

LEGISLATIVE COUNCIL BRIEF

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

Legislative Amendments for the Implementation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments

INTRODUCTION

To incorporate the latest requirements set out in the International Convention for the Control and Management of Ships' Ballast Water and Sediments ("Ballast Water Management Convention") of the International Maritime Organization ("IMO") into local legislation, the Secretary for Transport and Housing has made the Merchant Shipping (Control of Ballast Water and Sediments) Regulation ("the Regulation") at **Annex A** under Sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) ("the Ordinance").

2. At the meeting of the Executive Council on 8 May 2018, the Council ADVISED and the Chief Executive ORDERED that, under Section 3(2A) of the Ordinance, the Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2018 ("the Fees Amendment Regulation"), at **Annex B**, should be made to prescribe fees for the new survey and certification services to be provided by the Marine Department ("MD") in connection with the implementation of the requirements of the Ballast Water Management Convention.

BACKGROUND

3. A ballast tank is a compartment within a ship that holds water, which is used as ballast to provide stability, and hence maintain safety, for a ship during voyage. As shipping moves over 80% of commodities around the world, it is estimated that over three billion tonnes of ballast water are transferred every year.

4. However, when ships take in ballast water, they also take in the aquatic species, including bacteria or even viruses, which exist in the water. When the ballast water is discharged, the aquatic species are discharged together into the local marine environment. These foreign aquatic species will invade and disrupt the local marine environment, which presents a major threat to the marine ecosystem.

5. To prevent the spread of harmful aquatic organisms from one region to another, IMO adopted the Ballast Water Management Convention in 2004 to regulate the discharge of ballast water of ships by establishing standards and procedures for the management and control of ships' ballast water and sediments. The Ballast Water Management Convention came into force in September 2017¹.

LEGISLATIVE PROPOSALS

Major Requirements

6. We propose to make a new regulation under the Ordinance to implement the requirements of the Ballast Water Management Convention in Hong Kong. The requirements will apply to all Hong Kong-registered ocean-going vessels ("OGVs") and all OGVs within Hong Kong waters. Some of the major requirements are highlighted below —

- (a) ***Ballast Water Exchange*** — Ships are required to take in fresh seawater in exchange of the ballast water in water tanks for dilution before discharge. To minimise the impact of bringing invasive aquatic species to new environments through shipping, ships will be required to exchange ballast water at least 200 nautical miles from the nearest land and at least 200 metres in water depth whenever possible. At least 95% of the total volume of ballast water has to be exchanged before it is discharged to sea.
- (b) ***Ballast Water Management Plan*** — Ships will be required to have on board a ballast water management plan which details the safety and operational procedures of using the ballast water

¹ IMO decided that the Ballast Water Management Convention would come into force 12 months after ratification by at least 30 States, representing 35% of the world's merchant shipping tonnage. In this regard, the Ballast Water Management Convention only came into force 13 years after it was adopted in 2004.

management system on ships, conducting ballast water exchange and disposing the sediments in the ballast water, as well as the reporting procedures to port authorities when discharging ballast water. The Ballast Water Management Plan is ship-specific, depending on the size, design and the discharge system on board of a ship.

- (c) ***Ballast Water Record Book*** — Improper discharge of ballast water may present serious threats to the marine ecosystem. Ships will be required to carry a ballast water record book, which keeps record of every operation concerning ballast water including the circumstances and reasons for discharge. The Ballast Water Record Book will be required to be kept on board of the ship for a minimum of two years after the last entry is made.

Inspection and Enforcement

7. To ensure compliance with the requirements of the Ballast Water Management Convention, MD will conduct random inspections to ensure that OGVs have met the standards as set out in the Ballast Water Management Convention. MD will examine the validity of a ship's certificate, the ballast water management system, as well as the mandatory documents required on board under the Ballast Water Management Convention, including the aforementioned ballast water management plan and ballast water record book. In case of doubt, MD can collect ballast water samples for testing against the standards stipulated in the Ballast Water Management Convention to confirm whether the discharge procedures have been followed and standards have been met. MD may prosecute the ship owner and master if the discharge procedures are found to be non-compliant. MD may also inform the Flag Administration of the OGV concerned of any non-compliance identified to deter future occurrences.

Fees for Survey and Certification

8. Under the Regulation, all Hong Kong-registered OGVs will be required to be surveyed at specified intervals to ensure compliance with the requirements of the Ballast Water Management Convention. Subject to satisfactory result, they will be issued with an International Ballast Water Management Certificate, which must be carried on board to facilitate inspection. As these new surveying and certification services to be provided by MD entail the charging of fees, we need to correspondingly

amend the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413L) (“Fees Regulation”) to prescribe the fees chargeable by Government surveyors for providing such services.

