

立法會
Legislative Council

LC Paper No. CB(4)1118/15-16

Ref.: CB4/SS/4/15

Paper for the House Committee meeting on 17 June 2016

**Report of the Subcommittee on Four Regulations under the
Merchant Shipping (Safety) Ordinance (Cap. 369) Gazetted on 6 May 2016**

Purpose

This paper reports on the deliberations of the Subcommittee on Four Regulations under the Merchant Shipping (Safety) Ordinance (Cap. 369) Gazetted on 6 May 2016 ("the Subcommittee").

Background

The Four Regulations gazetted on 6 May 2016

2. L.N. 53 to L.N. 56 ("the four Regulations") are made by the Secretary for Transport and Housing under the Merchant Shipping (Safety) Ordinance (Cap. 369) to implement the latest requirements of the Convention on the International Regulations for Preventing Collisions at Sea ("COLREGs")¹ and the International Convention for the Safety of Life at Sea ("SOLAS")² adopted by the International Maritime Organization ("IMO").

¹ COLREGs, which impose steering, sailing and signaling requirements on vessels to prevent ship collisions, were adopted in 1972 and entered into force in 1977. They are implemented in Hong Kong through the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N). COLREGs were progressively updated to take into account technological advancement and changes on shipping practices.

² SOLAS, which governs the standards for the construction, equipment and operation of ships to ensure maritime safety, was adopted and entered into force in 1980. SOLAS is implemented in Hong Kong through the Merchant Shipping (Safety) Ordinance (Cap. 369) and its subsidiary legislation. Different aspects of maritime safety are covered under different chapters of SOLAS, and the requirements therein are incorporated into local legislation as necessary.

3. Major provisions of L.N. 53 to L.N. 56 are summarized as follows:
- (a) L.N. 53 amends the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N) to give effect to the amendments to COLREGs. The amendments include extending the application of Cap. 369N to Wing-In-Ground ("WIG") craft and providing for matters relating to navigational lights, sound signals and distress signals;
 - (b) L.N. 54 amends the Merchant Shipping (Safety) (Carriage of Cargoes) Regulation (Cap. 369AV) to give effect to the amendments to SOLAS. It renames Cap. 369AV as the Merchant Shipping (Safety) (Carriage of Cargoes and Oil Fuel) Regulation and extends its application to a ship carrying oil fuel. It also updates the provisions relating to the loading, stowage, carriage and unloading of cargoes (including solid bulk cargoes and grain). In addition, L.N. 54 implements the new requirement that the gross mass of cargoes and containers must be verified by (i) weighing the packed container as a whole, or (ii) adding the tare mass of the container and the mass of all the cargoes and packages to be packed into the container;
 - (c) L.N. 55 is a new regulation which implements the requirements under SOLAS and gives effect to the relevant provisions of the International Maritime Solid Bulk Cargoes Code ("IMSBC Code") relating to the loading, stowage, carriage and unloading of certain types of solid bulk cargoes (other than grain), including dangerous goods in solid form in bulk; and
 - (d) L.N. 56 amends the Merchant Shipping (Safety) (High Speed Craft) Regulation (Cap. 369AW) to provide for the requirements concerning the construction, operation, equipment maintenance and safety measures in respect of high speed craft. The amendments are made to reflect the latest requirements relating to the International Code of Safety for High Speed Craft adopted by the Maritime Safety Committee of IMO.

4. L.N. 53, L.N. 54 and L.N. 56 will come into operation on 1 July 2016. As for L.N. 55, save for sections 6(1) and 7(2)(b) and (7) which will come into operation on 1 January 2017, the other provisions will come into operation on 1 July 2016.

The Subcommittee

5. At the House Committee meeting held on 13 May 2016, Members agreed to form a subcommittee to study the four Regulations. The membership list of the Subcommittee is in the **Appendix**.

6. Under the chairmanship of Hon Frankie YICK, the Subcommittee held one meeting on 1 June 2016 with the Administration to examine the four Regulations. To allow sufficient time for the Administration to provide supplementary information pursuant to members' request made at the meeting on 1 June 2016 and for the Subcommittee to compile a report to the House Committee, the Subcommittee agreed to move a proposed resolution at the Council meeting of 8 June 2016 to extend the period of scrutiny to 29 June 2016. As the proposed resolution was not dealt with at the Council meeting of 8 June 2016, the scrutiny period of the four Regulations expired after the said Council meeting.

