

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping (Seafarers) Ordinance (Cap. 478)

Legislative Amendments for the Implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers

INTRODUCTION

A series of legislative amendments involving 22 regulatory instruments, at **Annexes A to V**, have been made to implement the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (“STCW Convention”) adopted by the International Maritime Organization (“IMO”).

2. The STCW Convention, adopted by IMO in 1978 and entered into force in 1984, promotes safety of life and property at sea and the protection of the marine environment by establishing international standards of training, certification and watchkeeping for seafarers. It is implemented in Hong Kong through the Merchant Shipping (Seafarers) Ordinance (“Ordinance”) and its subsidiary legislation.

3. In 2010, to keep training standards in tandem with new technological and operational requirements, IMO adopted a major revision to the STCW Convention, commonly known as the “Manila Amendments”, which updated the training and certification requirements for seafarers to enhance marine safety. The requirements apply to seafarers of all ranks serving on ocean-going merchant ships. The Manila Amendments will be enforced internationally with effect from 1 January 2017.

LEGISLATIVE PROPOSALS

(1) Incorporating the Latest Requirements under the Manila Amendments

Updating Seafarer Certification

4. At present, the Director of Marine (“DM”) is empowered to issue different types of seafarer competence certificates required by the STCW Convention. Without the certificates, seafarers cannot perform specific shipboard duties. In the light of increasing complexity of shipboard tasks, new certificates as proof of proficiency will be required. Seafarers can obtain these certificates after receiving proper training and accruing sufficient shipboard experience. The following regulations made by the Secretary for Transport and Housing (“STH”) will empower DM to issue the new certificates —

- A (a) Merchant Shipping (Seafarers) (Certification of Officers) (Amendment) Regulation 2016, at **Annex A**;
- B (b) Merchant Shipping (Seafarers) (Tankers) Regulation 2016, at **Annex B**;
- C (c) Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment) Regulation 2016, at **Annex C**;
- D (d) Merchant Shipping (Seafarers) (Navigational Watch) Regulation, at **Annex D**;
- E (e) Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation, at **Annex E**; and
- F (f) Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation, at **Annex F**.

W A list of the new certificates is at **Annex W**. The Maritime Services Training Institute is providing the necessary training to enable seafarers to obtain the new certificates. So far, about 240 Hong Kong seafarers currently working on ocean-going ships have received the training.

Enhancing Regulation for Other Training

5. Apart from obtaining certificates for designated shipboard duties or posts, training is also required to enhance seafarers' competence in areas such as crowd management, passenger safety and crisis management, etc. on passenger ships. Such training usually takes the form of half-day or one-day class. Further, to ensure that trainings are conducted and seafarers are properly certificated, ship companies are required to keep proper records for inspection and verification by authorised officers of the Marine Department ("MD").

6. These requirements are respectively stipulated under —

G

(a) Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships-Training) (Amendment) Regulation 2016, at **Annex G**, and

H

(b) Merchant Shipping (Seafarers) (Certification and Watchkeeping) (Amendment) Regulation 2016, at **Annex H**.

Controlling Alcohol and Drug Consumption

7. Currently a rating who works under the influence of drink or drug to such an extent that he behaves in a disorderly manner or is unfit to be entrusted with duties commits a disciplinary offence. The master of the vessel can impose a fine of an amount not exceeding one day's pay or, in the case of a second or subsequent commission of that offence before the seafarer is discharged from the ship, an amount not exceeding two days' pay for such disciplinary offence.

8. As consumption of alcohol or illegal drugs can severely impair seafarers' fitness for duty, we will turn such disciplinary offence into a criminal offence. To provide an objective yardstick, a limit of not greater than 0.05% blood alcohol level or 0.25mg/l alcohol in breath will be prescribed in line with IMO's requirements¹. The amendments are made under Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) (No. 2) Regulation 2016, at **Annex I**.

I

¹ Drink and drug driving is also a criminal offence under the Road Traffic Ordinance (Cap. 374), with a similar prescribed limit for consumption of alcohol, as follows—

- (a) 50 mg/l alcohol in blood (which equals to 0.05% blood alcohol level);
- (b) 22 mg/l alcohol in breath; or
- (c) 67 mg/l alcohol in urine.

(2) Fees for Certification Services

9. To prescribe the fees for the certification services provided by MD for the STCW Convention, which cover conduct of examinations, review of seafarers' qualifications and issuance and renewal of certificates², the Secretary for Financial Services and the Treasury has made the Merchant Shipping (Seafarers) (Fees) (Amendment) (No. 2) Regulation 2016, at **Annex J**.

J

(3) Administrative Appeal

10. To enable seafarers aggrieved by DM's decision to refuse issuance of STCW Certificate to appeal to the Administrative Appeals Board, the Chief Executive in Council has made the Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016, at **Annex K**.

K

THE REGULATIONS

11. The requirements covered under the nine regulations (**Annexes A to I**) for the implementation of Manila Amendments are as follows —

- (a) The Merchant Shipping (Seafarers) (Certification of Officers) (Amendment) Regulation 2016 provides for certification of a new rank of seafarers, i.e. electro-technical officers;
- (b) The Merchant Shipping (Seafarers) (Tankers) Regulation 2016 provides for certification of seafarers working on oil, chemical and liquefied gas tankers;
- (c) The Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment) Regulation 2016 provides for certification of engine room watch ratings and electro-technical ratings;
- (d) The Merchant Shipping (Seafarers) (Navigational Watch) Regulation provides for certification of navigational watch ratings;

² The fees would be set at the same level as those for similar services provided by MD under existing regulations, given that the workload and resources involved are the same. Also, 10 existing fee items will be removed due to the introduction of the new fee items.

- (e) The Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation provides for certification of able seafarers deck and able seafarers engine;
- (f) The Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation provides for the requirements of and the issue of certificates relating to ship safety, security and designated duties including medical first-aid and operation of fast rescue boats;
- (g) The Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships-Training) (Amendment) Regulation 2016 requires records for training on passenger ships;
- (h) The Merchant Shipping (Seafarers) (Certification and Watchkeeping) (Amendment) Regulation 2016 updates MD's power of inspection on ships; and
- (i) The Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) (No. 2) Regulation stipulates requirements against abuse of drink and drug by seafarers.

12. In consequence of the above amendments, the following regulations are made to repeal regulations and provisions which are replaced by the new regulations³, and to update the reference to the new regulations, as follows —

L

- (a) Merchant Shipping (Seafarers) (Tankers – Officers and Ratings) Regulation (Repeal) Regulation, at **Annex L**;

M

- (b) Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation (Repeal) Regulation, at **Annex M**;

³ The new regulations include —

- (1) Merchant Shipping (Seafarers) (Tankers) Regulation 2016, at **Annex B**;
- (2) Merchant Shipping (Seafarers) (Navigational Watch) (Amendment) Regulation 2016, at **Annex D**;
- (3) Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) (Amendment) Regulation 2016, at **Annex E**;
- (4) Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) (Amendment) Regulation 2016, at **Annex F**;
- (5) Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships-Training) Regulation 2016, at **Annex G**; and
- (6) Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) (No. 2) Regulation, at **Annex I**.

N (c) Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules (Repeal) Rules at **Annex N**;

O (d) Merchant Shipping (Seafarers) (Safety Training) Regulation (Repeal) Regulation, at **Annex O**;

P (e) Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Repeal) Rules at **Annex P**;

Q (f) Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passenger Ships-Training) Regulation (Repeal) Regulation, at **Annex Q**;

R (g) Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) (No. 2) Regulation 2016, at **Annex R**; and

S (h) Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships) (Amendment) Regulation 2016, at **Annex S**.

13. The Merchant Shipping (Seafarers)(Amendment) Ordinance 2013 was enacted in 2013. Amongst others, it amends the definition of “seafarer” and allows the use of “direct reference approach” in making subsidiary legislation under the Ordinance for implementing the requirements under various international conventions. We need to bring into operations these related provisions for the implementation of the STCW Convention.

14. Therefore, STH has made three commencement notices to bring into operation some provisions of the Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 and two regulations under the Ordinance, as follows —

T (a) Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (Commencement) Notice 2016, at **Annex T**;

U

(b) Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) Regulation 2016 (Commencement) Notice 2016, at Annex U; and

V

(c) Merchant Shipping (Seafarers) (Medical Examination) (Amendment) Regulation 2016 (Commencement) Notice, at Annex V.

Application of Direct Reference Approach

15. In line with the established practice of incorporating requirements of marine-related international conventions into local legislation, we have adopted the “direct reference approach” (DRA) in making and amending the regulations. By making direct reference to provisions under international agreements in local legislation, DRA can keep our local legislation in tandem with new STCW Convention requirements. As a guiding principle, DRA is adopted for technical standards (such as the detailed competency requirements for different ranks of seafarers).

LEGISLATIVE TIMETABLE

16. The regulations will be published in the Gazette on 7 October 2016 and introduced into the Legislative Council on 12 October 2016.

IMPLICATIONS OF THE PROPOSAL

17. The proposals are necessary to ensure that Hong Kong seafarers are certificated to discharge shipboard duties in accordance with the Manila Amendments by 1 January 2017 when the Manila Amendments are enforced internationally. It is estimated that about local 180 seafarers in total would require new certificates and the financial implications are negligible.

18. The proposals have no civil service, financial, economic, productivity, family, gender, environmental or sustainability implications. They are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

19. We consulted the Legislative Council Panel on Economic Development on the legislative proposals on 19 April 2016. Members supported the proposed amendments. We have also consulted the Shipping Consultative Committee⁴. Members endorsed the proposals.

PUBLICITY

20. A press release will be issued on 7 October 2016. A spokesman will be available to answer enquires.

ENQUIRIES

21. Any enquiries on this brief can be addressed to Ms Louisa Yan, Principal Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8162), or Mr W H Ho, Assistant Director (Special Duties), Marine Department (Tel: 2852 3192).

**Transport and Housing Bureau
October 2016**

⁴ Shipping Consultative Committee is a non-statutory consultative body comprises representatives of the shipping industry, seafarers' associations and trade organisations.

Merchant Shipping (Seafarers) (Certification of Officers) (Amendment) Regulation 2016

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Merchant Shipping (Seafarers) (Certification of Officers) (Amendment) Regulation 2016

(Made by the Secretary for Transport and Housing under sections 72, 73, 96, 119 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Certification of Officers) Regulation amended

The Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J) is amended as set out in sections 3 to 19.

3. Section 2 amended (interpretation)

(1) Section 2(1), English text, definition of *service endorsement*—

Repeal the semicolon

Substitute a full stop.

(2) Section 2(1)—

(a) definition of *GRT*;

(b) definition of *registered power*;

(c) definition of *tons* and *tonnage*—

Repeal the definitions.

(3) Section 2(1)—

Add in alphabetical order

“*company* (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

gross tonnage (總噸), in relation to a ship, means the gross tonnage of the ship determined in accordance with regulation 6 of the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C);”.

(4) Section 2(2), after “, III”—

Add

“, IIIA”.

4. Section 3 amended (application)

(1) Section 3(1)—

Repeal

“This Regulation shall apply”

Substitute

“Subject to subsection (1A), this Regulation applies”.

(2) After section 3(1)—

Add

- “(1A) This Regulation does not apply to—
- (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
 - (b) fishing vessels;
 - (c) pleasure yachts not engaged in trade; or
 - (d) wooden ships of primitive build.”.

5. **Section 4 amended (qualified deck officers and classes of certificates)**

- (1) Section 4(1A)—

Repeal paragraphs (a), (b) and (c)

Substitute

- “(a) holds a certificate of competency as a deck officer issued by, or under the authority of, the government of a state party to the Convention;
- (b) has satisfied the requirements for the issue of a licence referred to in subsection (1)(a)(iii); and
- (c) has applied for the issue of the licence,”.

- (2) Section 4(1A)—

Repeal

“a licence under Part V is”

Substitute

“the licence is”.

- (3) Section 4(6)—

Repeal

“GRT”

Substitute

“gross tonnage”.

- (4) Section 4—

Repeal subsection (7)

Substitute

- “(7) A certificate of competency as a deck officer is subject to any conditions endorsed on the certificate.”.

6. **Section 6 amended (qualified engineer officers and classes of certificates)**

- (1) Section 6(1A)—

Repeal paragraphs (a), (b) and (c)

Substitute

- “(a) holds a certificate of competency as an engineer officer issued by, or under the authority of, the government of a state party to the Convention;
- (b) has satisfied the requirements for the issue of a licence referred to in subsection (1)(a)(iii); and
- (c) has applied for the issue of the licence,”.

- (2) Section 6(1A)—

Repeal

“a licence under Part V is”

Substitute

“the licence is”.

- (3) Section 6(6)—

Repeal

“GRT”

Substitute

“gross tonnage”.

(4) Section 6—

Repeal subsection (7)

Substitute

“(7) A certificate of competency as an engineer officer is subject to any conditions endorsed on the certificate.”.

7. Part IIIA added

After Part III—

Add

“Part IIIA

Certification of Electro-technical Officers

7A. Qualified electro-technical officers

- (1) For the purposes of this Regulation, an electro-technical officer is qualified if—
 - (a) the officer holds—
 - (i) a certificate of competency as an electro-technical officer issued under this Regulation; or
 - (ii) a licence which is under Part V to be treated as equivalent to such a certificate of competency; and
 - (b) such certificate or licence is in force.
- (2) Despite subsection (1), if any person—

- (a) holds a certificate of competency as an electro-technical officer issued by, or under the authority of, the government of a state party to the Convention;
 - (b) has satisfied the requirements for the issue of a licence referred to in subsection (1)(a)(ii); and
 - (c) has applied for the issue of the licence,
the person is to be treated as a qualified electro-technical officer for the purposes of this Regulation for a period of 3 months from the date on which the application made by such person for the issue of the licence is received by the Authority.
- (3) A certificate of competency as an electro-technical officer issued by the Authority is of the class of Certificate of Competency (Electro-technical Officer) Class ETO.
 - (4) A certificate of competency as an electro-technical officer is subject to any conditions endorsed on the certificate.”.