9. We propose to set the fees at the same levels as those currently stipulated under the existing Fees Regulation for similar surveying and certification services, which are determined on a cost-recovery basis. The workflow and resources to be deployed by MD are also the same as those of similar surveying and certification services for pollution prevention currently provided by MD under the Ordinance. In this regard, the fees for survey carried out by a Government surveyor within Hong Kong are currently set at \$3,270 for the first hour or part hour, and \$1,115 for each subsequent hour or part hour. As for certification services, the fee is currently set at \$565.

THE REGULATIONS

Merchant Shipping (Control of Ballast Water and Sediments) Regulation

10. The Regulation is a new regulation made under the Ordinance to implement the requirements of the Ballast Water Management Convention of the IMO.

Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2018

11. The Fees Amendment Regulation amends Schedules 1 and 2 to the Fees Regulation to provide for the charging of fees for the survey and certification of ships carried out by MD under the Regulation. We would also take the opportunity to incorporate the provisions concerning the charging of fees for other surveys and certifications under four existing pieces of subsidiary legislation² under the Ordinance into the Fees Regulation to enhance clarity and improve the overall structure of the legislation.

² The four pieces of subsidiary legislation are:

- i. Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A);
- ii. Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413B);
- iii. Merchant Shipping (BCH Code) Regulations (Cap. 413D); and
- iv. Merchant Shipping (IBC Code) Regulations (Cap. 413E).

Application of the Direct Reference Approach

12. The requirements of the Ballast Water Management Convention are technical in nature and are updated from time to time by IMO. In line with the established practice in incorporating the requirements of other marine-related international conventions into our local legislation, we have adopted a direct reference approach to allow our local legislation to remain up-to-date as far as practicable.

LEGISLATIVE TIMETABLE

13. The regulations will be published in the Gazette on 18 May 2018 and introduced into the Legislative Council on 23 May 2018.

IMPLICATIONS OF THE PROPOSAL

14. The proposal should not have any significant economic implications since the charging of fees for the surveying and certification services provided by MD will have a very small impact on the operating costs of the vessels concerned. The proposal would have positive sustainability implications as the surveying and certification work carried out for the implementation of the Ballast Water Management Convention in Hong Kong will contribute to conserving marine biodiversity. The fees are set on a cost-recovery basis and the revenue generated from the fees is expected to be very small given that there may only be a few cases each year. There is no civil service implication as MD will absorb the additional work involved by its existing staff. It is also worth noting that MD is not the only authority to issue respective certificates as it is a common practice for the shipping industry to choose Recognised Organisations³ to carry out the statutory surveys, and the certificates issued by them are recognised by MD⁴. As such, it is expected that additional caseload to be handled by MD under the Regulation, if any, would be very small.

³ Recognised Organisations are international bodies specialised in the technical areas of ships, such as ship construction, equipment, operation and surveys, etc. At present, MD entrusted Recognised Organisations through contractual agreements to carry out certain services including ships' survey and certification.

⁴ The fees charged by Recognised Organisations may differ from those charged by MD.

15. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the current binding effect of the Ordinance. The proposal has no productivity, competition, gender or family implications.

PUBLIC CONSULTATION

16. We consulted the Legislative Council Panel on Economic Development in January 2018, as well as the Shipping Consultative Committee of the Marine Department. They supported the proposal.

PUBLICITY

17. A press release will be issued on 18 May 2018. A spokesman will be available to answer enquiries.

ENQUIRIES

18. 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 Choi Chi Chuen, Assistant Director (Multi-lateral Policy), Marine Department (Tel: 2852 4408).

Transport and Housing Bureau
May 2018

Merchant Shipping (Control of Ballast Water and Sediments) Regulation

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Merchant Shipping (Control of Ballast Water and Sediments) Regulation

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

Part 1

Preliminary

1. Commencement

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

2. Interpretation

In this Regulation—

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

anniversary date (周年日期), in relation to a certificate that is in force in respect of a ship, means the day and month of each year which corresponds to the date of expiry of the certificate;

ballast water (壓載水) means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;

Ballast Water Management Plan (壓載水管理計劃) means the Ballast Water Management Plan referred to in section 7;

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

Convention (《公約》) means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

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

Government surveyor (政府驗船師) means a person appointed under section 36 to be a Government surveyor;

gross tonnage (總噸位), 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);

IBWM Certificate (IBWM 證書) means a certificate referred to in section 13 that is issued by the Director or an IBWM Certificate issued by the Director under section 14;

IMO means the International Maritime Organization;

International Ballast Water Management Certificate (國際壓載水管理證書) means—

- (a) an IBWM Certificate;
- (b) an International Ballast Water Management Certificate issued by an organization recognized under section 37; or
- (c) an International Ballast Water Management Certificate issued by or under the authority of an Administration;

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

sediments (沉積物) means any matter settled out of ballast water in a ship.