Deliberations of the Subcommittee

7. Members in general support the four Regulations to implement the latest requirements of COLREGs and SOLAS adopted by IMO. The major deliberations of the Subcommittee are set out in the ensuing paragraphs.

L.N. 53

8. The Subcommittee notes that the proposed amendments are intended to reflect the latest changes of COLREGs, and the wordings employed in COLREGs are basically adopted in L.N. 53 for the purpose. The Subcommittee, however, notes that there is a discrepancy between the English and Chinese versions of section 4(17) of L.N. 53, which should be rectified before L.N. 53 comes into operation, i.e. 1 July 2016. In particular, section 4(17) seeks to amend paragraph 1(c) of Annex III in the Schedule to Cap. 369N. The two paragraphs after the table in paragraph 1(c) are repealed in the Chinese text whereas they are retained in the English text. The Subcommittee calls on the Administration to rectify the discrepancy as a matter of priority before L.N. 53 comes into operation.

9. The Administration has explained that the two paragraphs in question are explanatory notes to the table therein regarding the range of whistles' audibility. These explanatory notes seek to provide further information regarding factors that might affect the range of audibility. Given that the two paragraphs are included in COLREGs, they should be retained in both texts. To bring the Chinese version of section 4(17) of L.N. 53 in line with the English text, the Administration has informed the Subcommittee after the meeting that it would

amend L.N. 53 by an amendment regulation which would be gazetted on 10 June 2016 and come into effect on the day of its gazettal. The amendment regulation would be tabled at the Legislative Council on 15 June 2016³. The Administration has made the arrangement to amend L.N. 53 so that it will come into effect with its English and Chinese version tallied on 1 July 2016.

L.N. 54

10. The Subcommittee notes that to prevent collapse of container stacks during voyage and to ensure the stability of the ship, shippers will be required under L.N. 54 to verify the gross mass of cargoes ("VGM") before loading the packed containers on board with effect from 1 July 2016. In gist, this can be done by physically weighing the packed container as a whole, or adding up the weight of the constituent packages, cargoes and loads. The ship master and terminal operator should not load containers without VGM documentation. Noting that the industry has expressed concern about the practical implementation arrangements for VGM requirement, the Subcommittee has looked into the Administration's measures taken to address the industry's concerns.

11. The Administration has pointed out that to ease the industry's concern, the Marine Department ("MD") has been in dialogue with the industry since 2013 and promulgated the "Guidelines on the Verification of Gross Mass of a Container with Cargo Packed in Hong Kong". Recently, MD has held five townhall meetings between April and May 2016 plus one classroom size meeting on 1 June 2016 in English to brief stakeholders, including shippers, freight forwarders, terminal operators, authorized weigh-scale operators, etc. on the implementation arrangements and procedures. A trial run on workflow and documentation involving MD, shippers and terminal operators was also conducted from 23 May to 1 June 2016. The procedures will be fine-tuned in light of feedback to ensure smooth implementation on 1 July 2016.

12. The Administration has also advised that prior to the Subcommittee meeting, it has held another meeting with representatives of the industry to explain the implementation arrangements for the VGM requirement and allay the industry's concerns. The industry has agreed to the related arrangements. As most of the shippers will adopt the method of adding up the weight of the constituent packages, cargoes and loads, and that shippers are required to register with MD for adopting such method, the Subcommittee calls on the Administration to step up publicity on its registration system and deploy more manpower to handle the registrations before the global commencement of the VGM requirement on 1 July 2016.

³ Members may refer to the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) (Amendment) Regulation 2016 (Amendment) Regulation 2016 (L.N.94 of 2016) and its LegCo Brief for further information.

13. In response to a member's enquiry about the deviation which may be tolerated in respect of a reading of the weight of a container, the Administration has advised that tolerance of +/-5% and +/-0.5 ton between the verified gross mass declared by the shipper and the verified gross mass obtained by MD, carrier or terminal are acceptable for container's gross mass above 10 tons and 10 tons or below respectively. Such rates are not provided under the legislation. They are determined in the light of the relevant standards adopted in the Mainland and the United Kingdom as well as the views of the industry.

14. Section 9 of L.N. 54 adds a new section 3A to Cap. 369AV. The Subcommittee notes that while SOLAS requires container gross mass to be verified by one of the two accepted methods, and that containers cannot be loaded onboard without VGM data, detailed implementation of such requirement is left to the discretion of administrations and port states. The proposed section 3A of L.N. 54 sets out the VGM requirement for implementing regulation 2 of SOLAS. According to the Administration, the notice to be published in Gazette by the Director of Marine ("DM") pursuant to the new section 3A(7) does not add mandatory requirements but seeks to provide guidance to the industry as to the procedures and documentation for complying with the VGM requirement.

