

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping (Prevention and Control of Pollution) Ordinance
(Cap. 413)

Merchant Shipping (Control of Harmful Anti-fouling Systems on Ships) Regulation

and

Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2015

INTRODUCTION

A The Secretary for Transport and Housing (STH) will make the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation (the AFS Regulation), at **Annex A**, under section 3(2) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap.413) (the Ordinance) for the implementation of the “International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001” (the Convention) in Hong Kong.

2. At the meeting of the Executive Council on 24 February 2015, the Council ADVISED and the Chief Executive ORDERED that, under section 3(2A) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance, the Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2015 (the Fees Amendment Regulation), at B **Annex B**, should be made.

JUSTIFICATIONS

Implementation of the Convention

3. The Convention was adopted by the International Maritime Organization (IMO) to prohibit the use of organotin compounds in anti-fouling systems of ships for the protection of the marine environment¹. The Convention entered into force internationally on 17 September 2008. China ratified the Convention in March 2011. To implement the Convention in Hong Kong, we propose to make the AFS Regulation to set out all the relevant requirements that are applicable to ships within Hong Kong waters as well as Hong Kong ships wherever they are. Subject to its enactment, we will request the Central People's Government to notify the IMO the extension of the Convention to Hong Kong.

Legislative Proposals

(I) AFS Regulation

Requirements

4. Under the AFS Regulation, a ship must not bear any organotin compounds in its anti-fouling system. A ship of 400 gross tonnage (GT) or above that is engaged in an international voyage must also have a valid International Anti-fouling System Certificate (IAFS Certificate) issued by the Flag State or its recognised organisations². If 25% or more of a ship's anti-fouling system has been changed, replaced or affected by a repair, its IAFS Certificate is not to be regarded as valid for the purpose of the AFS Regulation until it has been endorsed by the issuing authorities. For a ship engaged in an international voyage that is less than 400 GT but is 24 meters

¹ An anti-fouling system means a coating, paint, surface or device that is used on the bottom of a ship to control or prevent attachment of unwanted organisms such as barnacles, bacteria, mussels and algae, which would otherwise slow down the ship and increase its fuel consumption. Studies have shown that use of organotin compounds in anti-fouling systems is harmful to the marine environment.

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

or more in length, although no certification is needed, it is required to carry on board a declaration signed by the owner of the ship or his authorised agent that the ship's anti-fouling system complies with the Convention.

5. If a ship fails to comply with the above requirements, the owner and the master each commits an offence and is liable to a fine at level 6 (i.e. \$100,000)³. To ascertain whether there have been any breaches of the statutory requirements, the AFS Regulation provides that a Government surveyor may board a ship for inspection, examination and investigation as considered necessary.

Issue of IAFS Certificate to Hong Kong Ships

6. The AFS Regulation provides that the owner of a Hong Kong ship may apply to the Director of Marine (the Director), together with the prescribed fee for the issue of an IAFS Certificate, or for an endorsement on an existing IAFS Certificate. The Director may issue or endorse on an IAFS Certificate upon being satisfied on completion of a survey by a Government surveyor that the anti-fouling system of the ship concerned complies with the Convention's requirements as stipulated in section 4 of the AFS Regulation.

Application of Direct Reference Approach

7. 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

³ If the offence is committed by the master or owner due to the act or omission of some other person, that person also commits the offence.

adopting this approach, various factors must be taken into account, including:

- (a) whether the requirements in provisions of the international agreement are clear and specific enough to be capable of being given direct effect;
- (b) whether the international agreement provisions are easily accessible and read to facilitate understanding of relevant requirements by those required to comply with these provisions;
- (c) whether the international agreement topics mainly concern a specific group of people, and whether such group of people are familiar with the requirements of the international agreement concerned;
- (d) whether relevant international requirements are applicable to all party states to the agreement and whether adoption of DRA is conducive to achieving uniformity in the implementation of the relevant requirements; and
- (e) whether the terminology of the international agreement provisions is compatible with local legislation.

8. After a careful review of the provisions of the AFS Regulation against the above factors, we have identified a number of legislative provisions that are suitable for the application of DRA. These provisions are set out at **Annex C**.

C

(II) Fees Amendment Regulation

Charging of Fees

9. To provide 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 (see paragraph 6 above), we propose that the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap.413L)

(the Fees Regulation) be amended by the Chief Executive in Council under section 3(2A) of the Ordinance to prescribe the fees concerned. We propose that the fees be set at the same levels as those currently stipulated under the Fees Regulation for similar surveying and certification services provided by the Marine Department (MD) under the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap.413K) and the Merchant Shipping (Prevention of Air Pollution) Regulation (Cap.413M). The workflow and resources to be deployed by MD for the new surveying and certification services under the AFS Regulation are the same as other similar surveying and certification services on prevention of sewage pollution and air pollution currently provided by MD under the relevant Regulations. In this regard, 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. Same as the existing fees for similar surveying and certification services, the fees for the services provided under the AFS Regulation will be assessed on the basis of cost recovery principle.