3. Application

- (1) This Regulation applies to the following ships which are engaged in international voyages—
 - (a) a Hong Kong ship wherever it may be;
 - (b) a non-Hong Kong ship that is within the waters of Hong Kong.
- (2) This Regulation does not apply to—
 - (a) a ship that is not designed or built to carry ballast water;
 - (b) a ship that carries ballast water in sealed tanks such that the ballast water is not subject to discharge;
 - (c) a warship;
 - (d) a naval auxiliary; or
 - (e) any other ship owned or operated by a government and used only on government non-commercial service.
- (3) In this section—

international voyage (國際航程) means—

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

Part 2

Ballast Water and Sediments Management

4. Ballast water management

- (1) Subject to section 5, a ship must, in relation to the discharge of ballast water on the ship, have an approved ballast water management system, unless the ballast water is discharged into a reception facility.
- (2) Subject to section 5, a ship must conduct ballast water management on the ship that meets the standard that is applicable to the ship as set out in Regulation B-3 of the Annex to the Convention.

- (3) In this section—

approved ballast water management system (認可壓載水管理系統) means a ballast water management system of a type in respect of which a Type Approval Certificate has been issued;

ballast water management system (壓載水管理系統) means any mechanical, physical, chemical or biological process, or any combination of such processes, to remove, render harmless or avoid the uptake or discharge of harmful aquatic organisms and pathogens in ballast water and sediments;

harmful aquatic organisms and pathogens (有害水生物及病原體) means any aquatic organisms or pathogens which, if introduced into the sea (including estuaries) or fresh water courses, may create hazards to the environment or human health, harm organisms, damage amenities, impair biological diversity or interfere with other legitimate uses of such areas;

Type Approval Certificate (型式認可證書) means a certificate of ballast water management system issued by the Director, or by or under the authority of an Administration, certifying that

a type of ballast water management system meets the standard specified by IMO.

5. Exceptions to section 4

- (1) A ship is not required to comply with the requirements in section 4 in the circumstances set out in subsection (2).
- (2) The circumstances are—
 - (a) the uptake or discharge of ballast water and sediments is necessary for ensuring the safety of the ship in emergency situation or saving life at sea;
 - (b) the accidental discharge or ingress of ballast water and sediments resulting from damage to the ship or its equipment, and all reasonable precautions have been taken, before and after the occurrence of the damage or discovery of the damage, discharge or ingress, for preventing or minimizing any accidental discharge or ingress of ballast water and sediments;
 - (c) the uptake or discharge of ballast water and sediments is for avoiding or minimizing the effect of pollution incidents from the ship;
 - (d) the uptake and the subsequent discharge into the high seas of ballast water and sediments;
 - (e) if the whole of the ballast water and sediments originating from an area is not mixed with unmanaged ballast water and sediments taken from another area, the discharge of those ballast water and sediments from the ship at the first-mentioned area.

6. Ballast water exchange

If, because of section 4, the standard that must be met for conducting ballast water management on a ship is the standard set out in Regulation D-1 of the Annex to the Convention, then the

ship, when conducting ballast water exchange on board, must comply with the requirements set out in Regulation B-4 of the Annex to the Convention.

7. Ballast Water Management Plan

A ship must have on board, and implement, a Ballast Water Management Plan which is specific to the ship and approved by the Director or an Administration in accordance with the guidelines issued by IMO.

8. Duty to maintain Ballast Water Record Book

- (1) A Ballast Water Record Book must be maintained for a ship and must contain the following information in relation to the ship—
 - (a) information required under Appendix II of the Annex to the Convention; and
 - (b) information required under Regulation B-2.3 of the Annex to the Convention.
- (2) The owner and the master of a ship must ensure that—
 - (a) each operation concerning ballast water is recorded in the Record Book without delay;
 - (b) each entry in the Record Book is signed by the officer in charge of the operation concerned and each completed page of the Record Book is signed by the master;
 - (c) the entries in the Record Book are made—
 - (i) in one of the working languages of the crew of the ship; and
 - (ii) unless that working language is English, French or Spanish, also in English, French or Spanish; and

(d) all exemptions in respect of the ship granted by the Director or an Administration in relation to the Convention are recorded in the Record Book.

- (3) If the entries in the Record Book are also made in an official language of the state whose flag the ship is entitled to fly, and there is an inconsistency between the entries made in the official language and those made in one of the languages referred to in subsection (2)(c), the entries made in the official language are to prevail.
- (4) The Record Book must be kept on board the ship in a place so as to be readily available for inspection at all reasonable times and must be continued to be so kept until the expiry of 2 years after the date of the last entry made in it.
- (5) The Record Book must be kept by the owner of the ship for a further period of 3 years after the expiry of the period referred to in subsection (4).
- (6) The Record Book may form part of the electronic recording system of the ship.