8. Part IV heading substituted

Part IV, heading—

Repeal the heading

Substitute

“Part IV

**Application for and Issue of Certificates of
Competency”.**

9. Sections 7B and 7C added

Part IV, before section 8—

Add

**“7B. Application for issue and renewal of certificates of
competency**

- (1) A person may apply to the Authority for the issue or renewal of a certificate of competency.
- (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue or the conditions for renewal of the certificate being applied for have been satisfied; and
 - (b) the prescribed fee.
- (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate being applied for, may issue the certificate to the applicant;
 - (b) if satisfied that the applicant is entitled to the renewal of the certificate being applied for, may renew the certificate; or
 - (c) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.

7C. Requirements for issue of certificates of competency

- (1) The Authority must not issue a certificate of competency referred to in subsection (2) to an applicant unless the requirements for the issue of the certificate are satisfied.
- (2) The requirements are—
 - (a) for a Certificate of Competency (Deck Officer) Class 1 (Master Mariner) or a Certificate of Competency (Deck Officer) Class 2, the applicant has met the requirements specified in Regulation II/2, paragraph 2 of the Convention;
 - (b) for a Certificate of Competency (Deck Officer) Class 3, the applicant has met the requirements specified in Regulation II/1, paragraph 2 of the Convention;
 - (c) for a Certificate of Competency (Marine Engineer Officer) Class 1 or a Certificate of Competency (Marine Engineer Officer) Class 2, the applicant has met the requirements specified in Regulation III/2, paragraph 2 of the Convention;
 - (d) for a Certificate of Competency (Marine Engineer Officer) Class 3, the applicant has met the requirements specified in Regulation III/1, paragraph 2 of the Convention; and
 - (e) for a Certificate of Competency (Electro-technical Officer) Class ETO, the applicant has met the requirements specified in Regulation III/6, paragraph 2 of the Convention.”.

**10. Section 8 amended (general standards and conditions for the
issue of certificates)**

Section 8(1)(c)—

Repeal

“an extension of the validity”

Substitute

“a renewal”.

11. Section 9 amended (classes of licences, etc.)

Section 9, Table, after item 6—

Add

“7. Licence (Electro-technical Officer) Class ETO	Certificate of Competency (Electro-technical Officer) Class ETO”.
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12. Section 10 amended (general standards and conditions for the issue of licences)

(1) Section 10(1)(a), after “Part;”—

Add

“and”.

(2) Section 10(1)—

Repeal paragraphs (b) and (c).

(3) Section 10(2)—

Repeal paragraph (a)

Substitute

“(a) a holder of a certificate issued by, or under the authority of, the government of a state party to the Convention and such certificate is issued not on the basis of recognition by such a government of any certificate issued by another government; and”.

13. Section 11 amended (form, validity, record and surrender of certificates)

(1) Section 11, heading—

Repeal

“Form, validity”

Substitute

“Validity”.

(2) Section 11—

Repeal subsection (1).

(3) Section 11(2)—

Repeal

“an extension of its validity”

Substitute

“a renewed certificate”.

14. Section 12 amended (lost, etc., certificates)

Section 12(1), after “prescribed fee,”—

Add

“cancel the certificate and”.

15. Section 13 amended (manning of ships)

(1) Section 13(1), Table A, items 2 and 3—

Repeal

“1 600 GRT”

Substitute

“3 000 gross tonnage”.

(2) Section 13(1), Table A, item 4—

- Repeal**
“registered”
- Substitute**
“propulsion”.
- (3) Section 13(1), Table A, item 4, column 3, Class 3—
- Repeal**
“2”
- Substitute**
“1”.
- (4) Section 13(1), Table A, item 5—
- Repeal**
“350”
- Substitute**
“750”.
- (5) Section 13(1), Table A, item 5—
- Repeal**
“registered”
- Substitute**
“propulsion”.
- (6) Section 13(1), Table A, item 5, column 3, Class 3—
- Repeal**
“3”
- Substitute**
“2”.
- (7) Section 13(1), Table B, item 2(a)—

- Repeal**
“registered”
- Substitute**
“propulsion”.
- (8) Section 13(1), Table B, item 2(a), column 3, Class 3—
- Repeal**
“2”
- Substitute**
“1”.
- (9) Section 13(1), Table B, item 2(b)—
- Repeal**
“registered”
- Substitute**
“propulsion”.
- (10) Section 13(1), Table B, item 2(b), column 3, Class 3—
- Repeal**
“1”.
- (11) Section 13—
Repeal subsections (2), (3), (4), (5) and (6).
16. **Section 15 repealed (additional requirements in respect of certain ships)**
Section 15—
Repeal the section.
17. **Section 17 amended (offences and penalties)**
(1) Section 17(1)—

Repeal

“or in connection with the endorsement, or extension of the validity”

Substitute

“or licence, or in connection with the endorsement, or renewal”.

- (2) Section 17(2)(a) and (b)—

Repeal

“or of service”

Substitute

“, certificate of service or licence”.

- (3) Section 17(3)—

Repeal

“or a certificate of service” (wherever appearing)

Substitute

“, certificate of service or licence”.

- (4) Section 17(3)—

Repeal

“or certificate of service”

Substitute

“, certificate of service or licence”.

- (5) Section 17—

Repeal subsection (4)

Substitute

“(4) The company or master of a ship who authorizes or permits the ship to proceed to sea in contravention of

section 13, whether or not the ship so proceeds, commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.”.

18. Section 18 amended (appeals)

Section 18—

Repeal

“8(2) or 10(2) to refuse to issue him a certificate or licence”

Substitute

“7B to refuse to issue or renew a certificate of competency or under section 10(2) to refuse to issue a licence”.

19. “適任” substituted for “合格”

(1) The following provisions, Chinese text—

- (a) Section 2(1), definition of 服務資歷認可證明,
- (b) Section 2(3)(b)(i) and (ii);
- (c) Section 4(1)(a)(i), (ii) and (iii), (2), (3), (4), (5) and (6)(a);
- (d) Section 5(5) and (7);
- (e) Section 6(1)(a)(i), (ii) and (iii), (2), (3), (4), (5), (6)(a) and (8);
- (f) Section 7(5) and (7);
- (g) Section 8(1)(a) and (b);
- (h) Section 9(2) and (3) and Table;
- (i) Section 10(1)(a);
- (j) Section 11(2), (3), (4) and (5)—

Repeal

“合格” (wherever appearing)

Substitute

“適任”。

(2) The following provisions, Chinese text—

(a) Section 5, heading;

(b) Section 7, heading;

(c) Section 16, heading—

Repeal

“合格” (wherever appearing)

Substitute

“適任”。

(3) The following provisions, Chinese text—

(a) Section 5(3);

(b) Section 7(3)—

Repeal

“)合格” (wherever appearing)

Substitute

“)適任”。

(4) The following provisions, Chinese text—

(a) Section 5(4);

(b) Section 7(4)—

Repeal

“合格證書。” (wherever appearing)

Substitute

“適任證書。”。

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to amend the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J) to implement the requirements relating to the certification of electro-technical officers under the Convention as revised by the Manila Amendments. New provisions are also added to expressly provide for the application and requirements for the issue of certificates of competency.

Merchant Shipping (Seafarers) (Tankers) Regulation

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Merchant Shipping (Seafarers) (Tankers) Regulation

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

Part 1**Preliminary****1. Commencement**

This Regulation comes into operation on 1 December 2016.

2. Interpretation

In this Regulation—

certificate of competency (適任證書) means a valid certificate of competency, other than a river trade certificate of competency, issued under the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

certificate of proficiency (培訓合格證書) means any of the following certificates of proficiency issued under this Regulation—

- (a) certificate of proficiency in basic training for oil and chemical tanker cargo operations;
- (b) certificate of proficiency in advanced training for oil tanker cargo operations;
- (c) certificate of proficiency in advanced training for chemical tanker cargo operations;
- (d) certificate of proficiency in basic training for liquefied gas tanker cargo operations;

(e) certificate of proficiency in advanced training for liquefied gas tanker cargo operations;

certificate of service (服務資歷證書) means a certificate of service referred to in the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J) that is valid;

chemical tanker (化學品船) means a ship constructed or adapted and used for the carriage in bulk of any liquid chemical;

company (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

IGC Code (《守則》) means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk published by the International Maritime Organization, as from time to time revised or amended by the International Maritime Organization;

licence (執照) means a valid licence issued under Part V of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

liquefied gas (液化氣體) means—

- (a) liquefied petroleum gas;
- (b) liquefied natural gas; or

(c) any of the gases listed in the IGC Code;

liquefied gas tanker (液化氣體船) means a ship constructed or adapted and used for the carriage in bulk of any liquefied gas or other product listed in Chapter 19 of the IGC Code;

liquid chemical (液體化學品) means any liquid product listed in Chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the International Maritime Organization, as from time to time revised or amended by the International Maritime Organization;

oil tanker (油輪) means a ship constructed and used for the carriage of petroleum and petroleum products in bulk;

petroleum products (石油產品) means—

- (a) fuel;
- (b) lubricant;
- (c) bitumen;
- (d) wax;
- (e) industrial spirits; or
- (f) any substance that—
 - (i) is produced directly or indirectly from crude petroleum (other than liquefied gas); and
 - (ii) has a final boiling point at normal atmospheric pressure of more than 50°C higher than its initial boiling point;

seagoing tanker (海油船) means a chemical tanker, a liquefied gas tanker or an oil tanker, other than one which navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;

(c) areas where port regulations apply.

3. Application

- (1) Subject to subsection (2), this Regulation applies to—
 - (a) all seagoing tankers that are Hong Kong ships; and
 - (b) all seagoing tankers that—
 - (i) are not Hong Kong ships;
 - (ii) are within the waters of Hong Kong; and
 - (iii) have entered those waters in the normal course of business or for operational reasons.
- (2) This Regulation does not apply to seagoing tankers owned or operated by a government and engaged only on governmental non-commercial service.

Part 2**Requirements for Service on Certain Tankers****4. Requirements for service on certain tankers**

- (1) Subject to section 5(1), the company and the master of an oil tanker or a chemical tanker must ensure that every seafarer on the tanker who is assigned to undertake specific duties or responsibilities related to cargo or cargo equipment on board has, before being assigned to undertake any of those duties or responsibilities—
 - (a) if the seafarer does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in basic training for oil and chemical tanker cargo operations; or
 - (b) if the seafarer holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-1, paragraph 2 of the Convention have been met for service on oil tankers and chemical tankers.
- (2) Subject to section 5(2), the company and the master of an oil tanker must ensure that each of the persons specified in subsection (6) on the tanker has, before being assigned to undertake any cargo operations duties on board—
 - (a) if the person does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in advanced training for oil tanker cargo operations; or
 - (b) if the person holds a certificate of competency, certificate of service or licence—obtained an

endorsement on the certificate or licence that the requirements specified in Regulation V/1-1, paragraph 4 of the Convention have been met for service on oil tankers.

- (3) Subject to section 5(3), the company and the master of a chemical tanker must ensure that each of the persons specified in subsection (6) on the tanker has, before being assigned to undertake any cargo operations duties on board—
 - (a) if the person does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in advanced training for chemical tanker cargo operations; or
 - (b) if the person holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-1, paragraph 6 of the Convention have been met for service on chemical tankers.
- (4) Subject to section 5(4), the company and the master of a liquefied gas tanker must ensure that every seafarer on the tanker who is assigned to undertake specific duties or responsibilities related to cargo or cargo equipment on board has, before being assigned to undertake any of those duties or responsibilities—
 - (a) if the seafarer does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in basic training for liquefied gas tanker cargo operations; or
 - (b) if the seafarer holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-2, paragraph 2

of the Convention have been met for service on liquefied gas tankers.

- (5) Subject to section 5(5), the company and the master of a liquefied gas tanker must ensure that each of the persons specified in subsection (6) on the tanker has, before being assigned to undertake any cargo operations duties on board—
- (a) if the person does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in advanced training for liquefied gas tanker cargo operations; or
 - (b) if the person holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-2, paragraph 4 of the Convention have been met for service on liquefied gas tankers.
- (6) The persons are—
- (a) the master;
 - (b) the chief engineer officer;
 - (c) the chief mate;
 - (d) the second engineer officer; and
 - (e) a person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on the tanker concerned.