10. In line with established practice, the AFS Regulation provides that the Director may recognise organisations to survey ships and issue certificates, etc. Since it is common practice for the shipping industry to engage the services of recognised organisations in the survey of ships and issue of certificates in conformity with the requirements of international maritime conventions, it is expected that the additional caseload to be handled by MD under the AFS Regulation, if any, would not be substantial.

The Regulation

The AFS Regulation

11. 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.
- (c) Part 3 covers certification and means of control on anti-fouling systems. It requires ships of 400 GT or above and engaged in international voyages 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. Part 3 also covers the following —
 - (i) applications for and issue of IAFS Certificates;
 - (ii) endorsements and cancellation of IAFS Certificates; and
 - (iii) 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 recognise organisations 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

12. The Fees Amendment Regulation seeks to prescribe the fees for the survey and certification of ships carried out by MD 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.

LEGISLATIVE TIMETABLE

13. The AFS Regulation and the Fees Amendment Regulation will be published in the Gazette on 20 March 2015 and introduced into the Legislative Council on 25 March 2015.

IMPLICATIONS OF THE PROPOSAL

14. The implementation of the Convention in Hong Kong to prohibit the use of organotin compounds in ships' anti-fouling systems will contribute to environmental protection and sustainability of the marine environment. The charging of fees for the survey and certification services provided by MD based on cost recovery principle will have minimal impact on the operating costs of ocean-going vessels and hence will not have any significant economic implications. Financial implications are also negligible. The revenue generated from the fees is for cost-recovery purpose and is expected to be very small in amount given there may only be a few cases each year.

15. There is no civil service implication because MD will absorb the additional work involved by existing staff. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the current binding effect of the Ordinance and the Fees Regulation. The proposal has no productivity or family implications.

PUBLIC CONSULTATION

16. On 16 December 2014, we consulted the Legislative Council Panel on Economic Development on our proposal to make the AFS Regulation for the implementation of the Convention in Hong Kong, including the requirements for the survey and certification of ships of 400 GT or above that are engaged in international voyages. Members endorsed our proposal. The Shipping Consultative Committee, the Local Vessels Advisory Committee and the High Speed Craft Consultative Committee, which comprise various stakeholders in the shipping industry, were also consulted and they raised no objection to the proposal.

PUBLICITY

17. A press release will be issued on 20 March 2015. A spokesperson will be available to handle enquires.

OTHERS

18. Any enquiries on this brief can be addressed to Mr. Y.K. Lai, Chief, Maritime Policy of Marine Department (Tel: 2852 4603) or Miss Joyce Chan, Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8257).

***Transport and Housing Bureau
18 March 2015***

Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation

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Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation

(Made by the Secretary for Transport and Housing under section 3 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Interpretation

In this Regulation—

Administration (主管機關), in relation to a ship, means the government of any place outside Hong Kong whose flag the ship is entitled to fly;

anti-fouling system (防污底系統) means a coating, paint, surface or device that is used on a ship to control or prevent attachment of unwanted organisms;

commencement date (生效日期) means the date on which this Regulation comes into operation;

Convention (《公約》) means the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, as from time to time revised or amended by the revision or amendment to any provision of such Convention that applies to Hong Kong;

Convention country (公約國) means a country that is a party to the Convention;

Government surveyor (政府驗船師) means a person appointed under section 12 to be a Government surveyor;

IAFS Certificate (IAFS 證書) means a certificate issued by the Director under section 7;

International Anti-Fouling System Certificate (國際防污底系統證書) means—

- (a) an IAFS Certificate;
- (b) a certificate entitled “International Anti-Fouling System Certificate” issued by a recognized organization in conformity with Annex 4 to the Convention; or
- (c) a certificate issued by or under the authority of an Administration in conformity with Annex 4 to the Convention;

international voyage (國際航程) means a voyage between—

- (a) Hong Kong and a port outside the People’s Republic of China; or
- (b) a port in a Convention country and a port outside that country (whether in another Convention country or not);

length (長度), in relation to a ship, means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating to it, or any successor convention, as amended from time to time and as applicable to Hong Kong;

non-Hong Kong ship (非香港船舶) means a ship other than a Hong Kong ship;

recognized organization (認可機構) means an organization recognized by the Director under section 15;

ship (船舶) means a vessel of any type operating in the marine environment and includes an air-cushion vehicle, a hydrofoil boat, a submersible, a floating craft, a fixed or floating platform, a floating storage unit and a floating production storage and off-loading unit.