9. Shipboard personnel assigned to conduct ballast water management

The owner and the master of a ship must ensure that each member of the crew of the ship who is assigned to conduct ballast water management is—

- (a) familiar with the procedures for the operation of ballast water management in so far as it relates to the duties assigned to the member; and
- (b) familiar with the Ballast Water Management Plan of the ship in so far as it relates to the duties assigned to the member.

10. Sediments management

Sediments from any tank, space or compartment of a ship designated for carrying, loading or discharging ballast water must be removed and disposed of in accordance with the Ballast Water Management Plan of the ship.

Part 3

Certificates

Division 1—Application of Part 3 and Requirement for Certificates etc.

11. Application of Part 3

This Part applies to a Hong Kong ship of 400 gross tonnage or above.

12. Ships to have certificates

A ship must have—

- (a) an International Ballast Water Management Certificate in force in respect of the ship; or
- (b) other certificate or document in force in respect of the ship certifying or confirming that the requirements under Article 7 of the Convention are complied with in relation to the ship.

Division 2—Issue of IBWM Certificates

13. Issue of IBWM Certificates

- (1) The owner of a ship may apply to the Director for an IBWM Certificate in respect of the ship.
- (2) The application must be accompanied by the prescribed fee for the Certificate.
- (3) The Director must not issue an IBWM Certificate in respect of a ship unless the Director is satisfied—
 - (a) that—

- (i) if an IBWM Certificate has never been issued in respect of the ship—an initial survey of the ship has been carried out in accordance with section 25; or
 - (ii) if an IBWM Certificate has been issued in respect of the ship—a renewal survey of the ship has been carried out in accordance with section 26; and
- (b) that, on the evidence of a declaration of survey forwarded to the Director under section 25 or 26, the Ballast Water Management Plan of the ship and the structure, equipment, systems, fittings, arrangements, material and processes of the ship associated with the Plan comply with the requirements of the Convention.

14. Recognition of inspection carried out before commencement date

- (1) If all the conditions specified in subsection (2) are satisfied in relation to a ship, the Director may issue an IBWM Certificate in respect of the ship even though no initial survey of the ship has been carried out in accordance with section 25.
- (2) The conditions are—
 - (a) an authorized organization had, before the commencement date—
 - (i) carried out an inspection of the ship; and
 - (ii) based on the result of the inspection, issued a preliminary certificate certifying that the requirements under Article 7 of the Convention are complied with in relation to the ship;
 - (b) if the preliminary certificate has been issued for more than 3 years before the date of application for the IBWM Certificate in respect of the ship, the preliminary

- certificate bears an endorsement by an authorized organization, indicating that the organization—
- (i) has inspected the ship between the second anniversary date and the third anniversary date of the preliminary certificate; and
 - (ii) is satisfied, based on the result of the inspection, that the requirements under Article 7 of the Convention are complied with in relation to the ship; and
- (c) the Director is satisfied, based on the preliminary certificate and any other documents and information provided by the owner of the ship, that the Ballast Water Management Plan of the ship and the structure, equipment, systems, fittings, arrangements, material and processes of the ship associated with the Plan comply with the requirements of the Convention.
- (3) Subject to the provisions of Divisions 3 and 4, an IBWM Certificate issued under subsection (1) is valid for the period specified by the Director in the Certificate, which must not exceed 5 years beginning on the date of the preliminary certificate.
- (4) In this section—

authorized organization (獲授權機構) means a member of the International Association of Classification Societies authorized by the Director to issue preliminary certificates in relation to the Convention in respect of Hong Kong ships before the commencement date.

Division 3—Duration of IBWM Certificates

15. Duration of IBWM Certificates issued after initial surveys

- (1) Subject to the provisions of this Division and Division 4, an IBWM Certificate issued in respect of a ship as a result of an initial survey under section 25 is valid for the period specified by the Director in the Certificate, which must not exceed 5 years beginning on the date of completion of the initial survey of the ship.
- (2) For the purposes of this Division, an IBWM Certificate issued in respect of a ship is to be regarded as a certificate referred to in Regulation E-5 of the Annex to the Convention.

16. Duration of IBWM Certificates issued after renewal surveys

A new IBWM Certificate issued in respect of a ship as a result of a renewal survey under section 26 is valid for the period specified by the Director in the Certificate in accordance with Regulation E-5 of the Annex to the Convention.

17. Duration of IBWM Certificates after early completion of surveys

- (1) This section applies if—
 - (a) an intermediate survey of a ship is completed before the period within which the survey is required to be completed under section 27; or
 - (b) an annual survey of a ship is completed before the period within which the survey is required to be completed under section 28.
- (2) After a survey of a ship is completed as described in subsection (1), the existing IBWM Certificate issued in respect of the ship must be endorsed to show a date described on the endorsement as the “new anniversary date”, which

must be a date that is within 3 months from the date of completion of the survey (*new anniversary date*).