5. Exceptions to section 4

- (1) A seafarer on an oil tanker or a chemical tanker who has not obtained a certificate of proficiency in basic training for oil and chemical tanker cargo operations, or an endorsement, as required by section 4(1) may be assigned to undertake a

specific duty or responsibility related to cargo or cargo equipment on board if—

- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 7(2)(a); and
 - (b) the duty or responsibility is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in basic training for oil and chemical tanker cargo operations;
 - (ii) a certificate of proficiency in advanced training for oil tanker cargo operations;
 - (iii) a certificate of proficiency in advanced training for chemical tanker cargo operations; or
 - (iv) an endorsement referred to in section 4(1)(b), (2)(b) or (3)(b).
- (2) A person specified in section 4(6) on an oil tanker who has not obtained a certificate of proficiency in advanced training for oil tanker cargo operations, or an endorsement, as required by section 4(2) may be assigned to undertake a cargo operations duty on board if—
- (a) the assignment is made for the purpose of enabling the person to meet the requirements referred to in section 7(2)(b); and
 - (b) the duty is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in advanced training for oil tanker cargo operations; or
 - (ii) an endorsement referred to in section 4(2)(b).
- (3) A person specified in section 4(6) on a chemical tanker who has not obtained a certificate of proficiency in advanced

training for chemical tanker cargo operations, or an endorsement, as required by section 4(3) may be assigned to undertake a cargo operations duty on board if—

- (a) the assignment is made for the purpose of enabling the person to meet the requirements referred to in section 7(2)(c); and
 - (b) the duty is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in advanced training for chemical tanker cargo operations; or
 - (ii) an endorsement referred to in section 4(3)(b).
- (4) A seafarer on a liquefied gas tanker who has not obtained a certificate of proficiency in basic training for liquefied gas tanker cargo operations, or an endorsement, as required by section 4(4) may be assigned to undertake a specific duty or responsibility related to cargo or cargo equipment on board if—
- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 7(2)(d); and
 - (b) the duty or responsibility is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in basic training for liquefied gas tanker cargo operations;
 - (ii) a certificate of proficiency in advanced training for liquefied gas tanker cargo operations; or
 - (iii) an endorsement referred to in section 4(4)(b) or (5)(b).
- (5) A person specified in section 4(6) on a liquefied gas tanker who has not obtained a certificate of proficiency in advanced

training for liquefied gas tanker cargo operations, or an endorsement, as required by section 4(5) may be assigned to undertake a cargo operations duty on board if—

- (a) the assignment is made for the purpose of enabling the person to meet the requirements referred to in section 7(2)(e); and
- (b) the duty is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in advanced training for liquefied gas tanker cargo operations; or
 - (ii) an endorsement referred to in section 4(5)(b).

Part 3**Application for and Issue of Certificates of Proficiency and Endorsements**

- 6. Application for issue of certificates of proficiency and endorsements and renewal of endorsements**
- (1) A person may apply to the Authority for—
 - (a) the issue of a certificate of proficiency or an endorsement referred to in section 4; or
 - (b) the renewal of such an endorsement.
 - (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue of the certificate or endorsement being applied for, or the conditions for renewal of the endorsement, have been satisfied; and
 - (b) the prescribed fee.
 - (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate or endorsement being applied for, may issue the certificate or endorsement to the applicant;
 - (b) if satisfied that the applicant is entitled to the renewal of the endorsement being applied for, may renew the endorsement; or
 - (c) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.
 - (4) If an applicant is aggrieved by a decision of the Authority to refuse to issue a certificate of proficiency or an endorsement,

or to refuse to renew an endorsement, the applicant may appeal against the decision to the Administrative Appeals Board.

- 7. Requirements for issue of certificates of proficiency and endorsements**
- (1) The Authority must not issue a certificate of proficiency or an endorsement referred to in subsection (2) to an applicant unless the requirements for the issue of the certificate or endorsement are satisfied.
 - (2) The requirements are—
 - (a) for a certificate of proficiency in basic training for oil and chemical tanker cargo operations or an endorsement referred to in section 4(1)(b), the applicant has met the requirements specified in Regulation V/1-1, paragraph 2 of the Convention;
 - (b) for a certificate of proficiency in advanced training for oil tanker cargo operations or an endorsement referred to in section 4(2)(b), the applicant has met the requirements specified in Regulation V/1-1, paragraph 4 of the Convention;
 - (c) for a certificate of proficiency in advanced training for chemical tanker cargo operations or an endorsement referred to in section 4(3)(b), the applicant has met the requirements specified in Regulation V/1-1, paragraph 6 of the Convention;
 - (d) for a certificate of proficiency in basic training for liquefied gas tanker cargo operations or an endorsement referred to in section 4(4)(b), the applicant has met the requirements specified in Regulation V/1-2, paragraph 2 of the Convention; and

- (e) for a certificate of proficiency in advanced training for liquefied gas tanker cargo operations or an endorsement referred to in section 4(5)(b), the applicant has met the requirements specified in Regulation V/1-2, paragraph 4 of the Convention.
- (3) The Authority may make determinations in writing specifying—
- (a) the details of the standards of competency to be attained or the conditions to be satisfied by an applicant to qualify for the issue of a certificate of proficiency or an endorsement;
 - (b) the conditions to be satisfied by an applicant to qualify for the renewal of the applicant's endorsement; or
 - (c) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.

8. Validity of endorsements

- (1) Subject to subsection (3), an endorsement referred to in section 4 is valid for the period specified in the endorsement unless it is cancelled or suspended for any period under section 10(1) or 11(3).
- (2) The period specified in the endorsement must not exceed 5 years beginning on the date of issue of the endorsement.
- (3) An endorsement referred to in section 4 on a certificate or licence is valid only if the certificate or licence is valid.

9. Recognition of other certificates as equivalent to certificates of proficiency

- (1) This section applies for the purposes of sections 4 and 5.
- (2) If the Authority is satisfied that a certificate—

- (a) is issued by, or under the authority of, the government of a state party to the Convention;
 - (b) is issued not on the basis of recognition by such a government of any certificate issued by another government; and
 - (c) shows that the person concerned has met the requirements referred to in paragraph (a), (b), (c), (d) or (e) of section 7(2) for the issue of the certificate of proficiency referred to in that paragraph,
- the Authority may recognize the certificate as equivalent to that certificate of proficiency.

Part 4**Miscellaneous****10. Loss of certificates of proficiency**

- (1) Subject to subsections (3) and (4), if a certificate of proficiency issued to a person has been lost, defaced or destroyed, the Authority may cancel the certificate and issue to the person another certificate in like terms on payment of the prescribed fee.
- (2) A certificate issued under subsection (1) has the same effect as the certificate lost, defaced or destroyed.
- (3) The Authority may only issue a certificate under subsection (1) if the Authority is satisfied that the certificate to be replaced has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee referred to in subsection (1) if the Authority is satisfied that the certificate to be replaced has been lost, defaced or destroyed without fault on the part of the person to whom it was issued.

11. False pretences and supply of false information

- (1) A person who, in connection with an application for, or the issue of, a certificate of proficiency or an endorsement referred to in section 4, or the renewal of such an endorsement—
 - (a) makes a false pretence; or
 - (b) supplies false information,
 knowing it to be false or not believing it to be true commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (2) A person who—
 - (a) permits any other person to use a certificate of proficiency or an endorsement referred to in section 4 to which that other person is not entitled; or
 - (b) falsely pretends to be entitled to a certificate of proficiency or an endorsement referred to in section 4,
 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (3) If a person is convicted of—
 - (a) an offence under subsection (1) or (2);
 - (b) the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency or an endorsement referred to in section 4;
 - (c) conspiracy to commit any offence mentioned in paragraph (a) or (b); or
 - (d) conspiracy to defraud in relation to a certificate of proficiency or an endorsement referred to in section 4,
 the Authority may cancel or suspend for any period the certificate of proficiency or the endorsement concerned held by the person.

12. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the cancellation or suspension of the certificates; and
- (c) any other matters affecting the certificates.

13. Exemption

- (1) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or individual cases on such conditions, if any, as the Authority thinks fit.
- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).

14. Offences and penalties

- (1) A company who contravenes section 4 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A master who contravenes section 4 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

15. Transitional provision

- (1) During the transitional period, a contravention of section 4 does not constitute an offence under section 14.
- (2) In this section—

transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to implement the requirements relating to undertaking duties or responsibilities on certain tankers under the Convention as revised by the Manila Amendments.

Part 1—Preliminary

3. Part 1 provides for the commencement, the interpretation of certain terms and the scope of application of the Regulation.

Part 2—Requirements for service on certain tankers

4. Part 2 provides for the certificates or endorsements that a seafarer must obtain before the seafarer is assigned to undertake certain duties or responsibilities on certain tankers.
5. The Part also provides for exceptions, namely when a seafarer carries out a duty for the purpose of obtaining certain certificates of proficiency.

Part 3—Application for and issue of certificates of proficiency and endorsements

6. Part 3 provides for the application for, the requirements for the issue of, and the validity of, certificates of proficiency and endorsements.
7. The Part also provides that certain certificates issued by, or under the authority of, the government of a state party to the Convention are recognized as equivalent to a certificate of proficiency.

Part 4—Miscellaneous

8. Part 4 provides for miscellaneous matters, including the keeping of a record of certificates of proficiency, the grant of exemptions, and offences and penalties.

Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment)
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**Merchant Shipping (Seafarers) (Engine Room Watch
Ratings) (Amendment) Regulation 2016**

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Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment) Regulation 2016

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation amended

The Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap. 478 sub. leg. V) is amended as set out in sections 3 to 15.

3. Title amended

The title, after “RATINGS”—

Add

“AND ELECTRO-TECHNICAL RATINGS”.

4. Section 2 amended (interpretation)

(1) Section 2—

Repeal the definition of *Convention*

Substitute

“*Convention* (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to

any provision of such Convention that applies to Hong Kong;”.

(2) Section 2, definition of *qualified engine room watch rating*—

Repeal

“holds a valid qualifying document”

Substitute

“is the holder of a certificate of proficiency for engine room watch ratings or a certificate recognized under section 4C as equivalent to that certificate of proficiency”.

(3) Section 2, definition of *qualified engineer officer*—

Repeal

everything after “means an”

Substitute

“engineer officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);”.

(4) Section 2—

(a) definition of *employer*;

(b) definition of *Engine Room Watch Rating Certificate*;

(c) definition of *qualifying document*;

(d) definition of *registered power*;

(e) definition of *sea service*;

(f) definition of *seagoing*—

Repeal the definitions.

(5) Section 2—

Add in alphabetical order

“*certificate of proficiency* (培訓合格證書) means any of the following certificates of proficiency issued under this Regulation—

- (a) certificate of proficiency for engine room watch ratings;
- (b) certificate of proficiency for electro-technical ratings;

company (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

qualified able seafarer engine (符合資格的機房高級海員) has the meaning given by section 2 of the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation;

qualified electro-technical officer (符合資格的電子技術高級船員) means an electro-technical officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

qualified electro-technical rating (符合資格的電子技術普通船員) means a rating who is the holder of a certificate of proficiency for electro-technical ratings or a certificate recognized under section 4C as equivalent to that certificate of proficiency;

registered person (註冊人士) means a person whose name is entered in the register kept pursuant to section 7 of the Ordinance;

seagoing ship (海船) means a ship that is powered by a main propulsion machinery of 750 kilowatts propulsion power or more, other than one which navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply;

STCW Code (《培訓規則》) means the Seafarers’ Training, Certification and Watchkeeping Code published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment to any provision of such Code that applies to Hong Kong.”

5. **Section 3 amended (application)**

Section 3—

Repeal subsection (1)

Substitute

- “(1) Subject to subsection (1A), this Regulation applies to—
- (a) all seagoing ships that are Hong Kong ships; and
 - (b) all seagoing ships that—
 - (i) are not Hong Kong ships;
 - (ii) are within the waters of Hong Kong; and
 - (iii) have entered those waters in the normal course of business or for operational reasons.

- (1A) This Regulation does not apply to—
- (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
 - (b) fishing vessels;
 - (c) pleasure yachts not engaged in trade; or
 - (d) wooden ships of primitive build.”.

6. **Section 4 amended (obligation on employer, master and chief engineer officer)**

- (1) Section 4, heading—

Repeal

“employer”

Substitute

“company”.

- (2) Section 4—

Repeal subsection (1).

- (3) Section 4(2), after “Neither the”—

Add

“company, the”.

- (4) Section 4(2)—

Repeal

“or a qualified engine room watch rating”

Substitute

“, qualified engine room watch rating or qualified able seafarer engine”.

- (5) Section 4(2), proviso—

Repeal

“or qualified engine room watch rating”

Substitute

“, qualified engine room watch rating or qualified able seafarer engine”.

- (6) After section 4(2)—

Add

“(3) Subject to subsection (4), the company, the master and the chief engineer officer of a ship must not permit a member of the ship’s crew who is not a qualified electro-technical rating to carry out any functions on board as specified in table A-III/7 of the STCW Code.

- (4) Subsection (3) does not apply if—

- (a) the functions are assigned to the member of the ship’s crew for the purpose of enabling the member to meet the requirements referred to in section 4B(2)(c)(i); and
- (b) the functions are carried out under the supervision of a qualified engineer officer, qualified electro-technical officer or qualified electro-technical rating.

- (5) The company, the master and the chief engineer officer of a ship must ensure that the officer in charge of an engineering watch is a qualified engineer officer.”.

7. **Sections 4A, 4B and 4C added**

After section 4—

Add

“4A. Application for issue of certificates of proficiency

- (1) A person may apply to the Authority for the issue of a certificate of proficiency.
- (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue of the certificate being applied for have been satisfied; and
 - (b) the prescribed fee.
- (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate being applied for, may issue the certificate to the applicant; or
 - (b) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.
- (4) If an applicant is aggrieved by a decision of the Authority to refuse to issue a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.

4B. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency for engine room watch ratings to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and
 - (c) the applicant has met the requirements specified in Regulation III/4, paragraphs 2.2, 2.3 and 3 of the Convention.

- (2) The Authority must not issue a certificate of proficiency for electro-technical ratings to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and
 - (c) the applicant—
 - (i) has met the requirements specified in Regulation III/7, paragraph 2 of the Convention; or
 - (ii) has worked in the engine department of a ship as a rating to carry out any functions on board as specified in table A-III/7 of the STCW Code for an aggregate period of not less than 12 months within the specified period.
- (3) In this section—

specified period (指明期間) means the period beginning on 1 December 2011 and ending on 30 November 2016.

4C. Recognition of other certificates as equivalent to certificates of proficiency

If the Authority is satisfied that a certificate—

- (a) is issued by, or under the authority of, the government of a state party to the Convention;
- (b) is issued not on the basis of recognition by such a government of any certificate issued by another government; and
- (c) shows that the person concerned has met the requirements referred to in subsection (1)(c) or (2)(c) of section 4B for the issue of the certificate of proficiency referred to in that subsection,

the Authority may recognize the certificate as equivalent to that certificate of proficiency.”.