3. Application

- (1) This Regulation applies to—
 - (a) a Hong Kong ship wherever it may be; and
 - (b) a non-Hong Kong ship within the waters of Hong Kong.
 - (2) This Regulation does not apply to—
 - (a) a warship;
 - (b) a naval auxiliary; or
 - (c) any other ship owned or operated by a government and used only on government non-commercial service.
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Part 2

Control on Anti-Fouling Systems on Ships

4. Controls on anti-fouling systems

- (1) Subject to subsections (2) and (3), a ship must not, on or after the commencement date, bear any organotin compounds that act as biocides in the anti-fouling system of the ship.
 - (2) Subject to subsection (3), if a ship bore any organotin compounds that act as biocides in its anti-fouling system before the commencement date, it must, as from that date, bear a coating that forms a barrier to the compounds.
 - (3) Subsections (1) and (2) do not apply to the following platform or unit that was constructed before 1 January 2003 and has not been in dry-dock on or after that date—
 - (a) a fixed or floating platform;
 - (b) a floating storage unit; or
 - (c) a floating production storage and off-loading unit.
 - (4) If subsection (1) is contravened or subsection (2) is not complied with, the owner and the master of the ship concerned each commits an offence and is liable to a fine at level 6.
 - (5) If an offence under subsection (4) is committed by the owner or the master of a ship due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.
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Part 3

Certification and Means of Control on Anti-Fouling Systems

5. Application of Part 3

This Part (except section 11) applies to a ship of 400 gross tonnage or above and engaged in an international voyage (excluding a fixed or floating platform, floating storage unit and floating production storage and off-loading unit).

6. Ships must have International Anti-Fouling System Certificates

- (1) A ship must have a valid International Anti-Fouling System Certificate in respect of the ship.
- (2) If subsection (1) is not complied with, the owner and the master of the ship concerned each commits an offence and is liable to a fine at level 6.
- (3) If an offence under subsection (2) is committed by the owner or the master of a ship due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.

7. Application for and issue of IAFS Certificates

- (1) The owner of a Hong Kong ship may apply to the Director for an IAFS Certificate in respect of the ship.
- (2) The application must be accompanied by the prescribed fee for the issue of an IAFS Certificate.
- (3) Except as provided in subsection (4), the Director must not issue an IAFS Certificate in respect of a Hong Kong ship unless the Director is satisfied that—

- (a) an initial survey of the ship has been carried out by a Government surveyor on payment of the prescribed fee for the survey; and
 - (b) on completion of the survey, the anti-fouling system of the ship complies with section 4.
- (4) The Director may issue an IAFS Certificate in respect of a ship if—
- (a) it is a ship that has been transferred to the registry in Hong Kong;
 - (b) there is a valid International Anti-Fouling System Certificate issued in respect of the ship by or under the authority of an Administration; and
 - (c) the record of the ship's anti-fouling system in the form specified in Appendix 1 to Annex 4 to the Convention is up to date.

8. Endorsements of International Anti-Fouling System Certificates

- (1) If, after an International Anti-Fouling System Certificate has been issued in respect of a ship, 25% or more of the ship's anti-fouling system has been changed or replaced or has been affected by a repair, the Certificate is not to be regarded as valid for the purposes of this Regulation until—
 - (a) the Certificate is endorsed under subsection (2); or
 - (b) the Certificate is endorsed in conformity with Annex 4 to the Convention by the recognized organization who issued the Certificate or by an Administration.

- (2) The Director may endorse on an International Anti-Fouling System Certificate issued in respect of a Hong Kong ship if satisfied that—
 - (a) an additional survey of the ship has been carried out by a Government surveyor on payment of the prescribed fee for the survey; and
 - (b) on completion of the survey, the ship's anti-fouling system so changed or replaced or affected by the repair complies with section 4.

9. Cancellation of International Anti-Fouling System Certificates

- (1) The Director may, by notice in writing to the owner and the master of a Hong Kong ship, cancel an International Anti-Fouling System Certificate issued in respect of the ship if the Director has reasonable grounds to believe that the Certificate was issued or endorsed on the basis of false or erroneous information.
- (2) The Director must give reasons for cancelling the Certificate in the notice.
- (3) On receiving the notice, the owner and the master of the ship concerned must forthwith deliver the Certificate to the Director.