- (3) For the purposes of any intermediate survey or annual survey to be carried out in respect of the ship under section 27 or 28 in any year subsequent to the endorsement, the period within which the survey must be carried out is to be ascertained by reference to the new anniversary date.
- (4) The duration of an existing IBWM Certificate issued in respect of the ship may be varied by the Director in accordance with Regulation E-5 of the Annex to the Convention.

18. Extension of validity period of IBWM Certificates in certain circumstances

The Director may extend the validity period of an existing IBWM Certificate issued in respect of a ship in accordance with Regulation E-5 of the Annex to the Convention if—

- (a) the Certificate is valid for a period of less than 5 years;
- (b) a new IBWM Certificate cannot be issued or placed on board the ship before the expiry of the Certificate;
- (c) the ship is not in the port in which it is to be surveyed when the Certificate expires; or
- (d) the ship is engaged in short voyages.

Division 4—Cessation and Cancellation of IBWM Certificates

19. IBWM Certificates cease to be valid

An IBWM Certificate issued in respect of a Hong Kong ship ceases to be valid if—

- (a) a survey referred to in Part 4 is not carried out in relation to the ship before the expiry of the period specified for the survey in that Part;
- (b) the Certificate is not endorsed under section 27 after an intermediate survey of the ship is carried out;
- (c) the Certificate is not endorsed under section 28 after an annual survey of the ship is carried out; or
- (d) the ship is transferred to the registry of a place outside Hong Kong.

20. Cancellation of IBWM Certificates

- (1) The Director may, by written notice to the owner and the master of a Hong Kong ship, cancel an IBWM Certificate issued in respect of the ship in the circumstances set out in subsection (2).
- (2) The circumstances are that the Director has reasonable grounds to believe that the Certificate was issued, or any endorsement on it was made, on the basis of false or erroneous information.
- (3) The Director must give reasons for cancelling the Certificate in the notice.
- (4) On receiving the notice, the owner and the master of the ship must deliver the Certificate to the Director immediately.

Division 5—Form, Alteration and Certified True Copies of IBWM Certificates

21. Form of IBWM Certificates

The Director may specify the form of an IBWM Certificate.

22. Alteration of IBWM Certificates

- (1) The owner of a ship in respect of which an IBWM Certificate has been issued may request the Director to alter any of the particulars contained in the Certificate.
- (2) The Director may refuse to make the alteration if the Director considers it to be a material alteration.
- (3) If the Director agrees to make the alteration, the Director must, on payment of the prescribed fee, alter the Certificate.

23. Certified true copies of IBWM Certificates

- (1) The owner of a ship in respect of which an IBWM Certificate has been issued may apply to the Director for the issue of a certified true copy of the Certificate.
 - (2) The application must be accompanied by the prescribed fee for the certified true copy.
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Part 4

Surveys

24. Application of Part 4

This Part applies to a Hong Kong ship of 400 gross tonnage or above.

25. Initial surveys

- (1) An initial survey of a ship is to be carried out by a Government surveyor—
 - (a) before the ship is put into service; or
 - (b) before an IBWM Certificate is issued for the first time in respect of the ship.
- (2) If, after having carried out an initial survey of the ship, the surveyor is satisfied that the Ballast Water Management Plan of the ship and the structure, equipment, systems, fittings, arrangements, material and processes of the ship associated with the Plan comply with the applicable requirements of the Annex to the Convention, the surveyor must make a declaration of survey to that effect and forward the declaration to the Director.

26. Renewal surveys

- (1) Subject to subsection (2), a renewal survey of a ship is to be carried out by a Government surveyor within 5 years—
 - (a) from the date of completion of the initial survey of the ship; or
 - (b) if a renewal survey of the ship has been carried out, from the date of completion of the preceding renewal survey.

- (2) If the validity period of the IBWM Certificate issued in respect of the ship has been extended under section 18(c) or (d), the period of 5 years referred to in subsection (1) is to be extended by the period for which the Certificate is extended.
- (3) If, after having carried out a renewal survey of the ship, the surveyor is satisfied that the Ballast Water Management Plan of the ship and the structure, equipment, systems, fittings, arrangements, material and processes of the ship associated with the Plan comply with the applicable requirements of the Annex to the Convention, the surveyor must make a declaration of survey to that effect and forward the declaration to the Director.