15. Further, the Subcommittee noted that the new section 3A(8) provides that a notice published under the new section 3A(7) of L.N.54 is not subsidiary legislation. The Subcommittee has examined whether such notice has legislative effect or not. The Administration has advised that in determining whether a notice has legislative effect, it will consider the following principles:

- (a) whether it extends or amends existing legislation (*Williams v. Government of Island of St. Lucia* [1970] AC 935);
- (b) whether it has general application to the public or a class as opposed to individuals (*Fowler v. AG* [1987] NZLR 56; *Jackson Standsfield & Sons v. Butterworth* [1984] 2 All ER 558);
- (c) whether it formulates a general rule of conduct without reference to particular cases (*The Commonwealth v. Grunseit* (1943) 67 CLR 58); and
- (d) the legislative intent.

16. Applying the above principles, the Administration considers that a notice made under section 3A of L.N. 54, being administrative guidelines for VGM requirement, does not extend or amend existing legislation. Further, the notice does not apply generally to the public or formulate a general rule of conduct but only provides guidance to individual shippers with containers to be loaded in Hong Kong for export. The express provision under section 3A(8) declaring that

the notice is not subsidiary legislation also reflects the legislative intent in the light of the nature of the notice. Accordingly, a notice published by DM in Gazette pursuant to the new section 3A(7) of L.N. 54 is not subsidiary legislation and has no legislative effect.

L.N. 55

17. Section 7 of L.N. 55 implements sections 4 and 8.1 of IMSBC Code, which require a shipper of solid bulk cargoes to provide the ship master with information on the cargoes to enable the master to take the necessary precautions for the proper stowage and safe carriage of the cargoes. Under the proposed section 7(1), the shipper must provide the ship master with information "sufficiently in advance of loading". The Subcommittee has examined the circumstances which constitute "sufficiently in advance of loading". The Administration has advised that the reference to "sufficiently in advance of loading" means that the information must be submitted before the loading of the cargo and that there must be enough time for preparatory works (e.g. carrying out safety precautionary actions, making loading plans etc.) to be done between the submission of the information and the beginning of cargo loading. What constitutes "sufficiently in advance of loading" may vary in different cases but this is determined by objective factors which are commonly accepted by and well known to the industry. For instance, availability of cargo loading instruments on the ship, quantities of the cargoes involved and danger of certain specific types of cargoes, etc. are some of the factors to be considered.

L.N. 56

18. L.N. 56 amends Cap.369AW to implement the latest requirements under the 1994 and 2000 International Code of Safety for High Speed Craft, covering the construction, operation, equipment and maintenance of high speed craft. Hon James TO, a non-Subcommittee member, has expressed concern at the meeting about the exclusion of WIG craft from L.N. 56. He is concerned about the lack of proper provisions in the existing legislation to govern the use of WIG craft.

19. The Administration has advised that WIG craft is a very fast marine transportation vehicle that flies close to the water surface by utilizing a cushion of relatively high-pressure air between its wing and the water surface. At present, there is no WIG craft in Hong Kong. The Administration has further advised that under the Shipping and Port Control Ordinance (Cap. 313), DM may give directions to prohibit the entry of a vessel into, or require the removal of a vessel from, the waters of Hong Kong if in DM's opinion, the condition of that vessel is such that its presence in the waters of Hong Kong may involve grave and imminent danger to the safety of any person or property. The Administration has expressed that it will keep in view the development and will consider introducing regulation to govern the use of WIG craft in future.

Recommendation

20. The Subcommittee in general supports the four Regulations and will not propose any amendment to them. The Subcommittee also urges the Administration to rectify the discrepancy which appears in L.N. 53 before it comes into operation.

Advice sought

21. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
16 June 2016

**Subcommittee on Subcommittee on Four Regulations under the Merchant
Shipping (Safety) Ordinance (Cap. 369) Gazetted on 6 May 2016**

Membership list

Chairman Hon Frankie YICK Chi-ming, JP

Members Hon WONG Kwok-kin, SBS
Hon Alan LEONG Kah-kit, SC
Hon CHAN Han-pan, JP
Hon SIN Chung-kai, SBS, JP

(Total : 5 members)

Clerk Ms Shirley CHAN

Legal Adviser Miss Evelyn LEE