10. Duty to keep International Anti-Fouling System Certificates on ships

- (1) The owner and the master of a ship must ensure that an International Anti-Fouling System Certificate that is issued in respect of the ship and is for the time being in force—
 - (a) is kept on board the ship; and
 - (b) is made available for inspection by a Government surveyor at all reasonable times.

- (2) The owner and the master of a ship who contravene subsection (1) each commits an offence and is liable to a fine at level 6.
- (3) If an offence under subsection (2) is committed by the owner or the master of a ship due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.

11. Declaration on anti-fouling systems

- (1) This section applies to a ship of 24 meters or more in length, less than 400 gross tonnage and engaged in an international voyage (excluding a fixed or floating platform, floating storage unit and floating production storage and off-loading unit).
- (2) The owner and the master of a ship must ensure that a declaration that is made in respect of the anti-fouling system of the ship and complies with the requirements in subsection (3)—
 - (a) is kept on board the ship; and
 - (b) is made available for inspection by a Government surveyor at all reasonable times.
- (3) The declaration must be—
 - (a) in the form specified in Appendix 2 to Annex 4 to the Convention;
 - (b) signed by the owner of the ship or an agent authorized by the owner; and
 - (c) accompanied by appropriate documentation showing that the anti-fouling system complies with section 4.

- (4) The owner and the master of a ship who contravene subsection (2) each commits an offence and is liable to a fine at level 6.
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Part 4

Powers of Director and Government Surveyors

12. Appointment of Government surveyors

The Director may appoint a person to be a Government surveyor for the purposes of this Regulation.

13. Power of Government surveyors to inspect, examine etc. ships

- (1) Any of the powers conferred by this section may be exercised for the purpose of ascertaining whether this Regulation has been or is being complied with.
- (2) A Government surveyor may, at any reasonable time—
 - (a) board a ship that is within the waters of Hong Kong; and
 - (b) take with the surveyor any other person and any equipment or materials required to assist the surveyor.
- (3) After boarding the ship, the Government surveyor may—
 - (a) inspect the ship;
 - (b) make any examination and investigation as the surveyor considers necessary;
 - (c) take a brief sampling of the ship's anti-fouling system in accordance with the Guidelines for Brief Sampling of Anti-Fouling Systems on Ships adopted by the International Maritime Organization;
 - (d) take samples of any articles or substances found on the ship that the surveyor may reasonably require for the inspection, examination or investigation;
 - (e) inspect, seize and remove from the ship any article or substance in respect of which the surveyor suspects on

- reasonable grounds that an offence under this Regulation has been committed;
- (f) detain the article or substance for so long as is necessary—
 - (i) for the inspection, examination or investigation; and
 - (ii) to ensure that it is available for use as evidence in any proceedings for an offence under this Regulation;
 - (g) take any measurements and photographs and make any recordings that the surveyor may reasonably require for the inspection, examination or investigation;
 - (h) require that the ship or any part of it, or anything on the ship, is to be left undisturbed (whether generally or in particular respects) for so long as is necessary for the inspection, examination or investigation;
 - (i) require any person who the surveyor reasonably believes is able to give any information relevant to the inspection, examination or investigation—
 - (i) to attend at a place and time specified by the surveyor;
 - (ii) to answer the questions that the surveyor thinks fit to ask; and
 - (iii) to sign a declaration of the truth of the person's answers;
 - (j) require the production of, and inspect and take copies of or of any entry in—
 - (i) any certificates, books or documents that are required to be kept under this Regulation; and

- (ii) any other certificates, books or documents that the surveyor considers necessary for the inspection, examination or investigation; and
- (k) require any person to afford the surveyor such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the surveyor considers necessary to enable the surveyor to exercise any power conferred by this section.

14. Obstruction and non-compliance with requirements

- (1) A person must not—
 - (a) wilfully obstruct a Government surveyor in the exercise of any power conferred by section 13; or
 - (b) make a statement or sign a declaration that the person knows is false, or recklessly make a statement or sign a declaration that is false, in purported compliance with a requirement under section 13(3)(i).
- (2) A person must comply with a requirement imposed on the person under section 13(3).
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 6.
- (4) A person who without reasonable excuse fails to comply with subsection (2) commits an offence and is liable to a fine at level 6.

15. Director may recognize organizations to survey ships and issue certificates etc.

The Director may recognize an organization for—

- (a) carrying out surveys of anti-fouling systems of Hong Kong ships of 400 gross tonnage or above and engaged

- in international voyages in conformity with Annex 4 to the Convention;
- (b) issuing International Anti-Fouling System Certificates in respect of those ships in conformity with Annex 4 to the Convention;
- (c) making endorsements in conformity with Annex 4 to the Convention on International Anti-Fouling System Certificates issued by the organization;
- (d) altering any particulars contained in International Anti-Fouling System Certificates issued by the organization; and
- (e) issuing certified true copies of International Anti-Fouling System Certificates issued by the organization.