27. Intermediate surveys

- (1) An intermediate survey of a ship is to be carried out by a Government surveyor—
 - (a) within the period commencing 3 months before and ending 3 months after the second anniversary date of the IBWM Certificate issued in respect of the ship; or
 - (b) within the period commencing 3 months before and ending 3 months after the third anniversary date of the IBWM Certificate issued in respect of the ship.
- (2) If, after having carried out an intermediate survey of the ship, the surveyor is satisfied that the equipment, systems and processes of the ship associated with the Ballast Water Management Plan of the ship—
 - (a) comply with the applicable requirements of the Annex to the Convention; and
 - (b) are in good working order,the surveyor must make an endorsement to that effect on the Certificate.

28. Annual surveys

- (1) Subject to subsection (2), an annual survey of a ship is to be carried out by a Government surveyor within the period commencing 3 months before and ending 3 months after each anniversary date of the IBWM Certificate issued in respect of the ship.
- (2) If an intermediate survey of the ship has been carried out under section 27 by reference to an anniversary date, the annual survey of the ship by reference to the anniversary date for the relevant year is not required to be carried out.
- (3) If, after having carried out an annual survey of the ship, the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements, material and processes of the ship associated with the Ballast Water Management Plan of the ship—
 - (a) have been maintained in accordance with Regulation E-1.9 of the Annex to the Convention so that the ship remains fit to proceed to sea without presenting a threat of harm to the environment, human health, organisms or amenities; and
 - (b) remain satisfactory for the service for which the ship is intended,the surveyor must make an endorsement to that effect on the Certificate.

29. Additional surveys

- (1) The Director may, by written notice to the owner and the master of a ship, require an additional survey of the ship to be carried out by a Government surveyor within a reasonable period specified by the Director.

- (2) The Director may exercise the power under subsection (1) only if—
 - (a) after an IBWM Certificate has been issued or endorsed in respect of the ship, significant alterations, replacements or repairs have been made to the structure, equipment, systems, fittings, arrangements or material covered by the survey leading to the issue or endorsement of the Certificate;
 - (b) the Director has reasonable grounds to believe that section 30 is not complied with in respect of the ship; or
 - (c) the Director determines on the basis of an investigation under section 32 that the survey is necessary.
 - (3) On receiving a notice under subsection (1), the owner and the master of the ship must cause an additional survey to be carried out.
 - (4) The additional survey may be general or partial as the Director thinks fit.
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Part 5

Other Duties

30. Duty to maintain condition of ship

The owner and the master of a ship must maintain the condition of the ship in accordance with Regulation E-1.9 of the Annex to the Convention so as to ensure that the ship remains fit to proceed to sea without presenting a threat of harm to the environment, human health, organisms or amenities.

31. Certificates to be kept on board

The owner and the master of a ship must ensure that the International Ballast Water Management Certificate issued in respect of the ship which is in force—

- (a) is kept on board the ship; and
- (b) is made readily available for inspection by a Government surveyor at all reasonable times.

32. Duty to report accidents or defects

- (1) If an accident occurs to, or a defect is discovered in, a ship, and the accident or defect substantially affects the ability of the ship to conduct ballast water management or ballast water exchange in accordance with section 4 or 6, the owner and the master of the ship must report the accident or defect to the Authority.
- (2) The Director may, on receiving a report under subsection (1), cause an investigation to be initiated.
- (3) In this section—

Authority (主管當局) means—

- (a) if the ship is within the waters of Hong Kong—the Director; or
- (b) if the ship is a Hong Kong ship that is in a port of any Convention country outside Hong Kong—the Director and the appropriate authority of that country.

Part 6

Powers of Government Surveyors

- 33. Power of Government surveyors to inspect, examine, etc. ships**
- (1) Any of the powers conferred by this section may be exercised for ascertaining whether this Regulation has been or is being complied with.
 - (2) A Government surveyor may, at any reasonable time—
 - (a) board a ship that is within the waters of Hong Kong; and
 - (b) take with the surveyor any other person and any equipment or materials required to assist the surveyor.
 - (3) After boarding the ship, the surveyor may—
 - (a) inspect the ship;
 - (b) make any examination and investigation as the surveyor considers necessary;
 - (c) take samples of ballast water on the ship, or of any article or substance found on the ship, that the surveyor may reasonably require for the inspection, examination or investigation;
 - (d) inspect, seize and remove from the ship any article or substance in respect of which the surveyor suspects on reasonable grounds that an offence under this Regulation has been committed;
 - (e) detain the article or substance for so long as is necessary—
 - (i) for the inspection, examination or investigation; and

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

- necessary to enable the surveyor to exercise any power conferred by this section.
- (4) A person must not—
 - (a) wilfully obstruct a Government surveyor in the exercise of any power conferred by this section; or
 - (b) make a statement or sign a declaration that the person knows is false, or recklessly make a statement or sign a declaration that is false, in purported compliance with a requirement under subsection (3)(h).
 - (5) A person must comply with a requirement imposed on the person under subsection (3).

