

LEGISLATIVE COUNCIL BRIEF

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

Legislative Amendments for the Implementation of the International Convention for the Prevention of Pollution from Ships

INTRODUCTION

To incorporate the latest requirements set out in the International Convention for the Prevention of Pollution from Ships (“MARPOL”) of the International Maritime Organization (“IMO”) into local legislation, the Secretary for Transport and Housing has made the following regulations under the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) (“the Ordinance”) —

- (a) Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2018, at **Annex A**, under Sections 3 and 3A of the Ordinance;
- (b) Merchant Shipping (BCH Code) (Amendment) Regulation 2018, at **Annex B**, under Sections 3 and 3A of the Ordinance; and
- (c) Merchant Shipping (IBC Code) (Amendment) Regulation 2018, at **Annex C**, under Sections 3 and 3A of the Ordinance.

BACKGROUND

2. To protect the marine environment and minimise pollution from ship operation, IMO adopted MARPOL in 1973. MARPOL came into force in

1983 and has six annexes regulating the discharge of different pollutants¹. This legislative exercise focuses on MARPOL Annex II, which regulates ships carrying noxious liquid substances (“NLS”) in bulk, covering specific requirements on design and construction of ships, ship certification, the record of cargo operations, and the control of operational discharges.

3. MARPOL Annex II has adopted the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (“BCH Code”) and the International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (“IBC Code”). The two codes set out design and construction standards of ships carrying NLS in bulk and the equipment such ships should carry. Ships carrying NLS in bulk that are constructed before 1 July 1986 are required to comply with the BCH code, while such ships constructed thereafter are to comply with the IBC Code.

4. The requirements of MARPOL Annex II are implemented in Hong Kong through the Ordinance and its subsidiary legislation², which apply to all Hong Kong ships. IMO made substantial revisions to MARPOL Annex II in 2004 to take into account the latest knowledge about the impact of NLS chemicals on marine environment and give clearer guidelines and procedures on the transport of NLS in bulk. These revisions came into force in 2007. Marine Department has been implementing the new requirements administratively through a Hong Kong Merchant Shipping Information Note to Hong Kong-registered vessels carrying NLS in bulk. As of 8 April 2018, all 113 Hong Kong-registered vessels concerned have met the latest requirements of MARPOL Annex II.

¹ Annexes to MARPOL govern various substances as follows:

- i. Annex I: Regulations for the prevention of pollution by oil;
- ii. Annex II: Regulations for the control of pollution by noxious liquid substances in bulk;
- iii. Annex III: Regulations for the prevention of pollution by harmful substances carried by sea in packaged form;
- iv. Annex IV: Regulations for the prevention of pollution by sewage from ships;
- v. Annex V: Regulations for the prevention of pollution by garbage from ships; and
- vi. Annex VI: Regulations for the prevention of air pollution from ships.

² There are three pieces of subsidiary legislation for MARPOL Annex II, IBC Code and BCH Code:

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

LEGISLATIVE PROPOSALS

5. We propose to incorporate the requirements adopted by IMO after 2004 into our local legislation. The major changes mainly cover the re-categorisation of chemicals based on the latest knowledge about their interactions with the marine environment, as well as requirements relating to their discharge. Some of the major amendments are highlighted below —

- (a) ***Revising the categorisation of NLS*** — When MARPOL Annex II was first adopted, it contained four categories of NLS (Categories A, B, C and D, with A being the most hazardous and would pose serious threat to human health and marine environment³). Each category had its corresponding loading, carriage and discharge restrictions. With better scientific understanding of the impact of NLS on the marine environment, IMO reclassified NLS products into Categories X, Y, Z and Other Substances. Products in Category X (such as chlorinated paraffins and coal tar) are the most hazardous. Other Substances include coal slurry, clay slurry, molasses and water, which are harmless to the marine environment and human health. Some new products, such as vegetable oils (Category Y), lard (Category Y) and urea solution (Category Z), have been added to the list as their carriage in bulk has become common due to their increased consumption worldwide.
- (b) ***Tightening the maximum residual quantity of NLS allowed on ships*** — Improvements in the unloading system of ships has made it possible to impose stricter control on the amount of residues that can be discharged into the sea after cargo unloading. For ships constructed on or after 1 January 2007, the maximum permitted residue in the tank and its piping system after cargo unloading (and which will be discharged into the sea) will be substantially reduced to a maximum of 75 litres for all products in Categories X, Y and Z (compared with previous limits which set a maximum of 100 to 900 litres, depending on the product category and age of the ship).

³ NLS are assigned to different pollution categories based on the following factors:

- i. Bio-accumulation;
- ii. Bio-degradation;
- iii. Acute toxicity;
- iv. Chronic toxicity;
- v. Long-term health effects; and
- vi. Effects on marine wildlife and on benthic habitats.

- (c) ***Discharge restrictions*** — NLS, if discharged into the sea from tank cleaning or deballasting operations, will present certain hazard to marine environment and human health. As such, NLS in Categories X, Y and Z can only be discharged into the sea subject to limits on quantity and after dilution. Ships constructed on or after 1 January 2007 and certified to carry products in Categories X, Y and Z must have an underwater discharge outlet (or outlets). As regards ships constructed before 1 January 2007, an underwater outlet (or outlets) is required for those certified for the carriage of substances in Categories X and Y; but the requirement is not mandatory for those certified for the carriage of substances in Category Z. There is no discharge restriction for products categorised as Other Substances.
- (d) ***Mandating the carriage of an approved stability instrument*** — The latest BCH Code and IBC Code require ships that carry NLS in bulk to carry an approved stability instrument which is capable of verifying compliance with the applicable stability requirements of the ship both in intact and damaged states, such that crew members can be alerted when any irregularities that may affect the stability of a ship are detected. Ships carrying NLS in bulk that are constructed on or after 1 January 2016 will need to comply on delivery, and existing ships will need to comply no later than 1 January 2021.

THE REGULATIONS

Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2018

6. The Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2018 amends the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413B) to implement the latest requirements of MARPOL Annex II of the IMO.

Merchant Shipping (BCH Code) (Amendment) Regulation 2018

7. The Merchant Shipping (BCH Code) (Amendment) Regulation 2018 amends the Merchant Shipping (BCH Code) Regulations (Cap. 413D) to implement the latest requirements of the BCH Code of the IMO.