16. Director may issue IAFS Certificates etc. at request of Convention countries

The Director may, at the request of any Convention country—

- (a) cause a non-Hong Kong ship that is within the waters of Hong Kong to be surveyed under section 7 or 8 as if the ship were a Hong Kong ship;
- (b) issue an IAFS Certificate in respect of the ship under section 7 as if the ship were a Hong Kong ship; and
- (c) endorse on an International Anti-Fouling System Certificate in conformity with Annex 4 to the Convention or under section 8(2) as if the Certificate were issued in respect of a Hong Kong ship.

17. Director may request Convention countries to survey Hong Kong ships etc.

The Director may request any Convention country—

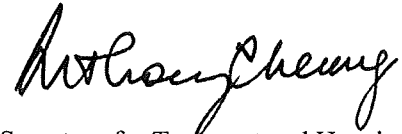
- (a) to carry out a survey in respect of a Hong Kong ship of 400 gross tonnage or above and engaged in an international voyage on behalf of the Director in conformity with Annex 4 to the Convention;
- (b) to issue an International Anti-Fouling System Certificate in respect of the ship in conformity with Annex 4 to the Convention; and
- (c) to endorse on an International Anti-Fouling System Certificate in conformity with Annex 4 to the Convention.

18. Alteration of IAFS Certificates

- (1) The owner of a Hong Kong ship may apply to the Director for altering any particulars contained in an IAFS Certificate issued in respect of the ship by the Director.
- (2) The Director may, on payment of the prescribed fee, alter the particulars contained in the IAFS Certificate if the Director considers that the alteration is not a material one.

19. Certified true copies of IAFS Certificates

- (1) The owner of a Hong Kong ship may apply to the Director for the issue of a certified true copy of an IAFS Certificate issued in respect of the ship by the Director.
- (2) The application must be accompanied by the prescribed fee for the issue of a certified true copy.



Secretary for Transport and Housing

13 March 2015

Explanatory Note

This Regulation implements the International Convention on Control of Harmful Anti-Fouling Systems on Ships, 2001 (*Convention*). The Convention seeks to protect the marine environment and human health from adverse effects of certain anti-fouling systems used on ships.

2. Part 1 contains preliminary provisions that provide for the commencement and application of the Regulation and define various terms used in the Regulation.
3. Part 2 prohibits ships from bearing organotin compounds that act as biocides in the anti-fouling systems of the ships.
4. Part 3 covers certification and means of control on anti-fouling systems. In particular section 6 requires ships of 400 gross tonnage or above and engaged in international voyages to have valid International Anti-Fouling System Certificates. Other provisions of Part 3 cover—
 - (a) applications for and issue of IAFS Certificates;
 - (b) endorsements and cancellation of International Anti-Fouling System Certificates; and
 - (c) the duty to keep on ships International Anti-Fouling System Certificates and declarations made in respect of anti-fouling systems.
5. Part 4 contains provisions dealing with—
 - (a) appointment of Government surveyors and their power to inspect, examine etc. ships;
 - (b) obstructing Government surveyors in exercising their power;

- (c) the power of the Director of Marine (*Director*) to recognize organizations to survey ships and issue certificates;
- (d) the Director's power to survey non-Hong Kong ships and issue certificates;
- (e) the Director's power to request Convention countries to survey Hong Kong ships and issue certificates; and
- (f) the Director's power to alter certificates and issue certified true copies of certificates.

Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2015

(Made by the Chief Executive in Council under section 3(2A) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413))

“(c) to be a Government surveyor under the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation;”.

4. Schedule 1 amended (specified services)

Schedule 1, after paragraph 2—

Add

“3. An initial survey or additional survey within the meaning of the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation.”.

5. Schedule 2 amended (specified certificates)

Schedule 2, after paragraph 2—

Add

“3. An IAFS Certificate within the meaning of the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation.”.

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation amended

The Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413 sub. leg. L) is amended as set out in sections 3, 4 and 5.

3. Section 2 amended (interpretation)

Section 2, definition of *Government surveyor*—

(a) Paragraph (a)—

Repeal

“or”;

(b) Paragraph (b), after the semicolon—

Add

“or”;

(c) After paragraph (b)—

Add


Clerk to the Executive Council

COUNCIL CHAMBER

24th February, 2015

Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment)
Regulation 2015

Explanatory Note
Paragraph 1

3

Explanatory Note

This Regulation amends the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413 sub. leg. L) to introduce the fees payable for the services rendered by Government surveyors, and the issue of IAFS Certificates by the Director of Marine, under the new Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation.