8. Section 5 repealed (power to issue certificates)

Section 5—

Repeal the section.

9. Section 5A amended (power to make determinations)

Section 5A—

Repeal

everything after “specifying”

Substitute

“—

- (a) the standards of competency to be attained and conditions to be satisfied by a person or class of persons to qualify for the issue of a certificate of proficiency; or
- (b) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.”.

10. Section 6 amended (offences by employer, master and chief engineer officer)

(1) Section 6, heading—

Repeal

“**employer**”

Substitute

“**company**”.

(2) Section 6(1)—

Repeal

“An employer who contravenes section 4(1)”

Substitute

“A company who contravenes section 4(2), (3) or (5)”.

(3) Section 6(2), after “section 4(2)”—

Add

“, (3) or (5)”.

11. Section 6A added

After section 6—

Add

“6A. Loss of certificates of proficiency

- (1) Subject to subsections (3) and (4), if a certificate of proficiency issued to a person has been lost, defaced or destroyed, the Authority may cancel the certificate and issue to the person another certificate in like terms on payment of the prescribed fee.
- (2) A certificate issued under subsection (1) has the same effect as the certificate lost, defaced or destroyed.
- (3) The Authority may only issue a certificate under subsection (1) if the Authority is satisfied that the certificate to be replaced has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee referred to in subsection (1) if the Authority is satisfied that the certificate to be replaced has been lost, defaced or destroyed without fault on the part of the person to whom it was issued.”.

12. Section 7 amended (false pretences and supply of false information)

- (1) Section 7, Chinese text, heading—

Repeal

“欺詐行為”

Substitute

“虛假表述”.

- (2) Section 7(1)—

Repeal

everything after “the issue of” and before the dash

Substitute

“a certificate of proficiency”.

- (3) After section 7(1)—

Add

“(1A) A person who—

- (a) permits any other person to use a certificate of proficiency to which that other person is not entitled; or
(b) falsely pretends to be entitled to a certificate of proficiency,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.”.

- (4) Section 7(2), after “under subsection (1)”—

Add

“or (1A)”.

- (5) Section 7(2)—

Repeal

“document referred to in subsection (1), or”

Substitute

“certificate of proficiency, or”.

- (6) Section 7(2)—

Repeal

everything after “defraud in relation to a”

Substitute

“certificate of proficiency, the Authority may cancel or suspend for any period the certificate of proficiency concerned held by such person.”.

13. Section 7A added

After section 7—

Add

“7A. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
(b) the cancellation or suspension of the certificates;
and
(c) any other matters affecting the certificates.”.

14. Section 8 substituted

Section 8—

Repeal the section

Substitute

“8. Transitional provisions

- (1) A certificate is treated as a certificate of proficiency for engine room watch ratings issued under section 4A during the transitional period if the certificate—
 - (a) is issued or deemed to have been issued under the pre-amended Regulation; and
 - (b) is valid immediately before 1 December 2016.
- (2) During the transitional period, a contravention of section 4(3) does not constitute an offence under section 6.
- (3) In this section—

pre-amended Regulation (《修訂前規例》) means the Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap. 478 sub. leg. V) in force immediately before 1 December 2016;

transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.”.

15. Schedules 1 and 2 repealed

Schedules 1 and 2—

Repeal the Schedules.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to amend the Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap. 478 sub. leg. V) to implement the requirements relating to the certification of engine room watch ratings and electro-technical ratings under the Convention as revised by the Manila Amendments. New provisions are also added to expressly provide for the application and requirements for the issue of certificates of proficiency.

Merchant Shipping (Seafarers) (Navigational Watch) Regulation

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Merchant Shipping (Seafarers) (Navigational Watch) Regulation

(Made by the Secretary for Transport and Housing under sections 72, 73 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Interpretation

In this Regulation—

certificate of proficiency (培訓合格證書) means a certificate of proficiency for navigational watch ratings issued under this Regulation;

company (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

gross tonnage (總噸), in relation to a ship, means the gross tonnage of the ship determined in accordance with regulation 6 of the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C);

qualified able seafarer deck (合資格甲板高級海員) has the meaning given by section 2 of the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation;

qualified deck officer (合資格甲板高級船員) means a deck officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

rating (普通船員) means a seafarer other than—

- (a) the master;
- (b) an officer; or
- (c) a seafarer not directly connected with the normal manning of the ship;

registered person (註冊人士) means a person whose name is entered in the register kept pursuant to section 7 of the Ordinance;

seagoing ship (海船) means a ship other than one which navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply.

3. Application

(1) Subject to subsection (2), this Regulation applies to—

- (a) a seagoing ship of 500 gross tonnage or more that is a Hong Kong ship; and

- (b) a seagoing ship of 500 gross tonnage or more that—
 - (i) is not a Hong Kong ship;
 - (ii) is within the waters of Hong Kong; and
 - (iii) has entered those waters in the normal course of business or for operational reasons.
- (2) This Regulation does not apply to—
 - (a) a ship owned or operated by a government and engaged only on governmental non-commercial service;
 - (b) a fishing vessel;
 - (c) a pleasure yacht not engaged in trade; or
 - (d) a wooden ship of primitive build.

Part 2

Navigational Watch

4. Navigational watch

- (1) Subject to section 5, the company and the master of a ship must ensure that every seafarer on the ship who is assigned to form part of a navigational watch—
 - (a) is a qualified deck officer;
 - (b) is a qualified able seafarer deck; or
 - (c) has, before the assignment, obtained a certificate of proficiency.
- (2) The company and the master of a ship must ensure that the officer in charge of a navigational watch is a qualified deck officer.

5. Exception to section 4(1)

- (1) A seafarer who has not obtained a certificate of proficiency as required by section 4(1) may be assigned to undertake any of the duties of a seafarer who forms part of a navigational watch if—
 - (a) the duty is of an unskilled nature; or
 - (b) the requirements set out in subsection (2) are met.
- (2) The requirements are—
 - (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 7(2)(c); and
 - (b) the duty is undertaken under the direct supervision of—
 - (i) the master;

- (ii) the qualified deck officer who is in charge of the navigational watch;
 - (iii) a qualified able seafarer deck; or
 - (iv) a person who holds a certificate of proficiency.
-

Part 3

Application for and Issue of Certificates of Proficiency

6. Application for issue of certificates of proficiency

- (1) A person may apply to the Authority for the issue of a certificate of proficiency.
- (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue of the certificate being applied for have been satisfied; and
 - (b) the prescribed fee.
- (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate being applied for, may issue the certificate to the applicant; or
 - (b) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.
- (4) If an applicant is aggrieved by a decision of the Authority to refuse to issue a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.

7. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency to an applicant unless the requirements for the issue of the certificate are satisfied.
- (2) The requirements are that the applicant—
 - (a) is a registered person;

- (b) is a rating; and
 - (c) has met the requirements specified in Regulation II/4, paragraphs 2.2, 2.3 and 3 of the Convention.
- (3) The Authority may make determinations in writing specifying—
- (a) the details of the standards of competency to be attained or the conditions to be satisfied by an applicant to qualify for the issue of a certificate of proficiency; or
 - (b) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.

8. Recognition of other certificates as equivalent to certificate of proficiency

- (1) This section applies for the purposes of sections 4 and 5.
- (2) If the Authority is satisfied that a certificate—
 - (a) is issued by, or under the authority of, the government of a state party to the Convention;
 - (b) is issued not on the basis of recognition by such a government of any certificate issued by another government; and
 - (c) shows that the person concerned has met the requirements referred to in section 7(2)(c) for the issue of a certificate of proficiency,
 the Authority may recognize the certificate as equivalent to a certificate of proficiency.

Part 4

Miscellaneous

9. Loss of certificates of proficiency

- (1) Subject to subsections (3) and (4), if a certificate of proficiency issued to a person has been lost, defaced or destroyed, the Authority may cancel the certificate and issue to the person another certificate in like terms on payment of the prescribed fee.
- (2) A certificate issued under subsection (1) has the same effect as the certificate lost, defaced or destroyed.
- (3) The Authority may only issue a certificate under subsection (1) if the Authority is satisfied that the certificate to be replaced has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee referred to in subsection (1) if the Authority is satisfied that the certificate to be replaced has been lost, defaced or destroyed without fault on the part of the person to whom it was issued.

10. False pretences and supply of false information

- (1) A person who, in connection with an application for, or the issue of, a certificate of proficiency—
 - (a) makes a false pretence; or
 - (b) supplies false information,
 knowing it to be false or not believing it to be true commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A person who—

- (a) permits any other person to use a certificate of proficiency to which that other person is not entitled; or
- (b) falsely pretends to be entitled to a certificate of proficiency,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (3) If a person is convicted of—
 - (a) an offence under subsection (1) or (2);
 - (b) the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency;
 - (c) conspiracy to commit any offence mentioned in paragraph (a) or (b); or
 - (d) conspiracy to defraud in relation to a certificate of proficiency,

the Authority may cancel or suspend for any period the certificate of proficiency concerned held by the person.

11. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the cancellation or suspension of the certificates; and
- (c) any other matters affecting the certificates.

12. Exemption

- (1) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or individual cases on such conditions, if any, as the Authority thinks fit.
- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).

13. Offences and penalties

- (1) A company who contravenes section 4 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A master who contravenes section 4 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

14. Transitional provision

- (1) During the transitional period, a contravention of section 4(1) does not constitute an offence under section 13.
- (2) In this section—

transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to implement the requirements relating to navigational watch under the Convention as revised by the Manila Amendments.

Part 1—Preliminary

3. Part 1 provides for the commencement, the interpretation of certain terms and the scope of application of the Regulation.

Part 2—Navigational watch

4. Part 2 provides for the qualification or certificate that a seafarer must obtain before the seafarer is assigned to form part of a navigational watch on a ship.
5. The Part also provides for exceptions, such as when a seafarer carries out a duty for the purpose of obtaining a certificate of proficiency.

Part 3—Application for and issue of certificates of proficiency

6. Part 3 provides for the application for, and the requirements for the issue of, certificates of proficiency.
7. The Part also provides that certain certificates issued by, or under the authority of, the government of a state party to the Convention are recognized as equivalent to a certificate of proficiency.

Part 4—Miscellaneous

8. Part 4 provides for miscellaneous matters, including the keeping of a record of certificates of proficiency, the grant of exemptions, and offences and penalties.

Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation

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Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Interpretation

In this Regulation—

certificate of proficiency (培訓合格證書) means any of the following certificates of proficiency issued under this Regulation—

- (a) certificate of proficiency for able seafarers deck;
- (b) certificate of proficiency for able seafarers engine;

company (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for

Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

gross tonnage (總噸), in relation to a ship, means the gross tonnage of the ship determined in accordance with regulation 6 of the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C);

qualified able seafarer deck (合資格甲板高級海員) means a rating who is the holder of a certificate of proficiency for able seafarers deck or a certificate recognized under section 10 as equivalent to that certificate of proficiency;

qualified able seafarer engine (合資格機房高級海員) means a rating who is the holder of a certificate of proficiency for able seafarers engine or a certificate recognized under section 10 as equivalent to that certificate of proficiency;

qualified deck officer (合資格甲板高級船員) means a deck officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

qualified engineer officer (合資格輪機師) means an engineer officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

rating (普通船員) means a seafarer other than—

- (a) the master;
- (b) an officer; or
- (c) a seafarer not directly connected with the normal manning of the ship;

registered person (註冊人士) means a person whose name is entered in the register kept pursuant to section 7 of the Ordinance;

seagoing ship (海船) means a ship other than one which navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply;

STCW Code (《培訓規則》) means the Seafarers' Training, Certification and Watchkeeping Code published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment to any provision of such Code that applies to Hong Kong.

3. Application

- (1) Subject to subsection (2), this Regulation applies to—
 - (a) all seagoing ships that are Hong Kong ships; and
 - (b) all seagoing ships that—
 - (i) are not Hong Kong ships;
 - (ii) are within the waters of Hong Kong; and
 - (iii) have entered those waters in the normal course of business or for operational reasons.
- (2) This Regulation does not apply to—
 - (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
 - (b) fishing vessels;
 - (c) pleasure yachts not engaged in trade; or
 - (d) wooden ships of primitive build.

Part 2

Able Seafarer

4. Qualified able seafarer deck

Subject to section 5, the company and the master of a seagoing ship of 500 gross tonnage or more must ensure that every seafarer working in the deck department of the ship is a qualified able seafarer deck before the seafarer is being assigned to carry out any functions on board as specified in table A-II/5 of the STCW Code.

5. Exception to section 4

A seafarer who is not a qualified able seafarer deck may be assigned to carry out any of the functions referred to in section 4 if—

- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 9(1)(c)(i); and
- (b) the function is carried out under the supervision of a qualified able seafarer deck or a qualified deck officer.

6. Qualified able seafarer engine

Subject to section 7, the company, the master and the chief engineer officer of a seagoing ship, powered by a main propulsion machinery of 750 kilowatts propulsion power or more, must ensure that every seafarer working in the engine department of the ship is a qualified able seafarer engine before the seafarer is being assigned to carry out any functions on board as specified in table A-III/5 of the STCW Code.

7. Exception to section 6

A seafarer who is not a qualified able seafarer engine may be assigned to carry out any of the functions referred to in section 6 if—

- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 9(2)(c)(i); and
 - (b) the function is carried out under the supervision of a qualified able seafarer engine or a qualified engineer officer.
-

Part 3

Application for and Issue of Certificates of Proficiency

8. Application for issue of certificates of proficiency

- (1) A person may apply to the Authority for the issue of a certificate of proficiency.
- (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue of the certificate being applied for have been satisfied; and
 - (b) the prescribed fee.
- (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate being applied for, may issue the certificate to the applicant; or
 - (b) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.
- (4) If an applicant is aggrieved by a decision of the Authority to refuse to issue a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.

9. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency for able seafarers deck to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and

- (c) the applicant—
 - (i) has met the requirements specified in Regulation II/5, paragraph 2 of the Convention; or
 - (ii) has worked in the deck department of a ship as a rating to carry out any functions on board as specified in table A-II/5 of the STCW Code for an aggregate period of not less than 12 months within the specified period.
- (2) The Authority must not issue a certificate of proficiency for able seafarers engine to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and
 - (c) the applicant—
 - (i) has met the requirements specified in Regulation III/5, paragraph 2 of the Convention; or
 - (ii) has worked in the engine department of a ship as a rating to carry out any functions on board as specified in table A-III/5 of the STCW Code for an aggregate period of not less than 12 months within the specified period.
- (3) The Authority may make determinations in writing specifying—
 - (a) the details of the standards of competency to be attained or the conditions to be satisfied by an applicant to qualify for the issue of a certificate of proficiency; or
 - (b) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.
- (4) In this section—

specified period (指明期間) means the period beginning on 1 December 2011 and ending on 30 November 2016.

10. Recognition of other certificates as equivalent to certificates of proficiency

If the Authority is satisfied that a certificate—

- (a) is issued by, or under the authority of, the government of a state party to the Convention;
- (b) is issued not on the basis of recognition by such a government of any certificate issued by another government; and
- (c) shows that the person concerned has met the requirements referred to in subsection (1)(c) or (2)(c) of section 9 for the issue of the certificate of proficiency referred to in that subsection,

the Authority may recognize the certificate as equivalent to that certificate of proficiency.

Part 4

Miscellaneous

11. Loss of certificates of proficiency

- (1) Subject to subsections (3) and (4), if a certificate of proficiency issued to a person has been lost, defaced or destroyed, the Authority may cancel the certificate and issue to the person another certificate in like terms on payment of the prescribed fee.
- (2) A certificate issued under subsection (1) has the same effect as the certificate lost, defaced or destroyed.
- (3) The Authority may only issue a certificate under subsection (1) if the Authority is satisfied that the certificate to be replaced has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee referred to in subsection (1) if the Authority is satisfied that the certificate to be replaced has been lost, defaced or destroyed without fault on the part of the person to whom it was issued.

12. False pretences and supply of false information

- (1) A person who, in connection with an application for, or the issue of, a certificate of proficiency—
 - (a) makes a false pretence; or
 - (b) supplies false information,
knowing it to be false or not believing it to be true commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A person who—

- (a) permits any other person to use a certificate of proficiency to which that other person is not entitled; or
- (b) falsely pretends to be entitled to a certificate of proficiency,
commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (3) If a person is convicted of—
 - (a) an offence under subsection (1) or (2);
 - (b) the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency;
 - (c) conspiracy to commit any offence mentioned in paragraph (a) or (b); or
 - (d) conspiracy to defraud in relation to a certificate of proficiency,
the Authority may cancel or suspend for any period the certificate of proficiency concerned held by the person.

13. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the cancellation or suspension of the certificates; and
- (c) any other matters affecting the certificates.

14. Exemption

- (1) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or individual cases on such conditions, if any, as the Authority thinks fit.

- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).

15. Offences and penalties

- (1) A company who contravenes section 4 or 6 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A master who contravenes section 4 or 6 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.
- (3) A chief engineer officer who contravenes section 6 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

16. Transitional provision

- (1) During the transitional period, a contravention of section 4 or 6 does not constitute an offence under section 15.
- (2) In this section—

transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to implement the requirements relating to the certification of able seafarers under the Convention as revised by the Manila Amendments.

Part 1—Preliminary

3. Part 1 provides for the commencement, the interpretation of certain terms and the scope of application of the Regulation.

Part 2—Able seafarer

4. Part 2 provides for the certificate that a seafarer must obtain before the seafarer is assigned to carry out certain functions on a ship as an able seafarer.
5. The Part also provides for exceptions, namely when a seafarer carries out a function for the purpose of obtaining a certificate of proficiency.

Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers)
Regulation

Explanatory Note
Paragraph 6

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Part 3—Application for and issue of certificates of proficiency

6. Part 3 provides for the application for, and the requirements for the issue of, certificates of proficiency.
7. The Part also provides that certain certificates issued by, or under the authority of, the government of a state party to the Convention are recognized as equivalent to a certificate of proficiency.

Part 4—Miscellaneous

8. Part 4 provides for miscellaneous matters, including the keeping of a record of certificates of proficiency, the grant of exemptions, and offences and penalties.

Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training)
Regulation

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Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation

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Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Interpretation

In this Regulation—

certificate of competency (適任證書) means a valid certificate of competency, other than a river trade certificate of competency, issued under the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

certificate of proficiency (培訓合格證書) means any of the following certificates of proficiency issued under this Regulation—

- (a) certificate of proficiency in basic training;
- (b) certificate of proficiency in designated security duties;
- (c) certificate of proficiency in security awareness;
- (d) certificate of proficiency for ship security officers;
- (e) certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
- (f) certificate of proficiency in fast rescue boats;

- (g) certificate of proficiency in advanced fire fighting;
- (h) certificate of proficiency in medical first aid;
- (i) certificate of proficiency in medical care;

company (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

designated security duties (指定保安職責) means the duties designated in accordance with the ship security plan of a ship;

fast rescue boat (快速救助艇) means a boat complying with the requirements of the Guidelines for Fast Rescue Boats adopted by the International Maritime Organization by resolution A.656(16);

rescue boat (救助艇) means a boat designed to rescue persons in distress and to marshal a survival craft;

seagoing ship (海船) means a ship other than one which navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply;

ship security officer (船舶保安員) means a ship security officer as defined by rule 1 of the Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582 sub. leg. A);

ship security plan (船舶保安計劃) means a ship security plan as defined by rule 1 of the Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582 sub. leg. A);

STCW Code (《培訓規則》) means the Seafarers' Training, Certification and Watchkeeping Code published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment to any provision of such Code that applies to Hong Kong;

survival craft (救生艇筏) means a craft of a ship capable of sustaining the lives of persons in distress from the time of abandoning the ship.

3. Application

- (1) Subject to subsection (2), this Regulation applies to—
- (a) all seagoing ships that are Hong Kong ships; and
 - (b) all seagoing ships that—
 - (i) are not Hong Kong ships;
 - (ii) are within the waters of Hong Kong; and
 - (iii) have entered those waters in the normal course of business or for operational reasons.
- (2) This Regulation does not apply to—
- (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
 - (b) fishing vessels;
 - (c) pleasure yachts not engaged in trade; or

- (d) wooden ships of primitive build.

Part 2

Safety, Security and Designated Duties Training

4. Safety training

The company and the master of a ship must ensure that—

- (a) every seafarer on the ship has, before being assigned to undertake any duties on board, received safety familiarization training or instruction in accordance with section A-VI/1, paragraph 1 of the STCW Code and met the appropriate standard of competence specified in that paragraph; and
- (b) every seafarer on the ship who is assigned to undertake any safety or prevention of pollution duties on board has, before being assigned to undertake any of those duties, obtained a certificate of proficiency in basic training.

5. Security training

Without limiting section 4 or 7, if a ship is one to which the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582) applies, the company and the master of the ship must ensure that—

- (a) every seafarer on the ship has, before being assigned to undertake any duties on board, received security-related familiarization training or instruction in accordance with section A-VI/6, paragraphs 1 and 3 of the STCW Code and met the appropriate standard of competence specified in those paragraphs;

- (b) every seafarer on the ship who is assigned to undertake any designated security duties on board has, before being assigned to undertake any of those duties—
 - (i) received security-related familiarization training or instruction in accordance with section A-VI/6, paragraphs 2 and 3 of the STCW Code and met the appropriate standard of competence specified in those paragraphs; and
 - (ii) obtained a certificate of proficiency in designated security duties;
- (c) every seafarer without being assigned to undertake any designated security duties on board the ship has, before being assigned to undertake any duties on board, obtained a certificate of proficiency in security awareness; and
- (d) subject to section 6, every seafarer on the ship who is assigned to undertake any duties of a ship security officer on board has, before being assigned to undertake any of those duties, obtained a certificate of proficiency for ship security officers.

6. Exception to section 5(d)

A seafarer who has not obtained a certificate of proficiency for ship security officers as required by section 5(d) may be assigned to undertake any of the duties of a ship security officer if—

- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 10(2)(d); and
- (b) the duty is undertaken under the supervision of a person who holds a certificate of proficiency for ship security officers.

7. Designated duties training

Without limiting section 4 or 5, the company and the master of a ship must ensure that—

- (a) subject to section 8, every seafarer on the ship has, before being designated to launch or take charge of a survival craft or rescue boat (other than a fast rescue boat), obtained a certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
- (b) every seafarer on the ship has, before being designated to launch or take charge of a fast rescue boat, obtained a certificate of proficiency in fast rescue boats;
- (c) every seafarer on the ship has, before being designated to control fire fighting operations, obtained a certificate of proficiency in advanced fire fighting;
- (d) every seafarer on the ship has, before being designated to provide medical first aid on board, obtained a certificate of proficiency in medical first aid; and
- (e) every seafarer on the ship has, before being designated to take charge of medical care on board, obtained a certificate of proficiency in medical care.

8. Exception to section 7(a)

A seafarer who has not obtained a certificate of proficiency in survival craft and rescue boats other than fast rescue boats as required by section 7(a) may be designated to launch or take charge of a survival craft or rescue boat (other than a fast rescue boat) if—

- (a) the designation is made for the purpose of enabling the seafarer to meet the requirements referred to in section 10(2)(e); and

- (b) the seafarer launches or takes charge of the craft or boat under the supervision of a person who holds a certificate of proficiency in survival craft and rescue boats other than fast rescue boats.

Part 3

Application for and Issue of Certificates of Proficiency

9. Application for issue and renewal of certificates of proficiency

- (1) A person may apply to the Authority for the issue or, if applicable, renewal of a certificate of proficiency.
- (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue or the conditions for renewal of the certificate being applied for have been satisfied; and
 - (b) the prescribed fee.
- (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate being applied for, may issue the certificate to the applicant;
 - (b) if satisfied that the applicant is entitled to the renewal of the certificate being applied for, may renew the certificate; or
 - (c) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.
- (4) If an applicant is aggrieved by a decision of the Authority to refuse to issue or renew a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.

10. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency referred to in subsection (2) to an applicant unless the requirements for the issue of the certificate are satisfied.
- (2) The requirements are—
 - (a) for a certificate of proficiency in basic training, the applicant has received training or instruction in accordance with section A-VI/1, paragraph 2 of the STCW Code and met the appropriate standard of competence specified in that paragraph;
 - (b) for a certificate of proficiency in designated security duties, the applicant has met the standard of competence specified in section A-VI/6, paragraphs 6 to 8 of the STCW Code;
 - (c) for a certificate of proficiency in security awareness, the applicant has received training or instruction in accordance with section A-VI/6, paragraph 4 of the STCW Code and met the appropriate standard of competence specified in that paragraph;
 - (d) for a certificate of proficiency for ship security officers, the applicant has met the requirements specified in Regulation VI/5, paragraph 1 of the Convention;
 - (e) for a certificate of proficiency in survival craft and rescue boats other than fast rescue boats, the applicant has met the requirements specified in Regulation VI/2, paragraph 1 of the Convention;
 - (f) for a certificate of proficiency in fast rescue boats, the applicant has met the requirements specified in Regulation VI/2, paragraph 2 of the Convention;

- (g) for a certificate of proficiency in advanced fire fighting, the applicant has received training or instruction in accordance with section A-VI/3, paragraphs 1 to 4 of the STCW Code and met the appropriate standard of competence specified in those paragraphs;
 - (h) for a certificate of proficiency in medical first aid, the applicant has met the standard of competence specified in section A-VI/4, paragraphs 1 to 3 of the STCW Code; and
 - (i) for a certificate of proficiency in medical care, the applicant has met the standard of competence specified in section A-VI/4, paragraphs 4 to 6 of the STCW Code.
- (3) The Authority may make determinations in writing specifying—
- (a) the details of the standards of competency to be attained or the conditions to be satisfied by an applicant to qualify for the issue of a certificate of proficiency;
 - (b) the conditions to be satisfied by an applicant to qualify for the renewal of the applicant's certificate of proficiency; or
 - (c) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.

11. Validity of certificates of proficiency

- (1) Any of the following certificates is valid for the period specified in the certificate unless it is cancelled or suspended for any period under section 13(1) or 14(3)—
- (a) certificate of proficiency in basic training;

- (b) certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
 - (c) certificate of proficiency in fast rescue boats;
 - (d) certificate of proficiency in advanced fire fighting.
- (2) The period specified in the certificate must not exceed 5 years beginning on the date of issue of the certificate.
- (3) A person who holds a certificate of proficiency referred to in subsection (1) may apply to the Authority to renew the certificate.

12. Recognition of other certificates as equivalent to certificates of proficiency

- (1) This section applies for the purposes of sections 4, 5, 6, 7 and 8.
- (2) A certificate of competency is equivalent to—
- (a) a certificate of proficiency in basic training;
 - (b) a certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
 - (c) a certificate of proficiency in advanced fire fighting; or
 - (d) a certificate of proficiency in medical first aid.
- (3) If the Authority is satisfied that a certificate—
- (a) is issued by, or under the authority of, the government of a state party to the Convention;
 - (b) is issued not on the basis of recognition by such a government of any certificate issued by another government; and
 - (c) shows that the person concerned has met the requirements referred to in paragraph (a), (b), (c), (d),

(e), (f), (g), (h) or (i) of section 10(2) for the issue of the certificate of proficiency referred to in that paragraph, the Authority may recognize the certificate as equivalent to that certificate of proficiency.

