine ("the Director") upon being satisfied on completion of a survey by a Government surveyor. The Director may recognize organizations to survey ships and issue certificates.²

6. Section 3A of the Ordinance allows for the application of "direct reference approach" ("DRA") in its regulations for the purpose of giving effect to provisions of international agreements applicable to Hong Kong. DRA means making direct reference to provisions under international agreements in local legislation so as to apply those provisions locally. DRA enables timely implementation of international requirements that are technical in nature and are commonly applied in other jurisdictions across the world. If Hong Kong ships cannot comply with those requirements, they may be denied entry to other ports. However, DRA may not be appropriate for implementing all requirements under international agreements. When adopting this approach, various factors as set out in paragraph 7 of the Legislative Council Brief (File Ref: THB(1)PML R8/10/70/3) ("LegCo Brief") must be taken into account. Annex C to the LegCo Brief contains the provisions of the AFS Regulation, being reviewed against the aforesaid factors, that have been identified to be suitable for the application of DRA.

¹ Section 2 of the Ordinance defines "Hong Kong ship" to mean a ship registered in Hong Kong; and a vessel required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

² Recognized organizations are international bodies specialized in the technical areas of ships, such as ship construction, equipment, operation and surveys, etc. At present, the Marine Department entrusted Recognized organizations through contractual agreements to carry out certain services, such as to survey ships and to issue certificates for these ships etc.

The Fees Amendment Regulation

7. The Fees Amendment Regulation provides the Marine Department for charging of fees in relation to survey of ship by a Government surveyor and issue of an IAFS Certificate by the Director under the AFS Regulation. On the basis of cost-recovery principle, the fees for survey carried out by a Government surveyor within Hong Kong are currently set at \$3,270 for the first hour or part hour, and \$1,115 for each subsequent hour or part hour. The fee for the issue of a certificate is currently set at \$565.

The Regulations

The AFS Regulation

8. The AFS Regulation seeks to implement the requirements of the Convention, with the main provisions set out below –

- (a) Part 1 provides for the commencement and application of the Regulation, as well as the definitions of various terms used;
- (b) Part 2 prohibits ships from bearing organotin compounds that act as biocides in anti-fouling systems of the ships; and
- (c) Part 3 covers certification and means of control on anti-fouling systems –
 - (i) ships of 400 gross tonnage ("GT") or above and engaged in international voyages are required to have valid IAFS Certificates; and ships under 400 GT of 24 metres or more in length engage in international voyage must have a Declaration on Anti-fouling System;
 - (ii) applications for and issue of IAFS Certificates;
 - (iii) endorsements and cancellation of IAFS Certificates; and
 - (iv) the duty to keep on ships IAFS Certificates and declarations in respect of anti-fouling systems.

- (d) Part 4 contains provisions dealing with –
- (i) appointment of Government surveyors and their power to inspect, examine etc. ships;
 - (ii) obstructing Government surveyors in exercising their power;
 - (iii) the Director's power to recognize organizations to survey ships and issue certificates;
 - (iv) the Director's power to survey non-Hong Kong ships and issue certificates at the request of other Convention countries;
 - (v) the Director's power to request Convention countries to survey Hong Kong ships and issue certificates; and
 - (vi) the Director's power to alter certificates and issue certified true copies of certificates.

The Fees Amendment Regulation

9. The Fees Amendment Regulation seeks to prescribe the fees for the survey and certification of ships carried out by the Marine Department under the AFS Regulation. The main provisions are to –

- (a) amend Schedule 1 so that the fees currently prescribed for services by a Government surveyor within Hong Kong, outside Hong Kong and outside office hours also apply to an initial survey or additional survey carried out under the AFS Regulation; and
- (b) amend Schedule 2 so that the fees currently prescribed for the issue of certificates also apply to the issuance of IAFS Certificates under the AFS Regulation.

10. Both regulations come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

Panel discussions

11. The Administration consulted the Panel on Economic Development about the AFS Regulation at its meeting on 16 December 2014. Members noted that the Convention had been in force since 2008 while China ratified it in 2011. They requested the Administration to expedite the relevant legislative

work as the compliance of international conventions, including the Convention, was essential in upholding the international image of Hong Kong.

Latest position

12. At the meeting of the House Committee on 10 April 2015, Members agreed to form a subcommittee to study the two Regulations.

Council Business Division 4
Legislative Council Secretariat
20 April 2015

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Economic Development	16 December 2014	Agenda Minutes Background brief Information paper issued by the Administration
Transport and Housing Bureau	18 March 2015	Legislative Council brief
Legislative Council Secretariat	8 April 2015	Legal Service Division Report
International Maritime Organization	--	MARPOL Annexes Ant-fouling systems (English version only)