Merchant Shipping (IBC Code) (Amendment) Regulation 2018

8. The Merchant Shipping (IBC Code) (Amendment) Regulation 2018 amends the Merchant Shipping (IBC Code) Regulations (Cap. 413E) to implement the latest requirements of the IBC Code of the IMO.

Application of the Direct Reference Approach

9. The requirements of MARPOL Annex II 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 in the regulations to allow our local legislation to remain up-to-date as far as practicable.

LEGISLATIVE TIMETABLE

10. 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

11. The proposal will contribute to protection and sustainability of the marine environment. It 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 financial, civil service, economic, productivity, competition, gender or family implications.

PUBLIC CONSULTATION

12. We consulted the Legislative Council Panel on Economic Development in June 2017, as well as the Shipping Consultative Committee and the Local Vessels Advisory Committee of the Marine Department. They supported the proposal.

PUBLICITY

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

ENQUIRIES

14. 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 Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2018

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Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2018

(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))

1. Commencement

This Regulation comes into operation on 17 July 2018.

2. Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations amended

The Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B) are amended as set out in sections 3 to 30.

3. Part I heading amended (general)

Part I, heading—

Repeal

“GENERAL”

Substitute

“PRELIMINARY”.

4. Regulation 1 amended (citation and interpretation)

(1) Regulation 1(2), definition of *BCH Code*—

Repeal

everything after “Bulk”

Substitute

“published by IMO, as from time to time revised or amended by any revision or amendment that applies to Hong Kong;”.

(2) Regulation 1(2)—

Repeal the definition of *BCH Code Certificate*

Substitute

“*BCH Code Certificate* (散化規則證書) means a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk as defined by regulation 1(2) of the BCH Code Regulations;”.

(3) Regulation 1(2)—

Repeal the definition of *chemical tanker*

Substitute

“*chemical tanker* (化學品液貨船) has the same meaning as in Annex II;”.

(4) Regulation 1(2)—

Repeal the definition of *HKNLS Certificate*

Substitute

“*HKNLS Certificate* (HKNLS 證書) means a certificate issued under regulation 24(1)(a);”.

(5) Regulation 1(2), definition of *IBC Code*—

Repeal

everything after “Bulk”

Substitute

“published by IMO, as from time to time revised or amended by any revision or amendment that applies to Hong Kong;”.

(6) Regulation 1(2)—

Repeal the definition of *IBC Code Certificate*

Substitute

“**IBC Code Certificate** (國際散化規則證書) means an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk as defined by regulation 1(2) of the IBC Code Regulations;”.

(7) Regulation 1(2)—

Repeal the definition of *INLS Certificate*

Substitute

“**INLS Certificate** (INLS 證書) means a certificate issued under regulation 24(1)(b);”.

(8) Regulation 1(2)—

Repeal the definition of *liquid substance*

Substitute

“**liquid substance** (液體物質) has the same meaning as in Annex II;”.

(9) Regulation 1(2)—

Repeal the definition of *Marpol surveyor*

Substitute

“**Marpol surveyor** (防污公約驗船師) means a Government surveyor or a surveyor appointed by or on behalf of a Convention country;”.

(10) Regulation 1(2)—

Repeal the definition of *noxious liquid substance*

Substitute

“**noxious liquid substance** (有毒液體物質) has the same meaning as in Annex II;”.

(11) Regulation 1(2), Chinese text, definition of ~~海、海域~~

Repeal

“指所有海船均可航行的”

Substitute

“包括海船可航行的所有”.

(12) Regulation 1(2)—

(a) definition of *Cargo Record Book*;

(b) definition of *Category A substance, Category B substance, Category C substance and Category D substance*;

(c) definition of *class-approved*;

(d) definition of *clean ballast*;

(e) definition of *constructed*;

(f) definition of *high residue substance*;

(g) definition of *HKOPP Certificate*;

(h) definition of *IMO Standards*;

(i) definition of *IOPP Certificate*;

(j) definition of *MARPOL 1973/78*;

(k) definition of *Merchant Shipping Notice*;

(l) definition of *nearest land*;

(m) definition of *non-polluting substance*;

(n) definition of *oil tanker*;

(o) definition of *oil-like substance*;

(p) definition of *Prevention of Oil Pollution Regulations*;

(q) definition of *pre-washed*;

(r) definition of *Procedures and Arrangements Manual*;

(s) definition of *provisionally listed*;

- (t) definition of *reception facility*;
- (u) definition of *residual mixture*;
- (v) definition of *segregated ballast*;
- (w) definition of *ship*;
- (x) definition of *Special Area*;
- (y) definition of *unassessed liquid substance*—

Repeal the definitions.

- (13) Regulation 1(2)—

Add in alphabetical order

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

Annex II (《附則 II》) means Annex II to the Convention as from time to time revised or amended by any revision or amendment that applies to Hong Kong;

anniversary date (周年日期), in relation to a specified Certificate 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;

Convention (《公約》) means the International Convention for the Prevention of Pollution from Ships, 1973, including its protocols and appendices, and Annex II (but no other Annex), 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 regulation 2A(1) to be a Government surveyor;

Hong Kong Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (香港有毒液體物質證書) means—

- (a) a HKNLS Certificate; or
- (b) a Hong Kong Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued by a recognized organization;

in bulk (散裝) means directly and without intermediate form of containment in a tank forming an integral part of, or permanently located on, a ship;

International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (國際有毒液體物質證書) means—

- (a) an INLS Certificate;
- (b) an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued by a recognized organization; or
- (c) an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued by or under the authority of an Administration;

recognized organization (認可機構) means an organization recognized under regulation 2AB;

specified Certificate (指明證書) means an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk or a Hong Kong

Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.”.

5. Regulation 1A added

After regulation 1—

Add

“1A. Interpretation: construction of ship

- (1) For the purposes of these regulations, a ship is constructed if—
 - (a) its keel is laid; or
 - (b) it is at the stage at which—
 - (i) construction identifiable with the ship begins; and
 - (ii) its assembly has commenced comprising at least 50 tonnes, or 1% of the estimated mass of all structural material, whichever is less.
- (2) Despite paragraph (1), a ship that has been converted into a chemical tanker is, irrespective of the date of construction, to be treated as a chemical tanker constructed on the date on which the conversion commenced.
- (3) Paragraph (2) does not apply to a ship that has been converted if—
 - (a) the ship is constructed before 1 July 1986; and
 - (b) the ship is certified under the BCH Code to carry only those products identified by the Code as substances with only pollution hazards.”.

