

立法會
Legislative Council

LC Paper No. LS47/17-18

**Paper for the House Committee Meeting
on 13 April 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 23 March 2018**

Tabling in LegCo : Council meeting of 28 March 2018

Amendment to be made by : Council meeting of 25 April 2018 (or that of
16 May 2018 if extended by resolution)

**Merchant Shipping (Safety) (Amendment) Ordinance 2009
(Commencement) Notice 2018** (L.N. 43)

**Merchant Shipping (Local Vessels) (Safety and Survey)
(Amendment) Regulation 2018** (L.N. 44)

**Merchant Shipping (Safety) (Cargo Ship Construction and
Survey) (Ships Built On or After 1 September 1984)
(Amendment) Regulation 2018** (L.N. 45)

**Merchant Shipping (Safety) (Carriage of Cargoes and Oil
Fuel) (Amendment) Regulation 2018** (L.N. 46)

**Merchant Shipping (Safety) (Load Line) (Amendment)
Regulation 2018** (L.N. 47)

**Merchant Shipping (Safety) (Load Lines) (Deck Cargo)
(Amendment) Regulation 2018** (L.N. 48)

**Merchant Shipping (Safety) (Load Lines) (Length of Ship)
Regulations (Repeal) Regulation** (L.N. 49)

**Merchant Shipping (Safety) (Passenger Ship Construction)
(Ships Built Before 1 September 1984) (Amendment)
Regulation 2018** (L.N. 50)

**Merchant Shipping (Safety) (Passenger Ship Construction
and Survey) (Ships Built On or After 1 September 1984)
(Amendment) Regulation 2018** (L.N. 51)

**Merchant Shipping (Safety) (Subdivision and Damage
Stability of Cargo Ships) (Amendment) Regulation 2018** (L.N. 52)

Background

The Merchant Shipping (Safety) (Amendment) Ordinance 2009 (10 of 2009) ("MSSAO") was enacted in 2009 to amend the Merchant Shipping (Safety) Ordinance (Cap. 369) to, among others, enable the timely implementation of international agreements related to marine safety by referring directly to the provisions of those agreements ("direct reference approach"). Under section 2(1) of MSSAO, provisions of MSSAO which enabled the direct reference approach, made adaptations of law, and replaced references to "Secretary for Transport and Housing" ("STH") with "Secretary" came into operation upon publication of MSSAO in the Gazette on 3 July 2009.

2. According to paragraphs 2 and 3 of the Legislative Council ("LegCo") Brief (File Ref.: THB (T) CR 8/10/80/11) issued by the Transport and Housing Bureau ("THB") in March 2018, ships on international voyages are required to comply with the requirements of the International Convention on Load Lines¹ which was adopted by the International Maritime Organization ("IMO") in 1966 and entered into force in 1968 ("Convention of 1966"). Ships conforming with the load line requirements are issued with certificates by the flag state. IMO adopts resolutions from time to time to amend the Convention of 1966 to keep international standards in relation to load lines in tandem with new shipping technological and operational practices. THB intends to incorporate requirements adopted by IMO after 2000 into local legislation.

L.N. 43

3. By L.N. 43, STH appoints 28 May 2018 as the day on which the following provisions of MSSAO come into operation:

¹ According to paragraph 2 of the LegCo Brief, one or more load lines may be marked on the surface of a ship's hull to indicate the varying legal limits to which the ship may be loaded in different zones and seasons to prevent marine accidents due to overloading.

- (a) section 3(4) in so far as it relates to the new definition of "Convention of 1966" which is defined as "the International Convention on Load Lines signed in London on 5 April 1966, or any convention that replaces that Convention or any successor convention, as amended from time to time and as applicable to Hong Kong"; and
- (b) sections 14 to 17 which amend sections 47, 51, 55 and 57 of Cap. 369 to allow the mutual recognition of international load line certificates issued or endorsed by the Director of Marine and the governments of other Convention countries in respect of ships registered in Hong Kong and such other countries, and to update the requirements on the display of load line certificates on ships.

4. Upon enquiry by the Legal Service Division ("LSD"), THB advises that the remaining provisions of MSSAO are mainly related to the International Convention for the Safety of Life at Sea ("SOLAS") of IMO. According to THB, these remaining provisions of MSSAO will come into operation in the 2018-2019 legislative session upon completion of the relevant legislative exercises to incorporate the latest requirements of SOLAS into local legislation.