Part 4

Miscellaneous

13. Loss of certificates of proficiency

- (1) Subject to subsections (3) and (4), if a certificate of proficiency issued to a person has been lost, defaced or destroyed, the Authority may cancel the certificate and issue to the person another certificate in like terms on payment of the prescribed fee.
- (2) A certificate issued under subsection (1) has the same effect as the certificate lost, defaced or destroyed.
- (3) The Authority may only issue a certificate under subsection (1) if the Authority is satisfied that the certificate to be replaced has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee referred to in subsection (1) if the Authority is satisfied that the certificate to be replaced has been lost, defaced or destroyed without fault on the part of the person to whom it was issued.

14. False pretences and supply of false information

- (1) A person who, in connection with an application for, or the issue or renewal of, a certificate of proficiency—
 - (a) makes a false pretence; or
 - (b) supplies false information,knowing it to be false or not believing it to be true commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A person who—

- (a) permits any other person to use a certificate of proficiency to which that other person is not entitled; or
- (b) falsely pretends to be entitled to a certificate of proficiency,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(3) If a person is convicted of—

- (a) an offence under subsection (1) or (2);
- (b) the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency;
- (c) conspiracy to commit any offence mentioned in paragraph (a) or (b); or
- (d) conspiracy to defraud in relation to a certificate of proficiency,

the Authority may cancel or suspend for any period the certificate of proficiency concerned held by the person.

15. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the cancellation or suspension of the certificates; and
- (c) any other matters affecting the certificates.

16. Exemption

- (1) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or individual cases on such conditions, if any, as the Authority thinks fit.

- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).

17. Offences and penalties

- (1) A company who contravenes section 4, 5 or 7 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A master who contravenes section 4, 5 or 7 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

18. Transitional provision

- (1) During the transitional period, a contravention of section 4, 5 or 7 does not constitute an offence under section 17.
- (2) In this section—

transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to implement the requirements relating to safety, security and designated duties training under the Convention as revised by the Manila Amendments.

Part 1—Preliminary

3. Part 1 provides for the commencement, the interpretation of certain terms and the scope of application of the Regulation.

Part 2—Safety, security and designated duties training

4. Part 2 provides for the training, instructions or certificates that a seafarer must receive or obtain before the seafarer is assigned to undertake certain duties on a ship.
5. The Part also provides for exceptions, namely when a seafarer carries out a duty for the purpose of obtaining certain certificates of proficiency.

Part 3—Application for and issue of certificates of proficiency

6. Part 3 provides for the application for, the requirements for the issue of, and the validity of, certificates of proficiency.
7. The Part also provides for the recognition of a certificate of competency as equivalent to certain certificates of proficiency. Certain certificates issued by, or under the authority of, the government of a state party to the Convention are recognized as equivalent to a certificate of proficiency.

Part 4—Miscellaneous

8. Part 4 provides for miscellaneous matters, including the keeping of a record of certificates of proficiency, the grant of exemptions, and offences and penalties.

Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships—Training) (Amendment)
Regulation 2016

Section 1

1

**Merchant Shipping (Seafarers) (Ro-Ro Passenger
Ships—Training) (Amendment) Regulation 2016**

(Made by the Secretary for Transport and Housing under sections 72, 73, 96
and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

**2. Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships—
Training) Regulation amended**

The Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships—
Training) Regulation (Cap. 478 sub. leg. AD) is amended as set out
in sections 3 to 8.

3. Title amended

The title—

Repeal

“RO-RO”.

4. Section 1 amended (interpretation)

(1) Section 1, definition of *passenger ship*—

Repeal

“and propelled by electricity or other mechanical power”.

(2) Section 1, definition of *ro-ro passenger ship*—

Repeal

everything after “means a”

Substitute

Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships—Training) (Amendment)
Regulation 2016

Section 4

2

“ro-ro passenger ship as defined in Regulation I/1 of the
Convention;”.

(3) Section 1, definition of *STCW Code*—

Repeal

“as in force from time to time”

Substitute

“, as from time to time revised or amended by any revision or
amendment to any provision of such Code that applies to
Hong Kong”.

(4) Section 1—

Repeal the definition of *employer*.

(5) Section 1—

Add in alphabetical order

“*company* (公司), in relation to a ship, means—

(a) the registered owner of the ship; or

(b) a person who has assumed responsibility for the
operation of the ship from the owner and who, on
assuming the responsibility, has agreed to take over
the obligations imposed on the owner of the ship
under the Convention;

Convention (《公約》) means the International Convention
on Standards of Training, Certification and
Watchkeeping for Seafarers, 1978, as from time to time
revised or amended by any revision or amendment to
any provision of such Convention that applies to Hong
Kong;

seagoing passenger ship (載客海船) means a passenger ship
other than one which navigates exclusively in one or
more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply.”

5. Section 2 amended (application)

Section 2—

Repeal subsection (1)

Substitute

- “(1) Subject to subsection (1A), this Regulation applies to—
- (a) all seagoing passenger ships that are Hong Kong ships; and
 - (b) all seagoing passenger ships that—
 - (i) are not Hong Kong ships;
 - (ii) are within the waters of Hong Kong; and
 - (iii) have entered those waters in the normal course of business or for operational reasons.
- (1A) This Regulation does not apply to—
- (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
 - (b) fishing vessels;
 - (c) pleasure yachts not engaged in trade; or
 - (d) wooden ships of primitive build.”

6. Section 3 repealed (duty of employer and master)

Section 3—

Repeal the section.

7. Section 4 amended (training)

- (1) Section 4(1)—

Repeal

“The following seafarers shall”

Substitute

“The company and the master of a ship must ensure that the following seafarers on the ship”.

- (2) Section 4(1)(a), English text—

Repeal

“masters”

Substitute

“master”.

- (3) Section 4(1)(c), English text—

Repeal

“muster lists”

Substitute

“the muster list”.

- (4) Section 4—

Repeal subsection (2).

- (5) Section 4—

Repeal subsection (3)

Substitute

- “(3) The company and the master of a ship must ensure that all personnel on the ship who provide direct service to passengers in passenger spaces have completed safety

training as specified in section A-V/2, paragraph 2 of the STCW Code.”

- (6) Section 4(4)—

Repeal

“The following seafarers shall have completed”

Substitute

“The company and the master of a ro-ro passenger ship must ensure that the following seafarers on the ship have completed approved”.

- (7) Section 4(4)(a), English text—

Repeal

“masters”

Substitute

“master”.

- (8) Section 4(5)—

Repeal

everything before “of the STCW Code”

Substitute

“(5) The company and the master of a ship must ensure that the following seafarers on the ship have completed approved training in crisis management and human behaviour as specified in section A-V/2, paragraph 3”.

- (9) Section 4(5)(a), English text—

Repeal

“masters”

Substitute

“master”.

- (10) Section 4(5)(e)—

Repeal

“having”

Substitute

“designated on the muster list to have the”.

- (11) Section 4(6)—

Repeal

everything before “evidence to the”

Substitute

“(6) The company and the master of a ship must ensure that the seafarers, except the master, on the ship required to be trained in accordance with subsection (1), (4) or (5)—

- (a) undertake, at intervals not exceeding 5 years, refresher training approved by the Authority; or
(b) provide, at intervals not exceeding 5 years,”.

- (12) Section 4(6A)—

Repeal

everything before “refresher training”

Substitute

“(6A) The company of a ship must ensure that the master on the ship required to be trained in accordance with subsection (1), (4) or (5) undertakes, at intervals not exceeding 5 years,”.

- (13) After section 4(7)—

Add

“(8) In this section—

approved training (認可訓練) means training approved by—

- (a) the Authority; or
- (b) the government of a state party to the Convention.”.

8. Sections 5 and 6 added

After section 4—

Add

“5. Documentary evidence

The company and the master of a ship must ensure that every seafarer on the ship required to be trained in accordance with section 4(1), (3), (4) or (5) has obtained from the person who provided the training documentary evidence on the seafarer’s completion of the training.

6. Offences and penalties

- (1) A company who contravenes section 4(1), (3), (4), (5), (6) or (6A) or 5 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A master who contravenes section 4(1), (3), (4), (5) or (6) or 5 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.”.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to amend the Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships—Training) Regulation (Cap. 478 sub. leg. AD) to implement the requirements relating to the training for seafarers working on a passenger ship, irrespective of whether the ship is a ro-ro passenger ship, under the Convention as revised by the Manila Amendments.

Merchant Shipping (Seafarers) (Certification and Watchkeeping) (Amendment)
Regulation 2016

i

**Merchant Shipping (Seafarers) (Certification and
Watchkeeping) (Amendment) Regulation 2016**

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Merchant Shipping (Seafarers) (Certification and Watchkeeping) (Amendment)
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Merchant Shipping (Seafarers) (Certification and Watchkeeping) (Amendment) Regulation 2016

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation amended

The Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation (Cap. 478 sub. leg. T) is amended as set out in sections 3 to 15.

3. Section 2 amended (interpretation)

(1) Section 2—

- (a) definition of *Certification Regulation*;
- (b) definition of *employer*;
- (c) definition of *hazardous cargo*;
- (d) definition of *qualified officer*;
- (e) definition of *seagoing*—

Repeal the definitions.

(2) Section 2—

Add in alphabetical order

“*company* (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or

- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

hours of rest (休息時間) means any period of time outside working hours, but does not include short breaks within working hours;

seagoing ship (海船) means a ship other than one which navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply;

STCW Code (《培訓規則》) means the Seafarers' Training, Certification and Watchkeeping Code published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment to any provision of such Code that applies to Hong Kong.”

4. Section 3 amended (application)

- (1) Section 3(1), Chinese text—

Repeal paragraph (a)

Substitute

“(a) 所有屬香港船舶的海船；及”。

(2) Section 3(1)(b), Chinese text—

Repeal

“海域航行船舶”

Substitute

“海船”。

(3) Section 3—

Repeal subsection (2)

Substitute

“(2) This Regulation does not apply to—

- (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
- (b) fishing vessels;
- (c) pleasure yachts not engaged in trade; or
- (d) wooden ships of primitive build.”.

5. Sections 4 and 5 substituted

Sections 4 and 5—

Repeal the sections

Substitute

“4. Duties of company and master in relation to watchkeeping

The company and the master of a ship must ensure that the watchkeeping arrangements for the ship meet the requirements specified in—

- (a) Regulation VIII/2, paragraph 2 of the Convention; and
- (b) section A-VIII/2, Parts 2 to 5 of the STCW Code.

5. Duties of chief engineer officer in relation to watchkeeping

The chief engineer officer of a ship must ensure that the engineering watchkeeping arrangements for the ship meet the requirements specified in section A-VIII/2, Part 4-2 of the STCW Code.”.

6. Sections 6 and 7 repealed

Sections 6 and 7—

Repeal the sections.

7. Sections 7A to 7D added

Before section 8—

Add

“7A. Miscellaneous duties of company

- (1) The company of a ship must ensure that the requirements specified in Regulation I/14, paragraphs 1.3 to 1.6 of the Convention are met on the ship.
- (2) The company of a ship must ensure that the assignment of seafarers for service on the ship meets the requirements specified in section A-I/14 of the STCW Code.

7B. Minimum hours of rest

- (1) Subject to subsection (2) and section 7C, a seafarer employed to work on board a ship must have at least—
 - (a) 10 continuous hours of rest in any 24-hour period; and
 - (b) 77 hours of rest in any 7-day period.
- (2) The hours of rest in a 24-hour period may be divided into 2 periods if—
 - (a) one of them is at least 6 hours in duration; and
 - (b) the interval between 2 consecutive periods of rest does not exceed 14 hours.
- (3) Emergency drills on board the ship must be conducted in a manner—
 - (a) that minimizes the disruption of any rest period; and
 - (b) that does not induce fatigue to any seafarer on board the ship.

7C. Authority may permit exceptions

The Authority may, in accordance with section A-VIII/1 of the STCW Code, permit an exception to the requirements on hours of rest under section 7B(1) and (2).

7D. Schedules of service and records of rest

- (1) The master of a ship must—
 - (a) compile a table that complies with subsection (2); and
 - (b) display the table in a conspicuous position on board the ship, which is accessible to the seafarers on it.

(2) The table must—

- (a) contain, in respect of each seafarer on board the ship—
 - (i) a schedule of service at sea and service in port; and
 - (ii) the minimum hours of rest; and
- (b) be presented—
 - (i) in the working language of the crew of the ship; and
 - (ii) if the working language is not English, also in English.
- (3) The master may require a seafarer to work during the hours of rest shown in the schedule of service for—
 - (a) ensuring the immediate safety of the ship, or a person or cargo on board the ship; or
 - (b) giving assistance to any other ship or a person in distress at sea.
- (4) If a seafarer has worked pursuant to subsection (3), the seafarer must be provided with a compensatory rest period.
- (5) The master must—
 - (a) maintain a record of daily hours of rest of every seafarer on board the ship that is endorsed by—
 - (i) the master or a person authorized by the master; and
 - (ii) the seafarer; and
 - (b) provide each seafarer with a copy of the record relating to the seafarer.”.

8. Section 8 amended (manning and certificates)

(1) Section 8, heading—

Repeal

“Manning and certificates”

Substitute

“Certificates”.

(2) Section 8(1)—

Repeal

“required to be held by an officer under this Regulation shall”

Substitute

“(with or without endorsement) that is issued under any of the subsidiary legislation specified in subsection (5) or that is treated as equivalent to a certificate so issued, or any of the documents specified in subsection (9), must”.

(3) Section 8—

Repeal subsections (2), (3) and (4).