Proposed Application of “Direct Reference Approach” in Provisions of AFS Regulation

Item	Subject Matters Involved	Relevant Provisions of the AFS Regulation
1	Definition of ‘Length’	Section 2 – “length (長度), in relation to a ship, means the length as defined in the International Convention on Load Lines, 1966 , as modified by the Protocol of 1988 relating to it, or any successor convention, as amended from time to time and as applicable to Hong Kong ¹ ”

¹ According to Article 2 of the International Convention on Load Lines, 1966, “Length” means 96 % of the total length on a waterline at 85 % of the least moulded depth measured from the top of the keel, or the length from the fore-side of the stem to the axis of the rudder stock on that waterline, if that be greater. Where the stem contour is concave above the waterline at 85 % of the least moulded depth, both the forward terminal of the total length and the fore-side of the stem respectively shall be taken at the vertical projection to that waterline of the after most point of the stem contour (above that waterline). In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline.

2	Endorsement on an International Anti-Fouling System Certificate	<p>Section 8(1)(b) - “the Certificate is endorsed in conformity with Annex 4 to the Convention by the recognized organization who issued the Certificate or an Administration.” <i>[Note: A copy of Annex 4 of the Convention is at Annex D.]</i></p>
3	Duties of recognized organizations	<p>Section 15 (a) to (c) – “The Director may recognize an organization for—</p> <ul style="list-style-type: none"> (a) carrying out surveys of anti-fouling systems of Hong Kong ships of 400 gross tonnage or above and engaged in international voyages in conformity with Annex 4 to the Convention; (b) issuing International Anti-Fouling System Certificates in respect of those ships in conformity with Annex 4 to the Convention; (c) making endorsements in conformity with Annex 4 to the Convention on International Anti-Fouling System Certificates issued by the organization; (d) altering any particulars contained in International Anti-Fouling System Certificates issued by the organization; and (e) issuing certified true copies of International Anti-Fouling System Certificates issued by the organization.”
4	Director may issue IAFS Certificates etc. at request of Convention countries	<p>Section 16 (c)– “The Director may, at the request of any Convention country—</p> <ul style="list-style-type: none"> (a) cause a non-Hong Kong ship that is within the waters of Hong

		<p>Kong to be surveyed under section 7 or 8 as if the ship were a Hong Kong ship;</p> <p>(b) issue an IAFS Certificate in respect of the ship under section 7 as if the ship were a Hong Kong ship; and</p> <p>(c) endorse on an International Anti-Fouling System Certificate in conformity with Annex 4 to the Convention or under section 8(2) as if the Certificate were issued in respect of a Hong Kong ship.”</p>
5	Director may request Convention countries to survey Hong Kong ships etc.	<p>Section 17 –</p> <p>“The Director may request any Convention country—</p> <p>(a) to carry out a survey in respect of a Hong Kong ship of 400 gross tonnage or above and engaged in international voyage on behalf of the Director in conformity with Annex 4 to the Convention;</p> <p>(b) to issue an International Anti-Fouling System Certificate in respect of the ship in conformity with Annex 4 to the Convention; and</p> <p>(c) to endorse on an International Anti-Fouling System Certificate in conformity with Annex 4 to the Convention.”</p>

ANNEX 4

SURVEYS AND CERTIFICATION REQUIREMENTS FOR ANTI-FOULING SYSTEMS**REGULATION 1**

Surveys

- (1) Ships of 400 gross tonnage and above referred to in article 3(1)(a) engaged in international voyages, excluding fixed or floating platforms, FSUs, and FPSOs, shall be subject to surveys specified below:
- (a) an initial survey before the ship is put into service or before the International Anti-fouling System Certificate (Certificate) required under regulation 2 or 3 is issued for the first time; and
 - (b) a survey when the anti-fouling systems are changed or replaced. Such surveys shall be endorsed on the Certificate issued under regulation 2 or 3.
- (2) The survey shall be such as to ensure that the ship's anti-fouling system fully complies with this Convention.
- (3) The Administration shall establish appropriate measures for ships that are not subject to the provisions of paragraph (1) of this regulation in order to ensure that this Convention is complied with.
- (4) (a) As regards the enforcement of this Convention, surveys of ships shall be carried out by officers duly authorized by the Administration or as provided in regulation 3(1), taking into account guidelines for surveys developed by the Organization*. Alternatively, the Administration may entrust surveys required by this Convention either to surveyors nominated for that purpose or to organizations recognized by it.
- (b) An Administration nominating surveyors or recognizing organizations** to conduct surveys shall, as a minimum, empower any nominated surveyor or recognized organization to:
- (i) require a ship that it surveys to comply with the provisions of Annex 1; and
 - (ii) carry out surveys if requested by the appropriate authorities of a port State that is a Party to this Convention.