6. Regulation 2 amended (application)

- (1) Regulation 2(1)—

Repeal

everything after “ships”

Substitute

“engaged in the carriage of noxious liquid substances in bulk.”.

- (2) After regulation 2(2)—

Add

“(3) However, in the case of a ship registered in a country that is not a Convention country, these regulations do not apply by reason of its being within the waters of Hong Kong if it would not have been there but for stress of weather or any circumstances which could not have been prevented by the owner, master or charterer (if any).

- (4) These regulations do not apply to—

- (a) a warship;
- (b) a naval auxiliary; or
- (c) any other ship owned or operated by a government and used only on government non-commercial service.”.

7. Regulation 2A amended (power of Director in respect of appointments and delegations)

- (1) Regulation 2A(1)—

Repeal

“surveyors or Marpol”

Substitute

“Government”.

(2) Regulation 2A—

Repeal paragraph (2).

8. Regulations 2AB, 2AC and 2AD added

After regulation 2A—

Add

“2AB. Director may recognize organizations to survey ships and issue certificates etc.

The Director may recognize an organization for—

- (a) carrying out surveys of Hong Kong ships;
- (b) issuing the following certificates in respect of Hong Kong ships—
 - (i) International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk; or
 - (ii) Hong Kong Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk;
- (c) making endorsements on the Certificates referred to in subparagraph (b) that are issued by the organization in conformity with Regulation 9 of Annex II;
- (d) with the prior written consent of the Director, granting extensions of the validity periods of the Certificates referred to in subparagraph (b) that are issued by the organization;

- (e) altering any particulars contained in the Certificates referred to in subparagraph (b) that are issued by the organization;
- (f) issuing certified true copies of the Certificates referred to in subparagraph (b) that are issued by the organization; and
- (g) specifying any corrective actions which the organization considers necessary to be taken in respect of Hong Kong ships.

2AC. 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 on behalf of the Director in conformity with Annex II; and
- (b) to do the following—
 - (i) issue an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk in respect of the ship in conformity with Annex II; or
 - (ii) endorse on an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued in respect of the ship in conformity with Annex II.

2AD. 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 V as if the ship were a Hong Kong ship; and
- (b) do the following—
 - (i) issue an INLS Certificate in respect of the ship under Part V as if the ship were a Hong Kong ship; or
 - (ii) endorse on an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued in respect of the ship in conformity with Annex II.”.

9. Regulation 2B amended (fees)

- (1) Regulation 2B—

Repeal

everything after “provided” and before “shall be determined”

Substitute

“by the Director or a Government surveyor under these regulations and”.

- (2) Regulation 2B—

Repeal

“(Fees) Regulations (Cap. 281 sub. leg.)”

Substitute

“(Prevention and Control of Pollution) (Fees) Regulation (Cap. 413 sub. leg. L)”.

- (3) Regulation 2B, English text—

Repeal

“those regulations”

Substitute

“the Regulation”.

10. Regulation 2C repealed (transitional)

Regulation 2C—

Repeal the regulation.

11. Regulation 3 substituted

Regulation 3—

Repeal the regulation

Substitute

“3. Control of discharges of residues of noxious liquid substances

(1) The control of discharges of residues of noxious liquid substances or ballast water, tank washings or other mixtures containing the substances from a ship must comply with Regulation 13 of Annex II.

(2) The discharges are subjected to verification by a Marpol surveyor in accordance with Regulation 13 of Annex II with a view to ensuring the compliance with that Regulation.

(3) In paragraph (1)—

residue (殘餘物) has the same meaning as in Annex II.”.

12. Regulations repealed

Regulations 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15—

Repeal the regulations.

- 13. Regulation 16 amended (emergency discharges)**
- (1) Regulation 16, heading—
Repeal
“Emergency discharges”
Substitute
“Exceptions”.
- (2) Regulation 16—
Repeal
“Regulations 3, 5, 6 and 11 to 14”
Substitute
“Regulation 3”.
- (3) Regulation 16—
Repeal
“unassessed liquid substance or mixture containing any such substance”
Substitute
“mixture containing any such substance from a ship”.
- (4) Regulation 16(a) and (b)—
Repeal
“a ship”
Substitute
“the ship”.
- 14. Regulations 17 and 18 repealed**
Regulations 17 and 18—
Repeal the regulations.

- 15. Regulation 19 amended (Procedures and Arrangements Manual)**
- (1) Regulation 19(1)—
Repeal
“complying with the IMO Standards”
Substitute
“that complies with Regulation 14 of Annex II”.
- (2) Regulation 19—
Repeal paragraphs (2) and (3).
- (3) Regulation 19(4), after “inspection”—
Add
“at all reasonable times”.
- (4) Regulation 19—
Repeal paragraph (5).
- 16. Regulation 20 amended (Cargo Record Book)**
- (1) Regulation 20(1)—
Repeal
everything after “Book”
Substitute
“that complies with Regulation 15.1 of Annex II.”.
- (2) Regulation 20—
Repeal paragraph (2)
Substitute
“(2) A record of the operations of the ship and the accidental discharges from the ship referred to in Regulation 15 of

Annex II must be kept in accordance with the requirements in that Regulation.”.

- (3) Regulation 20—

Repeal paragraphs (3) and (4).

- (4) Regulation 20(5), after “inspection”—

Add

“at all reasonable times”.

17. Regulation 20A added

Part III, after regulation 20—

Add

“20A. Shipboard marine pollution emergency plan for noxious liquid substances

- (1) A ship of 150 gross tonnage or above must carry on board a shipboard marine pollution emergency plan for noxious liquid substances that complies with Regulation 17 of Annex II.
- (2) The plan must be kept on board the ship and must be readily available for inspection at all reasonable times.”.