(4) Section 8—

Repeal subsection (5)

Substitute

“(5) The following subsidiary legislation is specified—

- (a) the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);
- (b) the Merchant Shipping (Seafarers) (Engine Room Watch Ratings and Electro-technical Ratings) Regulation (Cap. 478 sub. leg. V);

- (c) the Merchant Shipping (Seafarers) (Passenger Ships—Training) Regulation (Cap. 478 sub. leg. AD);
- (d) the Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation;
- (e) the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation;
- (f) the Merchant Shipping (Seafarers) (Navigational Watch) Regulation; and
- (g) the Merchant Shipping (Seafarers) (Tankers) Regulation.”.

(5) Section 8—

Repeal subsections (6), (7) and (8).

(6) At the end of section 8—

Add

- “(9) The following documents are specified for a ship that is not a Hong Kong ship—
- (a) a certificate of competency or certificate of service issued in relation to the implementation of the Convention by the appropriate authority of the country in which the ship is registered to a national of the country;
 - (b) a document treated by that authority as equivalent to such a certificate; and
 - (c) the documentary proof referred to in Regulation I/10, paragraph 5 of the Convention.”.

9. Section 9 repealed (qualifications of officers)

Section 9—

Repeal the section.

10. Section 10 substituted

Section 10—

Repeal the section

Substitute

“10. Inspection

An authorized person may inspect a ship—

- (a) to carry out the verification or assessment specified in Regulation I/4, paragraphs 1.1, 1.2 and 1.3 of the Convention; or
- (b) if the ship is the subject of an exemption granted under this Regulation, or belongs to a class of ships that is granted an exemption under this Regulation—to verify that the conditions of the exemption have been complied with.”

11. Section 11 amended (procedure to be adopted when inspection reveals deficiencies)

(1) Section 11—

Repeal paragraph (a)

Substitute

“(a) that there is a deficiency as described in Regulation I/4, paragraph 2 of the Convention; or”

(2) Section 11(b)—

Repeal

“with;”

Substitute

“with.”

(3) Section 11—

Repeal paragraphs (c), (d), (e) and (f).

(4) Section 11, English text—

Repeal

“he shall”

Substitute

“the authorized person must”.

12. Section 12 amended (power to detain)

Section 12(1)—

Repeal

everything before “been corrected”

Substitute

“(1) If—

- (a) an authorized person finds on an inspection carried out under section 10 any deficiency referred to in section 11(a); and
 - (b) the deficiency is not corrected within a reasonable time after notification of it under section 11,
- the authorized person may detain the ship until the deficiency has”.

13. Section 13 amended (offences and penalties)

(1) Section 13(1)—

Repeal

“An employer who contravenes section 8(4), (7) or (8)”

Substitute

“A company who contravenes section 4 or 7A”.

(2) Section 13(2)—

Repeal

“, 6, 7 or 8(3), (4) or (7)”.

(3) After section 13(3)—

Add

“(3A) If section 7B(1) or (3) or 7D(4) is contravened, the company and the master of the ship concerned each commits an offence and is liable on conviction—

- (a) for the company, to a fine at level 5;
- (b) for the master, to a fine at level 3.

(3B) The master of a ship who contravenes section 7D(1) or (5) commits an offence and is liable on conviction to a fine at level 1.

(3C) It is a defence for a person charged under subsection (3A) or (3B) to show that the person had taken all reasonable steps to prevent the commission of the offence.”.

14. Section 14 repealed (amendment of Schedules)

Section 14—

Repeal the section.

15. Schedules 1 to 4 repealed

Schedules 1, 2, 3 and 4—

Repeal the Schedules.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. This Regulation amends the Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation (Cap. 478 sub. leg. T) to implement the requirements relating to watchkeeping, certain miscellaneous duties of the company of a ship, seafarers' hours of rest, the keeping of certificates and documents on a ship and the inspection of a ship under the Convention as revised by the Manila Amendments.

**Merchant Shipping (Seafarers) (Health and Safety:
General Duties) (Amendment) (No. 2) Regulation 2016****Contents**

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**Merchant Shipping (Seafarers) (Health and Safety:
General Duties) (Amendment) (No. 2) Regulation 2016**

(Made by the Secretary for Transport and Housing under sections 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation amended

The Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478 sub. leg. C) is amended as set out in sections 3 to 11.

3. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

“*company* (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to

any provision of such Convention that applies to Hong Kong.”.

4. **Section 3 amended (application)**

Section 3(2)—

Repeal

everything after “apply to”

Substitute

“—

- (a) a ship owned or operated by a government and engaged only on governmental non-commercial service;
- (b) a fishing vessel;
- (c) a pleasure yacht not engaged in trade; or
- (d) a wooden ship of primitive build.”.

5. **Section 4 amended (general duties of employers)**

(1) Section 4, heading—

Repeal

“employers”

Substitute

“companies”.

(2) Section 4—

Repeal subsection (1)

Substitute

“(1) The company of a ship has the duty to ensure, so far as is reasonably practicable, the health and safety of—

- (a) the seafarers on board the ship; and
- (b) other persons on board the ship who may be affected by the company’s acts or omissions.”.

(3) Section 4(2)—

Repeal

“employer’s”

Substitute

“company’s”.

(4) Section 4(3)—

Repeal

everything before “general policy”

Substitute

“(3) The company of a ship has the duty to prepare and, as often as may be appropriate, revise a written statement of the company’s”.

(5) Section 4(3)—

Repeal

“those seafarers”

Substitute

“the seafarers on board the ship”.

(6) Section 4(3), proviso—

Repeal

“an employer”

Substitute

“a company”.

6. **Section 5 amended (general duties of seafarers)**

(1) Section 5(b)—

Repeal

“on his employer”

Substitute

“on the company of the ship”.

(2) Section 5(b)—

Repeal

“with his employer”

Substitute

“with the company”.

7. **Section 5A added**

After section 5—

Add

“5A. Seafarers must not be under influence of alcohol or drugs

- (1) This section applies to every seafarer on board a ship who is performing any of the designated duties set out in subsection (2).
- (2) The designated duties are duties relating to—
 - (a) the safety of the ship;
 - (b) the security of the ship; or
 - (c) the protection of the marine environment.
- (3) Without limiting section 5, a seafarer must ensure that—
 - (a) he or she is not under the influence of alcohol or drugs to an extent that—

- (i) he or she behaves in a disorderly manner; or
- (ii) his or her ability to perform the designated duties is impaired; and

(b) the proportion of alcohol in his or her breath or blood does not exceed the limit set out in subsection (4).

(4) The limit is—

- (a) 25 micrograms of alcohol in 100 millilitres of breath; or
- (b) 50 milligrams of alcohol in 100 millilitres of blood.

(5) The company and the master of a ship must ensure that every seafarer on board the ship to which this section applies complies with subsection (3).”.

8. **Section 6 amended (prohibition on levy)**

Section 6—

Repeal

everything before “any charge”

Substitute

“The company of a ship must not levy or permit to be levied on any seafarer on board the ship”.

9. **Section 7A added**

After section 7—

Add

“7A. Exemption

- (1) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or

individual cases on such conditions, if any, as the Authority thinks fit.

- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).”.

10. Section 8 amended (penalties)

- (1) Section 8(1)—

Repeal

“Any employer”

Substitute

“A company”.

- (2) After section 8(2)—

Add

“(2A) A master or officer who contravenes section 5A(3) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

(2B) A seafarer (other than a master or officer) who contravenes section 5A(3) commits an offence and is liable on conviction to a fine at level 1.

(2C) A company or master who contravenes section 5A(5) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.”.

- (3) Section 8(4)—

Repeal

“or (2)”

Substitute

“, (2) or (2C)”.

11. Section 12 amended (inspection and detention of ships which are not Hong Kong ships)

Section 12(2)(a)—

Repeal

everything after “is registered”

Substitute

“; and”.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The Convention as revised by the Manila Amendments requires the government of each party to the Convention to, among others, take measures to prevent the abuse of alcohol or drugs by seafarers. The main purpose of this Regulation is to amend the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478 sub. leg. C) to provide that it is an offence on board a ship for a seafarer to be under the influence of alcohol or drugs while the seafarer is performing certain duties.

Merchant Shipping (Seafarers) (Fees) (Amendment) (No. 2) Regulation 2016

(Made by the Secretary for Financial Services and the Treasury under section 133 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

- (1) Subject to subsection (2), this Regulation comes into operation on 1 December 2016.
- (2) Section 3(7) and (9) comes into operation on 1 January 2017.

2. Merchant Shipping (Seafarers) (Fees) Regulation amended

The Merchant Shipping (Seafarers) (Fees) Regulation (Cap. 478 sub. leg. AB) is amended as set out in sections 3 and 4.

3. Schedule amended

- (1) The Schedule, Part II, after item 2—

Add

“2A. Fees for an examination for a certificate of competency as Electro-technical Officers Class ETO—

For an examination for a certificate of competency on each occasion a candidate presents himself or herself—

- (a) For Part A or a portion of it, or for exemption from all of Part A 580
- (b) For Part B or a portion of it 2,510

(including fees for the oral examination if taken together with Part B)

- (c) For oral examination if taken separately 1,930”.

- (2) The Schedule, Part II, item 5—

Repeal

“as Deck Officers, or Marine Engineer Officers, Class 1, Class 2 or Class 3”

Substitute

“(with or without endorsement) as Deck Officers or Marine Engineer Officers, Class 1, Class 2 or Class 3, or Electro-technical Officers Class ETO,”.

- (3) The Schedule, Part II, item 6—

Repeal sub-item (f)

Substitute

“(f) For issue or renewal of an endorsement under the Merchant Shipping (Seafarers) (Tankers) Regulation on a certificate of competency or a certificate of service Nil”.

- (4) The Schedule, Part II, item 7—

Repeal the Note.

- (5) The Schedule, Part II, item 8—

Repeal

“8, 10 or 15”

Substitute

“8 or 10”.

(6) The Schedule, Part II, after item 8—

Add

“8A.	Fee for a copy of any determination made under section 5A of the Merchant Shipping (Seafarers) (Engine Room Watch Ratings and Electro-technical Ratings) Regulation (Cap. 478 sub. leg. V)	155
8B.	Fee for a copy of any determination made under section 10 of the Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation	155
8C.	Fee for a copy of any determination made under section 9 of the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation	155
8D.	Fee for a copy of any determination made under section 7 of the Merchant Shipping (Seafarers) (Navigational Watch) Regulation	155
8E.	Fee for a copy of any determination made under section	155”.

7 of the Merchant Shipping
(Seafarers) (Tankers) Regulation

(7) The Schedule, Part II—

Repeal items 9 and 10.

(8) The Schedule, Part III—

Repeal item 8**Substitute**

“8.	Fees in relation to a certificate of proficiency under the Merchant Shipping (Seafarers) (Engine Room Watch Ratings and Electro-technical Ratings) Regulation (Cap. 478 sub. leg. V)—	
(a)	For issue of a certificate of proficiency	Nil
(b)	For issue of a copy of a certificate of proficiency	155”.

(9) The Schedule, Part III—

Repeal item 9.

(10) The Schedule, Part III, before item 10—

Add

“9A.	Fees in relation to a certificate of proficiency under the Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation—	
(a)	For issue or renewal of a certificate of proficiency	Nil
(b)	For issue of a copy of a	155

certificate of proficiency

- 9B. Fees in relation to a certificate of proficiency under the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation—
- | | |
|---|-----|
| (a) For issue of a certificate of proficiency | Nil |
| (b) For issue of a copy of a certificate of proficiency | 155 |
- 9C. Fees in relation to a certificate of proficiency under the Merchant Shipping (Seafarers) (Navigational Watch) Regulation—
- | | |
|---|-----|
| (a) For issue of a certificate of proficiency | Nil |
| (b) For issue of a copy of a certificate of proficiency | 155 |
- 9D. Fees in relation to a certificate of proficiency under the Merchant Shipping (Seafarers) (Tankers) Regulation—
- | | |
|---|-------|
| (a) For issue of a certificate of proficiency | Nil |
| (b) For issue of a copy of a certificate of proficiency | 155”. |

4. “適任證書” substituted for “合格證書”

The following provisions, Chinese text—

- (a) The Schedule, Part II, Note (1);
- (b) The Schedule, Part II, item 1;
- (c) The Schedule, Part II, item 2;
- (d) The Schedule, Part II, item 6(g) and (h);
- (e) The Schedule, Part II, item 7(a) and (d);
- (f) The Schedule, Part II, item 11;
- (g) The Schedule, Part II, item 12—

Repeal

“合格證書” (wherever appearing)

Substitute

“適任證書”.

Secretary for Financial Services and
the Treasury

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. To implement the requirements under the Convention as revised by the Manila Amendments, various items of subsidiary legislation are amended, repealed or made under the Merchant Shipping (Seafarers) Ordinance (Cap. 478). Certain examinations, certificates and endorsements are introduced or removed. This Regulation amends the Schedule to the Merchant Shipping (Seafarers) (Fees) Regulation (Cap. 478 sub. leg. AB) to introduce the new fees, and to remove the obsolete fees, of those examinations, certificates and endorsements.

Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016

(Made by the Chief Executive in Council under section 4 of the Administrative Appeals Board Ordinance (Cap. 442))

1. Commencement

- (1) Subject to subsections (2) and (3), this Order comes into operation on 1 December 2016.
- (2) Section 3(2) and (5) comes into operation on 1 January 2017.
- (3) Section 3(6) comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Administrative Appeals Board Ordinance amended

The Administrative Appeals Board Ordinance (Cap. 442) is amended as set out in section 3.

3. Schedule amended

- (1) The Schedule, item 53—

Repeal

“under section 8(2) or 10(2) to refuse to issue a certificate or licence.”

Substitute

“—

- (a) to refuse to issue or renew a certificate of competency under section 7B; or
 - (b) to refuse to issue a licence under section 10(2).”
- (2) The Schedule—

Repeal item 54.