L.N. 44 to L.N. 52

5. L.N. 44 to L.N. 52 are made by STH under various sections of Cap. 369 or the Merchant Shipping (Local Vessels) Ordinance (Cap. 548)² to implement in local legislation the latest amendments to the Convention of 1966 adopted by IMO. According to paragraph 3 of the LegCo Brief, these amendments seek to enhance the stability and safety of a ship. In gist:

- (a) L.N. 47 amends the Merchant Shipping (Safety) (Load Line) Regulations (Cap. 369AD) to bring it in line with Annex I to the Convention of 1966 which provides for different technical requirements for ships constructed before 1 January 2005 ("pre-2005 ships") and those constructed thereafter ("post-2005 ships"). The major amendments include new requirements to: (i) improve the accuracy of freeboard³ calculations, (ii) enhance the intact stability of newly constructed ships, and (iii) update the stability information of ships. Other amendments include changing the Chinese renditions of "ships of war" (軍用船艦) and "fishing vessels" (捕魚船隻) to "軍艦" and "魚船" respectively;

² Sections 51, 63, 64, 96, 102, 105, 107 and 112B of Cap. 369 and section 89 of Cap. 548.

³ Freeboard refers to the vertical distance between a ship's main deck and the waterline.

- (b) L.N. 48 amends the Merchant Shipping (Safety) (Load Lines) (Deck Cargo) Regulations (Cap. 369AE) to update the requirements on the maximum height of timber deck cargo and how such cargo must be effectively secured in a way that complies with the Code of Safe Practice for Ships Carrying Timber Deck Cargoes, 2011;
- (c) L.N. 49 repeals the Merchant Shipping (Safety) (Load Lines) (Length of Ship) Regulations (Cap. 369 AF) because the provisions in Cap. 369AF for ascertaining the length of a ship are updated and incorporated by L.N. 47 which defines "length" and the symbol "(L)" for pre-2005 ships and post-2005 ships differently; and
- (d) L.N. 44 to L.N. 46 and L.N. 50 to L.N. 52 consequentially amend the following items of subsidiary legislation respectively in view of the making of L.N. 47 and L.N. 49:
 - (i) the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G);
 - (ii) the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369S);
 - (iii) the Merchant Shipping (Safety) (Carriage of Cargoes and Oil Fuel) Regulation (Cap. 369 AV);
 - (iv) the Merchant Shipping (Safety) (Passenger Ship Construction) (Ships Built Before 1 September 1984) Regulations (Cap. 369 AL);
 - (v) the Merchant Shipping (Safety) (Passenger Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369 AM); and
 - (vi) the Merchant Shipping (Safety) (Subdivision and Damage Stability of Cargo Ships) Regulation (Cap. 369 AT).

6. It is noted that the Administration has adopted the direct reference approach in L.N. 47 and L.N. 48 by referring directly to certain parts of the Convention of 1966, its Annexes, and other relevant international agreements pursuant to section 112B of Cap. 369 as amended by MSSAO. According to paragraph 9 of the LegCo Brief, this approach is adopted to keep the local legislation up-to-date as far as practicable.

7. In relation to the change of the Chinese renditions of "ships of war" and "fishing vessels" to "軍艦" and "魚船", it is noted that section 3 of Cap. 369 and paragraph (c) of the Schedule to the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N) still refer to "軍用船艦" and "捕魚船隻". Upon LSD's enquiry, THB has advised that "軍艦" and "漁船" are adopted from the official Chinese translation of the Convention of 1966 published by IMO. THB will keep in view if there is a need to align the Chinese texts when making amendments to Cap. 369 and Cap. 369N.

8. According to THB, the Administration consulted the Shipping Consultative Committee of the Marine Department on the legislative proposal in 2014 and they supported the proposal.

9. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 22 May 2017 on the proposed legislative amendments. Members were generally supportive of the proposal and noted that the shipping industry had no adverse views because relevant ocean-going vessel ("OGV") operators had already been complying with these international requirements. During the discussion, a member requested the Administration to provide further information on the differences between the intact stability requirements for local vessels and those for OGVs. Such information was issued to members vide LC Paper No. CB(4)1281/16-17(01).

10. L.N. 44 to L.N. 52 come into operation on 1 June 2018.

**Cross-boundary Movement of Physical Currency and
Bearer Negotiable Instruments Ordinance (Amendment of
Schedule 1) Notice 2018 (L.N. 53)**

**Cross-boundary Movement of Physical Currency and
Bearer Negotiable Instruments Ordinance
(Commencement) Notice (L.N. 54)**

L.N. 54

11. L.N. 54 is made by the Secretary for Security ("S for S") under section 1(2) of the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629) to appoint 16 July 2018 as the day on which Cap. 629 comes into operation.