* Guidelines to be developed.

** Refer to the guidelines adopted by the Organization by resolution A.739(18), as may be amended by the Organization, and the specifications adopted by the Organization by resolution A.789(19), as may be amended by the Organization.

- (c) When the Administration, a nominated surveyor, or a recognized organization determines that the ship's anti-fouling system does not conform either to the particulars of a Certificate required under regulation 2 or 3, or to the requirements of this Convention, such Administration, surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall also in due course notify the Administration of any such determination. If the required corrective action is not taken, the Administration shall be notified forthwith and it shall ensure that the Certificate is not issued or is withdrawn as appropriate.
- (d) In the situation described in subparagraph (c), if the ship is in the port of another Party, the appropriate authorities of the port State shall be notified forthwith. When the Administration, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such Administration, surveyor, or organization any necessary assistance to carry out their obligations under this regulation, including any action described in article 11 or 12.

REGULATION 2

Issue or Endorsement of an International Anti-fouling System Certificate

- (1) The Administration shall require that a ship to which regulation 1 applies is issued with a Certificate after successful completion of a survey in accordance with regulation 1. A Certificate issued under the authority of a Party shall be accepted by the other Parties and regarded for all purposes covered by this Convention as having the same validity as a Certificate issued by them.
- (2) Certificates shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate.
- (3) For ships bearing an anti-fouling system controlled under Annex 1 that was applied before the date of entry into force of a control for such a system, the Administration shall issue a Certificate in accordance with paragraphs (2) and (3) of this regulation not later than two years after entry into force of that control. This paragraph shall not affect any requirement for ships to comply with Annex 1.
- (4) The Certificate shall be drawn up in the form corresponding to the model given in Appendix 1 to this Annex and shall be written at least in English, French, or Spanish. If an official language of the issuing State is also used this shall prevail in the case of the dispute or discrepancy.

REGULATION 3

Issue or Endorsement of an International Anti-fouling System Certificate by Another Party

- (1) At the request of the Administration, another Party may cause a ship to be surveyed and, if satisfied that this Convention has been complied with, it shall issue or authorize the issue of a Certificate to the ship and, where appropriate, endorse or authorize the endorsement of that Certificate for the ship, in accordance with this Convention.

- (2) A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.
- (3) A Certificate so issued shall contain a statement that it has been issued at the request of the Administration referred to in paragraph (1) and it shall have the same force and receive the same recognition as a Certificate issued by the Administration.
- (4) No Certificate shall be issued to a ship which is entitled to fly the flag of a State which is not a Party.

REGULATION 4

Validity of an International Anti-fouling System Certificate

- (1) A Certificate issued under regulation 2 or 3 shall cease to be valid in either of the following cases:
 - (a) if the anti-fouling system is changed or replaced and the Certificate is not endorsed in accordance with this Convention; and
 - (b) upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with this Convention. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration a copy of the Certificates carried by the ship before the transfer and, if available, a copy of the relevant survey reports.
- (2) The issue by a Party of a new Certificate to a ship transferred from another Party may be based on a new survey or on a valid Certificate issued by the previous Party whose flag the ship was entitled to fly.

REGULATION 5

Declaration on Anti-fouling System

- (1) The Administration shall require a ship of 24 meters or more in length, but less than 400 gross tonnage engaged in international voyages and to which article 3(1)(a) applies (excluding fixed or floating platforms, FSUs, and FPSOs) to carry a Declaration signed by the owner or owner's authorized agent. Such Declaration shall be accompanied by appropriate documentation (such as a paint receipt or a contractor invoice) or contain appropriate endorsement.
- (2) The Declaration shall be drawn up in the form corresponding to the model given in Appendix 2 to this Annex and shall be written at least in English, French, or Spanish. If an official language of the State whose flag the ship is entitled to fly is also used, this shall prevail in the case of a dispute or discrepancy.