- (3) The Schedule, item 55, after “(Engine Room Watch Ratings”—

Add

“and Electro-technical Ratings”.

- (4) The Schedule, item 55—

Repeal

“an Engine Room Watch Rating Certificate under section 5(1)”

Substitute

“a certificate of proficiency under section 4A”.

- (5) The Schedule—

Repeal items 56, 57 and 58.

- (6) The Schedule—

Add

“58A. Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (L.N. 69 of 2016).

A decision of the Seafarers’ Authority—

- (a) to require a deficiency to be rectified under section 100(2); or
- (b) to direct that a ship must not proceed to sea under section 100(3).”.

- (7) The Schedule—

Add

“58B. Merchant

A decision of the Seafarers’

Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation	Authority to refuse to issue or renew a certificate of proficiency under section 9.
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58C. Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 8.
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58D. Merchant Shipping (Seafarers) (Navigational Watch) Regulation	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 6.
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58E. Merchant Shipping (Seafarers) (Tankers) Regulation	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency or an endorsement, or to refuse to renew an endorsement, under section 6."
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Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) sets out the decisions under various Ordinances against which an appeal may be made to the Administrative Appeals Board. This Order amends that Schedule to make the consequential amendments that are required as a result of the repeal and amendment of regulations, and the making of new regulations, as mentioned in paragraphs 3 and 5.

2. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*STCW Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the STCW Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The STCW Convention as revised by the Manila Amendments applies to Hong Kong.
3. To implement the requirements under the STCW Convention as revised by the Manila Amendments, certain subsidiary legislation made under the Merchant Shipping (Seafarers) Ordinance (Cap. 478) will be repealed or amended. New regulations will also be made under that Ordinance, namely the Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation, the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation, the Merchant Shipping (Seafarers) (Navigational Watch) Regulation and the Merchant Shipping (Seafarers) (Tankers) Regulation.
4. The Maritime Labour Convention, 2006 (*MLC Convention*) was adopted by the International Labour Conference of the International

Labour Organization in 2006. It sets out a comprehensive set of global standards for the working and living conditions of seafarers on seagoing ships and seeks to protect the right of seafarers to decent employment. The MLC Convention will apply to Hong Kong after China has extended it to Hong Kong.

5. Most of the requirements of the MLC Convention are implemented by a new regulation, namely the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (L.N. 69 of 2016).

Merchant Shipping (Seafarers) (Tankers—Officers and Ratings) Regulation
(Repeal) Regulation

Section 1

1

Merchant Shipping (Seafarers) (Tankers—Officers and Ratings) Regulation (Repeal) Regulation

(Made by the Secretary for Transport and Housing under sections 72, 73 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 January 2017.

2. Repeal

The Merchant Shipping (Seafarers) (Tankers—Officers and Ratings) Regulation (Cap. 478 sub. leg. K) is repealed.

Secretary for Transport and Housing

2016

Merchant Shipping (Seafarers) (Tankers—Officers and Ratings) Regulation
(Repeal) Regulation

Explanatory Note

Paragraph 1

2

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The requirements relating to seafarers on tankers under the Manila Amendments will be implemented by the Merchant Shipping (Seafarers) (Tankers) Regulation (*new Regulation*). This Regulation repeals the Merchant Shipping (Seafarers) (Tankers—Officers and Ratings) Regulation (Cap. 478 sub. leg. K) in view of the making of the new Regulation.

Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation (Repeal)
Regulation

Section 1

1

**Merchant Shipping (Seafarers) (Navigational Watch
Ratings) Regulation (Repeal) Regulation**

(Made by the Secretary for Transport and Housing under sections 72, 73
and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 January 2017.

2. Repeal

The Merchant Shipping (Seafarers) (Navigational Watch Ratings)
Regulation (Cap. 478 sub. leg. W) is repealed.

Secretary for Transport and Housing

2016

Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation (Repeal)
Regulation

Explanatory Note

Paragraph 1

2

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The requirements relating to navigational watch under the Manila Amendments will be implemented by the Merchant Shipping (Seafarers) (Navigational Watch) Regulation (*new Regulation*). This Regulation repeals the Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation (Cap. 478 sub. leg. W) in view of the making of the new Regulation.

Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules (Repeal) Rules

(Made by the Seafarers' Authority under section 74(2) of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

These Rules come into operation on 1 January 2017.

2. Repeal

The Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules (Cap. 478 sub. leg. Y) are repealed.

Seafarers' Authority

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The requirements relating to the certification of able seafarers under the Manila Amendments will be implemented by the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation (*new Regulation*). These Rules repeal the Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules (Cap. 478 sub. leg. Y) in view of the making of the new Regulation.

**Merchant Shipping (Seafarers) (Safety Training)
Regulation (Repeal) Regulation**

(Made by the Secretary for Transport and Housing under sections 72, 73, 96
and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 January 2017.

2. Repeal

The Merchant Shipping (Seafarers) (Safety Training) Regulation (Cap. 478 sub. leg. AC) is repealed.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The requirements relating to safety training under the Manila Amendments will be implemented by the Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation (*new Regulation*). This Regulation repeals the Merchant Shipping (Seafarers) (Safety Training) Regulation (Cap. 478 sub. leg. AC) in view of the making of the new Regulation.

Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Repeal) Rules

Section 1

1

Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Repeal) Rules

(Made by the Seafarers' Authority under section 74(2) of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

These Rules come into operation on 1 January 2017.

2. Repeal

The Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Cap. 478 sub. leg. Z) are repealed.

Seafarers' Authority

2016

Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Repeal) Rules

Explanatory Note

Paragraph 1

2

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The requirements relating to certification in survival craft, rescue boats and fast rescue boats under the Manila Amendments will be implemented by the Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation (*new Regulation*). These Rules repeal the Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Cap. 478 sub. leg. Z) in view of the making of the new Regulation.

Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passenger Ships—Training) Regulation (Repeal) Regulation

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Repeal

The Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passenger Ships—Training) Regulation (Cap. 478 sub. leg. AE) is repealed.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. To implement the requirements under the Convention as revised by the Manila Amendments relating to the training for seafarers working on a passenger ship, irrespective of whether the ship is a ro-ro passenger ship, the Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships—Training) Regulation (Cap. 478 sub. leg. AD) (*Training Regulation*) will be amended. This Regulation repeals the Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passenger Ships—Training) Regulation (Cap. 478 sub. leg. AE) in view of the amendments made to the Training Regulation.

Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) (No. 2) Regulation 2016

Section 1

1

Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) (No. 2) Regulation 2016

(Made by the Secretary for Transport and Housing under sections 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulation amended

The Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulation (Cap. 478 sub. leg. R) is amended as set out in section 3.

3. Section 2 amended (interpretation)

Section 2, definition of *petroleum products, liquid chemical and liquefied gas*—

Repeal

“Merchant Shipping (Seafarers) (Tankers—Officers and Ratings) Regulation (Cap. 478 sub. leg.)”

Substitute

“Merchant Shipping (Seafarers) (Tankers) Regulation”.

Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) (No. 2) Regulation 2016

2

Secretary for Transport and Housing

2016

Explanatory Note

This Regulation amends the Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulation (Cap. 478 sub. leg. R) to replace the reference to the Merchant Shipping (Seafarers) (Tankers—Officers and Ratings) Regulation (Cap. 478 sub. leg. K) with the new Merchant Shipping (Seafarers) (Tankers) Regulation.

Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships)
(Amendment) Regulation 2016

Section 1

1

Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships) (Amendment) Regulation 2016

(Made by the Secretary for Transport and Housing under sections 107, 119 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships) Regulation amended

The Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships) Regulation (Cap. 478 sub. leg. N) is amended as set out in sections 3, 4 and 5.

3. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

“*company* (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to

Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships)
(Amendment) Regulation 2016

Section 4

2

any provision of such Convention that applies to Hong Kong;”.

4. Section 4 amended (disciplinary offences on board all ships)

Section 4—

Repeal paragraph (d).

5. Section 5 amended (disciplinary offences on board certain ships)

(1) Section 5(1)(b)—

Repeal

“employer”

Substitute

“the company of the ship”.

(2) Section 5(2)—

Repeal

“employer”

Substitute

“company of the ship”.

Secretary for Transport and Housing

2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. Under the Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships) Regulation (Cap. 478 sub. leg. N) (*Disciplinary Regulation*), it is a disciplinary offence on board a ship for a seafarer to be under the influence of alcohol or drugs. The Convention as revised by the Manila Amendments requires new measures to be taken to prevent the abuse of alcohol or drugs by seafarers. Accordingly, the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478 sub. leg. C) is amended so that it is an offence on board a ship for a seafarer to be under the influence of alcohol or drugs while the seafarer is performing certain duties. This Regulation is made to remove the disciplinary offence from the Disciplinary Regulation.

Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (Commencement)
Notice 2016

1

**Merchant Shipping (Seafarers) (Amendment)
Ordinance 2013 (Commencement) Notice 2016**

Under section 1(2) of the Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (16 of 2013), I appoint 1 December 2016 as the day on which the following provisions of the Ordinance come into operation—

- (a) section 1;
- (b) section 2(1);
- (c) section 3(11)(c);
- (d) section 4;
- (e) section 7(11);
- (f) section 10;
- (g) section 66;
- (h) Division 12 of Part 2;
- (i) Subdivision 7 of Division 1 of Part 3.

Secretary for Transport and Housing

2016

Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment)
Regulation 2016 (Commencement) Notice 2016

1

**Merchant Shipping (Seafarers) (Health and Safety:
General Duties) (Amendment) Regulation 2016
(Commencement) Notice 2016**

Under section 1 of the Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) Regulation 2016 (L.N. 71 of 2016), I appoint 1 December 2016 as the day on which the Regulation (except section 4) comes into operation.

Secretary for Transport and Housing

2016

Merchant Shipping (Seafarers) (Medical Examination) (Amendment) Regulation
2016 (Commencement) Notice

1

**Merchant Shipping (Seafarers) (Medical Examination)
(Amendment) Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Medical Examination) (Amendment) Regulation 2016 (L.N. 74 of 2016), I appoint 1 December 2016 as the day on which the Regulation comes into operation.

Secretary for Transport and Housing

2016

New Seafarer Certificates issued by the Marine Department

Regulation	New Certificates	Seafarers Needing the New Certificates	Estimated Number of Applicable Seafarers¹
Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation	Certificate of proficiency in basic training	Seafarers assigned to undertake safety or prevention of pollution duties on board	83
	Certificate of proficiency in designated security duties	Seafarers assigned to undertake designated security duties	222
	Certificate of proficiency in security awareness	Seafarers without being assigned to undertake designated security duties	17
	Certificate of proficiency for ship security officers	Seafarers assigned to undertake duties of a ship security officers	15
	Certificate of proficiency in survival craft and rescue boats other than fast rescue boats	Seafarers to be designated to launch or take charge of a survival craft or rescue boats (other than fast rescue boats)	0 ²
	Certificate of proficiency in fast rescue boats	Seafarers to be designated to launch or take charge fast rescue boats	0 ²
	Certificate of proficiency in advanced fire fighting	Seafarers to be designated to control fire fighting operations	0 ²

¹ There are a total of some 240 Hong Kong registered seafarers currently employed on sea-going ships. Some seafarers might choose to apply for more than one certificate if they wish to perform different types of designated duties on board.

² Hong Kong seafarers who are now serving at the rank of officers are currently in possession of a certificate of competency, which includes training in survival craft, rescue boats other than fast rescue boats, advanced fire fighting and medical care. The certificate of competency they now possess are treated as equivalent to the new certificates of proficiency and thus the seafarers concerned do not need to re-apply for these certificates of proficiency.

Regulation	New Certificates	Seafarers Needing the New Certificates	Estimated Number of Applicable Seafarers¹
	Certificate of proficiency in medical first aid	Seafarers to be designated to provide medical first aid	0 ²
	Certificate of proficiency in medical care	Seafarers to be designated to take charge of medical care	20
Merchant Shipping (Seafarers) (Certification of Officers) (Amendment) Regulation 2016	Certificate of competency as an electro-technical officer	Electro-technical officers	10
Merchant Shipping (Seafarers) (Tankers) Regulation	Certificate of proficiency in basic training for oil and chemical tanker cargo operations	Seafarers on a tanker who is assigned to undertake duties related to cargo or cargo equipment on board	0 ³
	Certificate of proficiency in basic training for liquefied gas tanker cargo operations		
	Certificate of proficiency in advanced training for oil tanker cargo operations	The master, chief engineer officer, the chief mate, the second engineer officer on a tanker; or a person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on the tanker concerned	0 ³
	Certificate of proficiency in advanced training for chemical tanker cargo operations		
	Certificate of proficiency in advanced training for liquefied gas tanker cargo operations		

³ Hong Kong registered seafarers can choose to comply with the requirement by a dangerous cargo endorsement, which they are currently in possession of and is treated as an equivalent of these certificates of proficiency.

Regulation	New Certificates	Seafarers Needing the New Certificates	Estimated Number of Applicable Seafarers¹
Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment) Regulation 2016	Certificate of proficiency for engine room watch ratings	Ratings forming part of an engine room watch	0 ⁴
	Certificate of proficiency for electro-technical ratings	Ratings assigned to carry out electro-technical duties	
Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation	Certificate of proficiency for able seafarer deck	Ratings working in the deck department	17
	Certificate of proficiency for able seafarer engine	Ratings working in the engine department	
Merchant Shipping (Seafarers) (Navigational Watch) Regulation	Certificate of proficiency for navigational watch ratings	Ratings assigned to form part of a navigational watch	17

⁴ These certificates of proficiency are applicable to ratings. There are 17 Hong Kong registered ratings in total serving on board ocean-going vessels as at 31 December 2015, and it is expected that no or very few ratings would specialise as engine room watch rating or electro-technical rating due to the low market demand for these types of jobs.