18. Regulation 21 substituted

Regulation 21—

Repeal the regulation

Substitute

“21. Pumping and piping arrangements

The pumping and piping arrangement of a ship must comply with the applicable requirements under Regulation 12 of Annex II.”.

19. Regulation 22 amended (equipment and arrangements)

Regulation 22—

Repeal

everything after “in”

Substitute

“the Procedures and Arrangements Manual relating to the ship that is required to be provided under regulation 19.”.

20. Regulation 23 amended (survey requirements)

- (1) Regulation 23(1)(a)—

Repeal

everything before “; an”

Substitute

“(a) an initial survey before the ship is put in service or before the specified Certificate is issued in respect of the ship for the first time”.

- (2) Regulation 23(1)(a)—

Repeal

“comply with the applicable provisions of these regulations”

Substitute

“fully comply with the applicable provisions of Annex II”.

- (3) Regulation 23(1)(b)—

Repeal

“periodical”

Substitute

“renewal”.

- (4) Regulation 23(1)(b)—

Repeal

“comply with the applicable provisions of these regulations”

Substitute

“fully comply with the applicable provisions of Annex II”.

- (5) Regulation 23(1)(c)—

Repeal

everything before “; intermediate”

Substitute

“(c) an intermediate survey within the period commencing 3 months before and ending 3 months after the second anniversary date of the specified Certificate issued in respect of the ship or within the period commencing 3 months before and ending 3 months after the third anniversary date of the specified Certificate issued in respect of the ship”.

- (6) Regulation 23(1)(c)—

Repeal

“comply with the applicable provisions of these regulations”

Substitute

“fully comply with the applicable provisions of Annex II”.

- (7) Regulation 23(1)(c)—

Repeal

“V of Annex II to MARPOL 1973/78 shall be endorsed by the surveyor on the INLS or HKNLS”

Substitute

“3 to Annex II must be endorsed by the surveyor on the specified”.

- (8) Regulation 23(1)(d)—

Repeal

everything after “within” and before “satisfactory”

Substitute

“the period commencing 3 months before and ending 3 months after each anniversary date of the specified Certificate issued in respect of the ship which is to include a general inspection of the structure, equipment, systems, fittings, arrangements and materials referred to in subparagraph (a) to ensure that they have been maintained in accordance with regulation 25 and that they remain”.

- (9) Regulation 23(1)(d)—

Repeal

“V of Annex II to MARPOL 1973/78 shall be endorsed by the surveyor on the INLS or HKNLS”

Substitute

“3 to Annex II must be endorsed by the surveyor on the specified”.

- (10) Regulation 23(1)(e)—

Repeal

everything after “such repairs or renewals are”

Substitute

“in all respects satisfactory, and that the ship complies in all respects with the requirements of Annex II.”.

- (11) Regulation 23—

Repeal paragraph (2)

Substitute

“(2) If an intermediate survey of the ship has been carried out 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.”.

- (12) Regulation 23(3)—

Repeal

“periodical” (wherever appearing)

Substitute

“renewal”.

- (13) Regulation 23(3)—

Repeal

“INLS Certificate or HKNLS”

Substitute

“specified”.

21. Regulation 24 amended (issue of INLS and HKNLS Certificates)

- (1) Regulation 24, Chinese text, heading—

Repeal

“國際有毒液體物質證書及香港有毒液體物質”

Substitute

“INLS 證書及 HKNLS”.

- (2) Regulation 24(1)—

Repeal

“of an initial or periodical survey”

Substitute

“by a Government surveyor of an initial or renewal survey under regulation 23,”.

- (3) Regulation 24(1)—

Repeal

“these regulations”

Substitute

“Annex II”.

- (4) Regulation 24(1)—

Repeal

everything after “is to be”

Substitute

“issued)—

(a) in the case of a Hong Kong-trading ship—a HKNLS Certificate; or

(b) in the case of any other ship—an INLS Certificate.”.

- (5) Regulation 24(2), Chinese text—

Repeal

“國際有毒液體物質證書或香港有毒液體物質”

Substitute

“INLS 證書或 HKNLS”.

- (6) Regulation 24—

Repeal paragraphs (3) and (4)

Substitute

“(3) The Certificate issued under paragraph (1) is valid for the period specified by the Director in the Certificate.

(4) The period specified by the Director must not exceed 5 years from the date of issue stated in the Certificate.”.

(7) Regulation 24(5)—

Repeal

“a state party to MARPOL 1973/78”

Substitute

“another Convention country”.

(8) Regulation 24(5)—

Repeal

“were not carried out by a surveyor appointed as required by regulation 23(2)(a)”

Substitute

“referred to in regulation 23 were not carried out by a Government surveyor”.

(9) Regulation 24(5)(a)—

Repeal

“already been subjected to a satisfactory initial or periodical”

Substitute

“, in conformity with Annex II, already been subjected to an initial or renewal”.

(10) Regulation 24(5)(b)—

Repeal

“government of that state with an INLS Certificate”

Substitute

“Convention country concerned with an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk”.

(11) Regulation 24(5)(c)—

Repeal

“these regulations”

Substitute

“Annex II”.

(12) Regulation 24(5)(d)—

Repeal

“government of that state”

Substitute

“Convention country concerned”.

(13) Regulation 24(5)—

Repeal

everything after “ship an INLS”

Substitute

“Certificate or HKNLS Certificate.”.

(14) Regulation 24—

Repeal paragraph (6)

Substitute

“(6) The Certificate issued under paragraph (5) must not expire after the expiry date of the Certificate mentioned in subparagraph (b) of that paragraph.”.

(15) Regulation 24—

Repeal paragraphs (7), (8) and (9).

22. Regulations 24A to 24K added

After regulation 24—

Add

“24A. Keeping and inspection of specified Certificates

A specified Certificate must be kept on board the ship and must be readily available for inspection at all reasonable times.

24B. Duration of specified Certificates issued after renewal survey

A new specified Certificate issued in respect of a ship as a result of a renewal survey under regulation 23 is valid for such period as may be specified by the Director in the Certificate in accordance with Regulation 10 of Annex II.

24C. Duration of specified Certificates after early completion of surveys

(1) This regulation applies if—

- (a) an intermediate survey of a ship is completed before the period within which the survey is required to be completed under regulation 23(1)(c); or
- (b) an annual survey of a ship is completed before the period within which the survey is required to be completed under regulation 23(1)(d).