APPENDIX 1 TO ANNEX 4

MODEL FORM OF INTERNATIONAL ANTI-FOULING SYSTEM CERTIFICATE

INTERNATIONAL ANTI-FOULING SYSTEM CERTIFICATE

(This certificate shall be supplemented by a Record of Anti-fouling Systems)

(Official seal)

(State)

Issued under the
International Convention on the Control of Harmful Anti-Fouling Systems on Ships

under the authority of the Government of

.....
(name of the State)

by

.....
(person or organization authorized)

When a Certificate has been previously issued, this Certificate replaces the certificate dated

*Particulars of ship*¹

Name of ship

Distinctive number or letters

Port of registry

Gross tonnage

IMO number²

An anti-fouling system controlled under Annex 1 has not been applied during or after construction of this ship

An anti-fouling system controlled under Annex 1 has been applied on this ship previously, but has been removed by *(insert name of the facility)* on *(date)*

An anti-fouling system controlled under Annex 1 has been applied on this ship previously, but has been covered with a sealer coat applied by *(insert name of the facility)* on *(date)*

An anti-fouling system controlled under Annex 1 was applied on this ship prior to.... *(date)*³, but must be removed or covered with a sealer coat prior to *(date)*⁴

¹ Alternatively, the particulars of the ship may be placed horizontally in boxes.

² In accordance with the IMO Ship Identification Number Scheme adopted by the Organization with Assembly resolution A.600(15).

³ Date of entry into force of the control measure.

⁴ Date of expiration of any implementation period specified in article 4(2) or Annex 1.

THIS IS TO CERTIFY THAT:

- 1 the ship has been surveyed in accordance with regulation 1 of Annex 4 to the Convention;
and
- 2 the survey shows that the anti-fouling system on the ship complies with the applicable requirements of Annex 1 to the Convention.

Issued at.....
(Place of issue of Certificate)

.....
(Date of issue)

.....
(Signature of authorized official issuing the Certificate)

Date of completion of the survey
on which this certificate is issued:

MODEL FORM OF RECORD OF ANTI-FOULING SYSTEMS

RECORD OF ANTI-FOULING SYSTEMS

This Record shall be permanently attached to the International Anti-Fouling System Certificate.

Particulars of ship

Name of ship :
Distinctive number or letters :
IMO number :

Details of anti-fouling system(s) applied

Type(s) of anti-fouling system(s) used

Date(s) of application of anti-fouling system(s).....

Name(s) of company(ies) and facility(ies)/location(s) where applied

Name(s) of anti-fouling system manufacturer(s).....

Name(s) and colour(s) of anti-fouling system(s).....

Active ingredient(s) and their Chemical Abstract Services Registry Number(s) (CAS number(s))

Type(s) of sealer coat, if applicable

Name(s) and colour(s) of sealer coat applied, if applicable

Date of application of sealer coat.....

THIS IS TO CERTIFY that this Record is correct in all respects.

Issued at.....
(Place of issue of Record)

.....
(Date of issue)

.....
(Signature of authorized official issuing the record)

Endorsement of the Records⁵

THIS IS TO CERTIFY that a survey required in accordance with regulation 1(1)(b) of Annex 4 to the Convention found that the ship was in compliance with the Convention

Details of anti-fouling system(s) applied

Type(s) of anti-fouling system(s) used.....
.....

Date(s) of application of anti-fouling system(s).....

Name(s) of company(ies) and facility(ies) location(s) where applied.....
.....

Name(s) of anti-fouling system(s) manufacturer(s).....
.....

Name(s) and colour(s) of anti-fouling system(s).....
.....

Active ingredient(s) and their Chemical Abstract Services Registry Number(s) (CAS number(s)) ...
.....

Type(s) of sealer coat, if applicable

Name(s) and colour(s) of sealer coat applied, if applicable
.....

Date of application of sealer coat

Signed:.....

(Signature of authorized official issuing the Record)

Place:

Date⁶:

(Seal or stamp of the authority)

⁵ This page of the Record shall be reproduced and added to the Record as considered necessary by the Administration.

⁶ Date of completion of the survey on which this endorsement is made.

APPENDIX 2 TO ANNEX 4

MODEL FORM OF DECLARATION ON ANTI-FOULING SYSTEM

DECLARATION ON ANTI-FOULING SYSTEM

Drawn up under the
International Convention on the Control of Harmful Anti-Fouling Systems on Ships

Name of ship

Distinctive number or letters

Port of registry

Length

Gross tonnage

IMO number (if applicable)

I declare that the anti-fouling system used on this ship complies with Annex 1 of the Convention.

.....
(Date) *(Signature of owner or owner's authorized agent)*

Endorsement of anti-fouling system(s) applied

Type(s) of anti-fouling system(s) used and date(s) of application

.....
(Date) *(Signature of owner or owner's authorized agent)*

Type(s) of anti-fouling system(s) used and date(s) of application

.....
(Date) *(Signature of owner or owner's authorized agent)*

Type(s) of anti-fouling system(s) used and date(s) of application

.....
(Date) *(Signature of owner or owner's authorized agent)*