12. The Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Bill ("the Bill") was passed by the LegCo at its meeting of 14 June 2017. The enacted Ordinance, which was published in the Gazette as Ord. No. 7 of 2017, among other things, establishes a declaration and disclosure system to detect cross-boundary movement of large quantities of physical currency and bearer negotiable instruments ("CBNIs") into or out of Hong Kong in order to implement Recommendation 32 of the Financial Action Task Force, and provides for the powers to restrain the movement of CBNIs suspected to be related to money laundering and terrorist financing. Section 4 of Cap. 629 requires a declaration to be made for CBNIs in the possession of a person arriving at any specified control points (i.e. places specified in Schedule 1 to Cap. 629) from a place outside Hong Kong ("traveller"), if the total value of CBNIs is more than the amount specified in Schedule 4 to Cap. 629 (i.e. \$120,000)⁴. Any traveller who fails to make the declaration or makes a false declaration commits an offence and pursuant to section 4(8) of Cap. 629, is liable on conviction to a fine of \$500,000 and to imprisonment for two years. Division 3 of Part 2 of Cap. 629 provides for a procedure for dealing with such offence by paying an amount specified in Schedule 5 (i.e. \$2,000) provided that the person is a first-time offender and the CBNIs concerned are not suspected to be crime proceeds or terrorist property.

13. As advised by the Clerk to the Bills Committee formed to study the Bill, members of the Bills Committee noted that the Bill, if passed, would come into operation on a day to be appointed by S for S by notice published in the Gazette. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)1525/16-17) for details of its deliberations.

L.N. 53

14. L.N. 53 is made by the Commissioner of Customs and Excise under section 33(1) of Cap. 629 to add Ocean Terminal to Schedule 1 to Cap. 629 as a specified control point. The effect is that the declaration requirement provided in section 4 of Cap. 629 is applicable to travellers arriving at Ocean Terminal.

15. L.N. 53 comes into operation on the day on which Cap. 629 comes into operation (i.e. 16 July 2018).

⁴ Where the traveller is a young person under the age of 16 and is accompanied by an adult, the accompanying adult is responsible for making the declaration on the young person's behalf if it is known to the accompanying adult that the young person is in possession of CBNIs of a total value over the specified amount (i.e. \$120,000).

Consultation with LegCo Panel

16. As advised by the Clerk to the Panel on Security, the Panel has not been consulted specifically on L.N. 53 and L.N. 54. The Administration in its paper (LC Paper No. CB(2)24/17-18(01)) provided for the Panel's policy briefing cum meeting on 3 November 2017 mentioned its plan to commence Cap. 629 in the second half of 2018. Members of the Panel did not raise any concern about the proposal at the meeting.

Pesticides Ordinance (Amendment of Schedule 2) Notice 2018

(L.N. 55)

17. The Pesticides Ordinance (Cap. 133) provides for the registration and control of pesticides in Hong Kong, including those regulated under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("the Rotterdam Convention")⁵. Part 1 of Schedule 2 to Cap. 133 currently contains 34 items of pesticides subject to the regulation of the Rotterdam Convention.

18. L.N. 55 is made by the Secretary for Food and Health under section 19A of Cap. 133 to amend Part 1 of Schedule 2 to Cap. 133 to:

- (a) add to that Part two pesticides, namely Carbofuran ("克百威") and Trichlorfon. The effect of this amendment is that the import, export, manufacture, sale, supply, possession or use of the two newly added pesticides is prohibited except with a permit. Pursuant to section 17(1) of Cap. 133, failure to comply with the above requirement is an offence punishable by a fine at level 5 (i.e. \$50,000) and imprisonment for one year; and
- (b) amend the Chinese name of Carbofuran, which is part of an existing pesticide "Dustable powder formulations" listed in item 30 of that Part, from "蟲蟎威" to "克百威" to align it with the latest official Chinese name of Carbofuran published under the Rotterdam Convention.

⁵ According to paragraph 2 of the LegCo Brief, the People's Republic of China is a signatory to the Rotterdam Convention and in accordance with Article 153 of the Basic Law, the Central People's Government has applied the Convention to Hong Kong since 26 August 2008.

19. According to paragraph 10 of the LegCo Brief (with no file reference) issued jointly by the Food and Health Bureau and the Agriculture, Fisheries and Conservation Department on 21 March 2018, the Administration informed relevant stakeholders, including holders of pesticides licences and permits under Cap. 133, as well as shipping and logistics companies, of the proposed amendments to Part 1 of Schedule 2 to Cap. 133 in July 2017. According to the Administration, no comments or concerns have been raised by the trade.

20. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel has not been consulted on L.N. 55.

21. L.N. 55 comes into operation on 1 June 2018.

Concluding observations

22. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

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