- (2) After a survey in respect of a ship is completed as described in paragraph (1), the existing specified 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 regulation 23(1)(c) or (d) 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 specified Certificate issued in respect of a ship may be varied by the Director in accordance with Regulation 10.8 of Annex II.

24D. Extension of validity period of specified Certificates in certain circumstances

The Director may extend the validity period of an existing specified Certificate issued in respect of a ship in accordance with Regulation 10 of Annex II if—

- (a) the Certificate is valid for a period of less than 5 years;
- (b) a new specified 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.

24E. Specified Certificates cease to be valid

- (1) A specified Certificate issued in respect of a Hong Kong ship ceases to be valid if—
 - (a) after a survey, without the sanction of the Director, a material change has been made to the structure, equipment, systems, fittings, arrangements or materials covered by the survey, other than the direct replacement of them;
 - (b) a survey referred to in regulation 23(1)(b), (c) or (d) is not carried out within the period specified for the survey in that regulation;
 - (c) an additional survey referred to in regulation 23(1)(e) is not carried out within such reasonable time as the Government surveyor or recognized organization may specify;
 - (d) the Certificate is not endorsed under regulation 23(1)(c) or under Regulation 9 of Annex II, after an intermediate survey of the ship is carried out;
 - (e) the Certificate is not endorsed under regulation 23(1)(d) or under Regulation 9 of Annex II, after an annual survey of the ship is carried out; or
 - (f) the ship is transferred to the registry of a place outside Hong Kong.
- (2) In any of the cases specified in paragraph (1)(b), (c), (d) or (e), the owner of the ship must deliver the Certificate to the Director on demand.

24F. Certificates issued under this Part regarded as International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk in Annex II

For the purposes of regulations 24B, 24C and 24D, an INLS Certificate or HKNLS Certificate issued under this Part is to be regarded as an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk referred to in Regulation 9 of Annex II.

24G. Withdrawal of specified Certificates

- (1) A Government surveyor may, by written notice, require the owner or master of a Hong Kong ship in respect of which a specified Certificate has been issued to take such corrective action which the surveyor considers necessary if on a survey (other than an initial survey) of the ship referred to in regulation 23, the surveyor determines that the condition of the ship or its equipment does not correspond substantially with the particulars in the Certificate.
- (2) The surveyor must, on giving notice under paragraph (1), inform the Director.
- (3) If the corrective action is not taken within the period specified by the surveyor, the surveyor must inform the Director and the Director may, by written notice to the owner and master of the ship, withdraw the Certificate.
- (4) On receiving a notice under paragraph (3), the owner and master of the ship must deliver the Certificate to the Director immediately.

- (5) The owner or master of the ship may, after the corrective action in respect of the ship has been taken, apply to the Director for the return of the Certificate.
- (6) On receiving an application under paragraph (5), if the Director is satisfied that the corrective action in respect of the ship has been taken, the Director must, by written notice to the owner or master of the ship, return the Certificate to the owner or master.

24H. Cancellation of specified Certificates

- (1) The Director may, by written notice to the owner and master of a Hong Kong ship, cancel a specified Certificate issued in respect of the ship in the circumstances set out in paragraph (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 under paragraph (1).
- (4) On receiving a notice under paragraph (1), the owner and master of the ship must deliver the Certificate to the Director immediately.

24I. Form of specified Certificates

The Director may specify the form of a specified Certificate.

24J. Alteration of INLS or HKNLS Certificate

- (1) The owner of a ship in respect of which an INLS Certificate or HKNLS 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.

24K. Certified true copies of INLS or HKNLS Certificate

- (1) The owner of a ship in respect of which an INLS Certificate or HKNLS 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.”.

23. Regulation 25 amended (maintenance of condition after survey)

- (1) Regulation 25(1)—

Repeal

“these regulations”

Substitute

“Annex II”.

- (2) Regulation 25(2)—

Repeal

“of the ship under regulation 23 has been completed”

Substitute

“referred to in regulation 23 has been completed in respect of a Hong Kong ship”.

- (3) Regulation 25(3)—

Repeal

“the equipment required by these regulations”

Substitute

“its equipment covered by Annex II.”

- (4) Regulation 25(3), before “determine”—

Add

“cause investigations to be initiated to”.

24. Part VI heading amended (offences and penalties)

Part VI, heading—

Repeal

“OFFENCES AND PENALTIES”

Substitute

“POWERS TO INSPECT AND PENALTIES ETC.”.

25. Regulations 27A and 27B added

Part VI, before regulation 28—

Add

“27A. General power of Government surveyors to inspect, examine etc. ships

- (1) Any of the powers conferred by this regulation may be exercised for ascertaining whether these regulations have been or are 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 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 these regulations 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 these regulations;
- (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 these regulations; 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 regulation.
- (4) If an inspection of a ship under paragraph (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.
- (5) A master to whom a direction is given under paragraph (4) must—

- (a) comply with the direction;
 - (b) take steps to rectify the deficiency; and
 - (c) inform the Director once the deficiency is rectified.
- (6) 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 master of the ship, require the surrender of the specified Certificate issued in respect of the ship to the Director.
- (7) On receiving a notice under paragraph (6), the owner and master of the ship must deliver the Certificate to the Director immediately.
- (8) The owner or 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.
- (9) On receiving an application under paragraph (8), 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.

27B. Obstruction and non-compliance with requirements

- (1) A person must not—
- (a) wilfully obstruct a Government surveyor in the exercise of any power conferred by regulation 27A; 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 regulation 27A(3)(h).

- (2) A person must comply with a requirement imposed on the person under regulation 27A(3).”.

26. Regulation 28 amended (prohibition on uncertificated carriage)

- (1) Regulation 28(1)—

Repeal

“A, B, C or D”

Substitute

“X, Y or Z”.

- (2) Regulation 28(1)(a)(i)—

Repeal

everything after “valid”

Substitute

“specified Certificate or BCH Code Certificate or IBC Code Certificate, covering the substance in question; and”.

- (3) Regulation 28(1)(a)(ii)—

Repeal

“; and”

Substitute a full stop.