Part 7

Powers of Director

34. Director may require ballast water management to be conducted

- (1) After an inspection of a ship under section 33(3), the Director may give a direction to the master of the ship requiring the master to conduct ballast water management at the location and within the period specified by the Director.
- (2) A master to whom a direction is given under subsection (1) must comply with the direction and conduct ballast water management at the location and within the period specified by the Director.

35. Director may require rectification

- (1) If an inspection of a ship under section 33(3) reveals a deficiency, the Director may give a direction to the master of the ship requiring the master to cause the ship not to proceed to sea until the deficiency is rectified.
- (2) A master to whom a direction is given under subsection (1) must—
 - (a) comply with the direction;
 - (b) take steps to rectify the deficiency; and
 - (c) inform the Director once the deficiency is rectified.
- (3) If the ship is a Hong Kong ship and the deficiency is not rectified within the period specified by the Director, the Director may, by written notice to the owner and the master of the ship, withdraw the International Ballast Water Management Certificate issued in respect of the ship.

- (4) On receiving a notice under subsection (3), the owner and the master of the ship must deliver the Certificate to the Director immediately.
- (5) The owner or the master of the ship may, after the deficiency in respect of the ship has been rectified, apply to the Director for the return of the Certificate.
- (6) On receiving an application under subsection (5), if the Director is satisfied that the deficiency in respect of the ship has been rectified, the Director must, by written notice to the applicant, return the Certificate to the applicant.

36. Director may appoint Government surveyors

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

37. Director may recognize organization to survey ships and issue certificates etc.

The Director may recognize an organization for—

- (a) carrying out surveys of Hong Kong ships in conformity with Part 4;
- (b) issuing International Ballast Water Management Certificates in respect of Hong Kong ships in conformity with Part 3;
- (c) making endorsements on the International Ballast Water Management Certificates that are issued by the organization in conformity with Part 4;
- (d) with the prior written consent of the Director, granting extensions of the validity periods of the International Ballast Water Management Certificates that are issued by the organization;

- (e) altering any particulars contained in the International Ballast Water Management Certificates that are issued by the organization;
- (f) issuing certified true copies of the International Ballast Water Management Certificates that are issued by the organization; and
- (g) specifying any corrective actions (other than those referred to in section 35(1)) that the organization considers necessary to be taken in respect of Hong Kong ships.

38. Director may request Convention countries to survey Hong Kong ships and issue or endorse certificates

The Director may request any Convention country—

- (a) to carry out a survey of a Hong Kong ship of 400 gross tonnage or above on behalf of the Director in conformity with Regulation E-1 of the Annex to the Convention; and
- (b) to do the following—
 - (i) issue an International Ballast Water Management Certificate in respect of the ship in conformity with Regulation E-2 of the Annex to the Convention; or
 - (ii) endorse on an International Ballast Water Management Certificate issued in respect of the ship in conformity with Regulation E-2 of the Annex to the Convention.

39. Director may at request of Convention countries survey non-Hong Kong ships and issue or endorse certificates

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

- (a) cause a non-Hong Kong ship that is within the waters of Hong Kong to be surveyed under Part 4 as if the ship were a Hong Kong ship; and
- (b) do the following—
 - (i) issue an IBWM Certificate in respect of the ship under Part 3 as if the ship were a Hong Kong ship; or
 - (ii) endorse on an International Ballast Water Management Certificate issued in respect of the ship in conformity with Regulation E-2 of the Annex to the Convention.

40. Director may grant exemption

The Director may exempt any ship or class or description of ships from any of the requirements of this Regulation on such conditions as the Director may specify, and the Director may alter or cancel any such exemption.

Part 8

Offences and Miscellaneous

41. Offences


- (1) If any of the requirements in section 4(1) or (2), 6, 7, 8(1), (2) or (4), 9, 10, 12, 29(3), 30, 31, 32(1), 34(2) or 35(4) is contravened in respect of a ship, the owner and the master of the ship each commits an offence.
- (2) If section 8(5) is contravened, the owner of the ship concerned commits an offence.
- (3) A person who contravenes section 33(4) commits an offence and is liable to a fine at level 6.
- (4) A person who fails to comply with section 33(5) commits an offence and is liable to a fine at level 6.
- (5) A person who commits an offence under subsection (1) or (2) is liable—
 - (a) on conviction on indictment—to a fine at level 6; or
 - (b) on summary conviction—to a fine at level 3.
- (6) It is a defence for a person charged under subsection (1) or (2) to show that the person had taken all reasonable steps to prevent the commission of the offence.
- (7) If an offence under this section is committed or would, but for the operation of subsection (6), have been committed by the owner or the master of a ship due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence, whether or not proceedings are taken against the owner or the master.