- (4) Regulation 28(1)(a)—

Repeal sub-subparagraph (iii).

- (5) Regulation 28(1)—

Repeal subparagraph (b).

- (6) Regulation 28—

Repeal paragraph (2).

- (7) Regulation 28(3)—

Repeal

“an unassessed liquid substance in bulk”

Substitute

“in bulk any liquid substance that is not listed in the Pollution Category column of the table in Chapter 17 or 18 of the IBC Code”.

- (8) Regulation 28(3)—

Repeal subparagraph (a)

Substitute

“(a) the following condition is met—

- (i) the Director has, under regulation 28A, provisionally assessed the substance and given written permission for its carriage in bulk; or
- (ii) an Administration has, with the concurrence of the Director, provisionally assessed the substance in accordance with Regulation 6.3 of Annex II and given written permission for its carriage in bulk; and”.

- (9) After regulation 28(3)—

Add

“(4) In paragraph (1)—

Category X, Y or Z substance (X、Y 或 Z 類物質) means a substance that is indicated in the Pollution Category column of the table in Chapter 17 or 18 of the IBC Code as falling into Category X, Y or Z.”.

27. Regulation 28A added

After regulation 28—

Add

“28A. Provisional assessment

- (1) This regulation applies to a liquid substance that is not listed in the Pollution Category column of the table in Chapter 17 or 18 of the IBC Code.
- (2) The Director may, in accordance with Regulation 6 of Annex II—
 - (a) provisionally assess a substance; and
 - (b) give written permission for a ship to carry the substance in bulk.”.

28. Regulation 29 amended (penalties)

After regulation 29(2)—

Add

- “(3) If an offence under this regulation is committed or would, but for the operation of paragraph (2), have been committed by the owner or 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 master.”.

29. Regulation 31 added

After regulation 30—

Add

“31. Saving of Certificates and pending applications

- (1) An INLS Certificate issued under these regulations and in force immediately before the commencement date of

the Amendment Regulation 2018 is taken as an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued in accordance with these regulations as amended by the Amendment Regulation 2018.

- (2) A HKNLS Certificate issued under these regulations and in force immediately before the commencement date of the Amendment Regulation 2018 is taken as a Hong Kong Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued in accordance with these regulations as amended by the Amendment Regulation 2018.
- (3) If an application for an INLS Certificate has been made before the commencement date of the Amendment Regulation 2018 for which a decision is pending, the application is to be regarded as an application for an INLS Certificate made under these regulations as amended by the Amendment Regulation 2018.
- (4) If an application for a HKNLS Certificate has been made before the commencement date of the Amendment Regulation 2018 for which a decision is pending, the application is to be regarded as an application for a HKNLS Certificate made under these regulations as amended by the Amendment Regulation 2018.
- (5) In this regulation—
Amendment Regulation 2018 (《2018年修訂規例》) means the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2018.”.

30. Third and Fourth Schedules repealed

Third and Fourth Schedules—

Repeal the Schedules.



Secretary for Transport and Housing

10th May 2018

Explanatory Note

This Regulation amends the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B) (*principal Regulations*) to give effect to certain changes made to Annex II (*MARPOL Annex II*) to the International Convention for the Prevention of Pollution from Ships, 1973.

2. Parts II, III, IV and V of the principal Regulations impose requirements on ships in relation to, respectively, the discharge and washing of tanks, documents, construction and equipment, and surveys and related matters. The Regulation amends those Parts to reflect the latest requirements of MARPOL Annex II.
3. New provisions have been introduced to provide for—
 - (a) the meaning of various new terms used in the principal Regulations;
 - (b) the power of the Director of Marine (*Director*) to recognize organizations to perform certain functions;
 - (c) the power of the Director to specify the form in relation to certain certificates;
 - (d) the power of the Director to conduct provisional assessment of a liquid substance; and
 - (e) the general power of Government surveyors to inspect or examine ships within the waters of Hong Kong.
4. The Regulation removes from the principal Regulations certain provisions that are obsolete or outdated, including some definitions and the Schedules.
5. The Regulation also provides for the saving of INLS Certificates and HKNLS Certificates issued before its commencement.

Merchant Shipping (BCH Code) (Amendment) Regulation 2018

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Merchant Shipping (BCH Code) (Amendment) Regulation 2018

(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))

1. Commencement

This Regulation comes into operation on 17 July 2018.

2. Merchant Shipping (BCH Code) Regulations amended

The Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D) are amended as set out in sections 3 to 17.

3. Regulation 1 amended (citation and interpretation)

(1) Regulation 1(2), definition of *1974 SOLAS Convention*—

Repeal

everything after “1974,”

Substitute

“or any convention that replaces that Convention or any successor convention, as amended from time to time and as applicable to Hong Kong;”.

(2) Regulation 1(2), definition of *BCH Code*—

Repeal

everything after “Bulk”

Substitute

“published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment that applies to Hong Kong;”.

- (3) Regulation 1(2), definition of *Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Radiotelegraphy Certificate and Cargo Ship Safety Radiotelephony Certificate*—

Repeal

“Radiotelegraphy Certificate” (貨船無線電報安全證書) and “Cargo Ship Safety Radiotelephony Certificate” (貨船無線電話)

Substitute

“Radio Certificate” (貨船無線電安全證書) and “Cargo Ship Safety Certificate” (貨船”.

- (4) Regulation 1(2)—

Repeal the definition of *Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk*

Substitute

“*Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk* (散裝運輸危險化學品適裝證書) means—

- (a) a certificate issued under regulation 5;
- (b) a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by a recognized organization; or
- (c) a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by or under the authority of an Administration;”.

- (5) Regulation 1(2)—

Repeal the definition of *chemical tanker*

Substitute

“*chemical tanker* (化學品液貨船) means a ship constructed or adapted for the carriage in bulk of any liquid substance listed in Chapter 17 of the IBC Code;”.

- (6) Regulation 1(2), definition of *IBC Code*—

Repeal

everything after “Bulk”

Substitute

“published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment that applies to Hong Kong;”.

- (7) Regulation 1(2)—

- (a) definition of *Category A, Category B* and *Category C*;
- (b) definition of *MARPOL 1973/78*—

Repeal the definitions.

- (8) Regulation 1(2)—

Add in alphabetical order

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

anniversary date (周年日期), in relation to a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk 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;

Category X, Y or Z substance (X、Y 或 Z 類物質) means a substance that is indicated in the Pollution Category column of the table in Chapter 17 of the IBC Code as falling into Category X, Y or Z;

Convention (《公約》) means the International Convention for the Prevention of Pollution from Ships, 1973, including its protocols and appendices, and Annex II (but no other Annex), 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 regulation 2A(1) to be a Government surveyor;

recognized organization (認可機構) means an organization recognized under regulation 2AB;

sea (海、海域) includes all waters navigable by sea-going ships.”.

(9) Regulation 1(3)(d)—

Repeal

“Secretary for Transport and Housing”

Substitute

“Director”.

(10) Regulation 1(3)(d)—

Repeal

“Kong, be references to the Director;”

Substitute

“Kong, be references to the Director; and”.

(11) Regulation 1(3)(e)—

Repeal the semicolon

Substitute a full stop.

(12) Regulation 1(3)—

Repeal subparagraph (f).

4. Regulation 2 amended (application)

(1) Regulation 2(1)—

Repeal

“carrying Category A, Category B or Category C”

Substitute

“engaged in the carriage of Category X, Y or Z”.

(2) Regulation 2(2), proviso—

Repeal

“State which is not a party to MARPOL 1973/78”

Substitute

“country that is not a Convention country”.

(3) After regulation 2(3)—

Add

“(4) These regulations do not apply to—

(a) a warship;

(b) a naval auxiliary; or

(c) any other ship owned or operated by a government and used only on government non-commercial service.”.

5. Regulation 2A amended (power of Director in respect of appointments and delegations)

Regulation 2A(1), after “be”—

Add

“Government”.

6. Regulations 2AB, 2AC and 2AD added

After regulation 2A—

Add

“2AB. Director may recognize organizations to survey ships and issue Certificates of Fitness etc.

The Director may recognize an organization for—

- (a) carrying out surveys of Hong Kong ships;
- (b) issuing Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk in respect of Hong Kong ships;
- (c) making endorsements on the Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization;
- (d) with the prior written consent of the Director, granting extensions of the validity periods of the Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization;
- (e) altering any particulars contained in the Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization;
- (f) issuing certified true copies of the Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization; and
- (g) specifying any corrective actions which the organization considers necessary to be taken in respect of Hong Kong ships.

2AC. Director may request Convention countries to survey Hong Kong ships and issue or endorse Certificates of Fitness

The Director may request any Convention country—

- (a) to carry out a survey of a Hong Kong ship on behalf of the Director in conformity with Chapter I of the BCH Code; and
- (b) to do the following—
 - (i) issue a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk in respect of the ship in conformity with Chapter I of the BCH Code; or
 - (ii) endorse on a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship in conformity with Chapter I of the BCH Code.

2AD. Director may at request of Convention countries survey non-Hong Kong ships and issue or endorse Certificates of Fitness

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 regulation 4 as if the ship were a Hong Kong ship; and
- (b) do the following—
 - (i) issue a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk in respect of the ship under regulation 5 as if the ship were a Hong Kong ship; or

- (ii) endorse on a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship in conformity with Chapter I of the BCH Code.”.

7. Regulation 2B amended (fees)

- (1) Regulation 2B—

Repeal

everything after “provided” and before “shall be determined”

Substitute

“by the Director or a Government surveyor under these regulations and”.

- (2) Regulation 2B—

Repeal

“(Fees) Regulations (Cap. 281 sub. leg.)”

Substitute

“(Prevention and Control of Pollution) (Fees) Regulation (Cap. 413 sub. leg. L)”.

- (3) Regulation 2B, English text—

Repeal

“those regulations”

Substitute

“the Regulation”.

8. Regulation 2C repealed (transitional)

Regulation 2C—

Repeal the regulation.

9. Regulation 3 amended (compliance with Code)

- (1) Regulation 3(2)(b), English text—

Repeal

“tons”.

- (2) Regulation 3(3), English text—

Repeal

“tons”.

- (3) Regulation 3(3)—

Repeal

“Chapters V and VA”

Substitute

“Chapter V”.

10. Regulation 4 amended (survey requirements)

- (1) Regulation 4(1)—

Repeal

“, Cargo Ship Safety Radiotelegraphy Certificate or Cargo Ship Safety Radiotelephony”

Substitute

“and Cargo Ship Safety Radio Certificate or Cargo Ship Safety”.

- (2) Regulation 4(1)(a)—

Repeal

everything before “; an”

Substitute

“(a) an initial survey before the ship is put in service or before the Certificate of Fitness for the Carriage of

Dangerous Chemicals in Bulk is issued in respect of the ship for the first time”.

- (3) Regulation 4(1)(b)—

Repeal

“periodical”

Substitute

“renewal”.

- (4) Regulation 4(1)(b), after “materials”—

Add

“fully”.

- (5) Regulation 4(1)(c)—

Repeal

everything before “; intermediate”

Substitute

- “(c) an intermediate survey within the period commencing 3 months before and ending 3 months after the second anniversary date of the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship or within the period commencing 3 months before and ending 3 months after the third anniversary date of the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship”.

- (6) Regulation 4(1)(c)—

Repeal

“comply with the relevant provisions of the BCH Code and are in good working order and condition”

Substitute

“fully comply with the relevant provisions of the BCH Code and are in good working order”.

- (7) Regulation 4(1)(c), Chinese text—

Repeal

“驗船師在散裝運輸危險化學品適裝證書上批註”

Substitute

“有關驗船師在散裝運輸危險化學品適裝證書上簽註”.

- (8) Regulation 4(1)(d)—

Repeal

everything after “within” and before “satisfactory”

Substitute

“the period commencing 3 months before and ending 3 months after each anniversary date of the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship which is to include a general inspection of the structure, equipment, fittings, arrangements and materials referred to in subparagraph (a) to ensure that they have been maintained in accordance with regulation 6 and that they remain”.

- (9) Regulation 4(1)(d), Chinese text—

Repeal

“驗船師在散裝運輸危險化學品適裝證書上批註”

Substitute

“有關驗船師在散裝運輸危險化學品適裝證書上簽註”.