42. Access to Convention

- (1) The Director must keep a copy of the English and Chinese texts of the Convention at the office of the Director.
- (2) The Director must allow the public to inspect the texts free of charge at the office during normal office hours.

43. Transitional provision

- (1) During the transitional period, a contravention of section 12 or 31 does not constitute an offence under section 41.
- (2) In this section—
transitional period (過渡期間) means the 1-year period beginning on the commencement date.


Secretary for Transport and Housing

10th May 2018

Explanatory Note

The object of this Regulation is to implement the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

2. Part 1 contains provisions that provide for the commencement and application of the Regulation, and the interpretation of words and expressions used in the Regulation.
3. Part 2 regulates ballast water and sediments and stipulates the standards that are required to be met when ships conduct ballast water management, ballast water exchange and sediments management. A ship is also required to have, and implement, a Ballast Water Management Plan, and maintain a Ballast Water Record Book for keeping information relating to ballast water operation.
4. Ships of 400 gross tonnage or above and engaged in international voyages are required to have an International Ballast Water Management Certificate. Part 3 governs the issue, duration, cessation and cancellation of the Certificates issued by the Director of Marine. Part 4 sets out the various types of surveys that are required to be carried out in respect of a ship.
5. Part 5 sets out certain duties of the owner and the master of a ship.
6. Part 6 deals with the powers of Government surveyors and Part 7 provides for the powers of the Director of Marine. The offences are set out in Part 8.

Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2018

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

1. Commencement

- (1) Subject to subsection (2), this Regulation comes into operation on 17 July 2018.
- (2) Sections 3(3), (4) and (5), 4(2) and 5(2) come into operation on the day on which the Merchant Shipping (Control of Ballast Water and Sediments) Regulation comes into operation.

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

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

3. Section 2 amended (interpretation)

- (1) Section 2, definition of *Government surveyor*, paragraph (b)—

Repeal
“; or”

Substitute a semicolon.
- (2) Section 2, definition of *Government surveyor*, after paragraph (c)—

Add

- “(d) to be a Government surveyor under the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg. A);
- (e) to be a Government surveyor under the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B);
- (f) to be a Government surveyor under the Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D); or
- (g) to be a Government surveyor under the Merchant Shipping (IBC Code) Regulations (Cap. 413 sub. leg. E);”.

- (3) Section 2, definition of *Government surveyor*, paragraph (f)—

Repeal

“; or”

Substitute a semicolon.

- (4) Section 2, definition of *Government surveyor*, paragraph (g)—

Repeal the semicolon

Substitute

“; or”.

- (5) Section 2, definition of *Government surveyor*, after paragraph (g)—

Add

“(h) to be a Government surveyor under the Merchant Shipping (Control of Ballast Water and Sediments) Regulation;”.

4. Schedule 1 amended (specified services)

(1) Schedule 1, after paragraph 3—

Add

- “4. An initial survey, renewal survey, intermediate survey, annual survey or additional survey within the meaning of the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg. A).
5. An initial survey, renewal survey, intermediate survey, annual survey or additional survey within the meaning of the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B).
6. An initial survey, renewal survey, intermediate survey, annual survey or additional survey within the meaning of the Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D).
7. An initial survey, renewal survey, intermediate survey, annual survey or additional survey within the meaning of the Merchant Shipping (IBC Code) Regulations (Cap. 413 sub. leg. E).”.

(2) Schedule 1, after paragraph 7—

Add

“8. An initial survey, renewal survey, intermediate survey, annual survey or additional survey within the meaning of the Merchant Shipping (Control of Ballast Water and Sediments) Regulation.”.

5. Schedule 2 amended (specified certificates)

(1) Schedule 2, after paragraph 3—

Add

- “4. A HKOPP Certificate or IOPP Certificate within the meaning of the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg. A).
5. A HKNLS Certificate or INLS Certificate within the meaning of the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B).
6. A Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under regulation 5 of the Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D).
7. An International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under regulation 5 of the Merchant Shipping (IBC Code) Regulations (Cap. 413 sub. leg. E).”.

(2) Schedule 2, after paragraph 7—

Add

“8. An IBWM Certificate within the meaning of the Merchant Shipping (Control of Ballast Water and Sediments) Regulation.”.



Clerk to the Executive Council

COUNCIL CHAMBER

8 May 2018

Explanatory Note

This Regulation amends the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413 sub. leg. L) to provide for the fees payable in respect of certain surveys carried out, and certificates issued, under—

- (a) the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg. A);
- (b) the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B);
- (c) the Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D);
- (d) the Merchant Shipping (IBC Code) Regulations (Cap. 413 sub. leg. E); and
- (e) the Merchant Shipping (Control of Ballast Water and Sediments) Regulation.