- (10) Regulation 4(1)(e)—

Repeal

everything after “board”

Substitute

“or without presenting any unreasonable threat of harm to the marine environment.”.

- (11) Regulation 4—

Repeal paragraph (2)

Substitute

“(2) If an intermediate survey of the ship has been carried out 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.”.

11. Regulation 5 amended (issue of Certificate of Fitness)

- (1) Regulation 5(1)—

Repeal

“of an initial or periodical survey under regulation 4 of these regulations and under regulation 19”

Substitute

“by a Government surveyor of an initial or renewal survey under regulation 4 of these regulations and under regulation 23”.

- (2) Regulation 5(1)—

Repeal

everything after “and of”

Substitute

“Annex II to the Convention a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.”.

- (3) Regulation 5—

Repeal paragraphs (2) and (3)

Substitute

“(2) The Certificate is valid for the period specified by the Director in the Certificate.

(3) The period specified by the Director must not exceed 5 years from the date of issue stated in the Certificate.”.

- (4) Regulation 5(4)—

Repeal

“another State”

Substitute

“another Convention country”.

- (5) Regulation 5(4)—

Repeal

“were not carried out by a surveyor appointed as required by regulation 4(2)”

Substitute

“referred to in regulation 4 were not carried out by a Government surveyor”.

- (6) Regulation 5(4)(a)—

Repeal

“already been subjected to a satisfactory initial or periodical”

Substitute

“, in conformity with Chapter I of the BCH Code, already been subjected to an initial or renewal”.

- (7) Regulation 5(4)(b)—

Repeal

“government of that other State with a certificate of fitness”

Substitute

“Convention country concerned with a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk”.

- (8) Regulation 5(4)(d)—

Repeal

“government of that other State”

Substitute

“Convention country concerned”.

- (9) Regulation 5(4)—

Repeal

everything after “ship a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk”.

Substitute a full stop.

- (10) Regulation 5—

Repeal paragraph (5)

Substitute

“(5) The Certificate issued under paragraph (4) must not expire after the expiry date of the Certificate mentioned in subparagraph (b) of that paragraph.”.

- (11) Regulation 5—

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

12. Regulations 5A to 5K added

After regulation 5—

Add

“5A. Keeping and inspection of Certificate of Fitness

A Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk must be kept on board the ship and must be readily available for inspection at all reasonable times.

5B. Duration of Certificate of Fitness issued after renewal survey

A new Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of a ship as a result of a renewal survey under regulation 4 is valid for such period as may be specified by the Director in the Certificate in accordance with paragraph 1.6.6 of Chapter I of the BCH Code.

5C. Duration of Certificate of Fitness after early completion of surveys

- (1) This regulation applies if—

(a) an intermediate survey of a ship is completed before the period within which the survey is required to be completed under regulation 4(1)(c); or

(b) an annual survey of a ship is completed before the period within which the survey is required to be completed under regulation 4(1)(d).

- (2) After a survey in respect of a ship is completed as described in paragraph (1), the existing Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk 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 regulation 4(1)(c) or (d) 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 Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship may be varied by the Director in accordance with paragraph 1.6.6 of Chapter I of the BCH Code.

5D. Extension of validity period of Certificate of Fitness in certain circumstances

The Director may extend the validity period of an existing Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of a ship in accordance with paragraph 1.6.6 of Chapter I of the BCH Code if—

- (a) the Certificate is valid for a period of less than 5 years;
- (b) a new Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk 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.

5E. Certificate of Fitness ceases to be valid

- (1) A Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of a Hong Kong ship ceases to be valid if—

- (a) after a survey, without the sanction of the Director, a material change has been made to the structure, equipment, fittings, arrangements or materials covered by the survey, other than the direct replacement of them;
 - (b) a survey referred to in regulation 4(1)(b), (c) or (d) is not carried out within the period specified for the survey in that regulation;
 - (c) an additional survey referred to in regulation 4(1)(e) is not carried out within such reasonable time as the Government surveyor or recognized organization may specify;
 - (d) the Certificate is not endorsed under regulation 4(1)(c) or under Chapter I of the BCH Code, after an intermediate survey of the ship is carried out;
 - (e) the Certificate is not endorsed under regulation 4(1)(d) or under Chapter I of the BCH Code, after an annual survey of the ship is carried out; or
 - (f) the ship is transferred to the registry of a place outside Hong Kong.
- (2) In any of the cases specified in paragraph (1)(b), (c), (d) or (e), the owner of the ship must deliver the Certificate to the Director on demand.

5F. Certificates of Fitness issued under regulation 5 regarded as Certificates of Fitness in Chapter I of BCH Code

For the purposes of regulations 5B, 5C and 5D, a certificate issued under regulation 5 is to be regarded as a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk referred to in paragraph 1.6 of Chapter I of the BCH Code.

5G. Withdrawal of Certificate of Fitness

- (1) A Government surveyor may, by written notice, require the owner or master of a Hong Kong ship in respect of which a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk has been issued to take such corrective action which the surveyor considers necessary if on a survey (other than an initial survey) of the ship referred to in regulation 4, the surveyor determines that the condition of the ship or its equipment does not correspond substantially with the particulars in the Certificate.
- (2) The surveyor must, on giving notice under paragraph (1), inform the Director.
- (3) If the corrective action is not taken within the period specified by the surveyor, the surveyor must inform the Director and the Director may, by written notice to the owner and master of the ship, withdraw the Certificate.
- (4) On receiving a notice under paragraph (3), the owner and master of the ship must deliver the Certificate to the Director immediately.
- (5) The owner or master of the ship may, after the corrective action in respect of the ship has been taken, apply to the Director for the return of the Certificate.
- (6) On receiving an application under paragraph (5), if the Director is satisfied that the corrective action in respect of the ship has been taken, the Director must, by written notice to the owner or master of the ship, return the Certificate to the owner or master.

5H. Cancellation of Certificate of Fitness

- (1) The Director may, by written notice to the owner and master of a Hong Kong ship, cancel a Certificate of

Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship in the circumstances set out in paragraph (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 under paragraph (1).
- (4) On receiving a notice under paragraph (1), the owner and master of the ship must deliver the Certificate to the Director immediately.

5I. Form of Certificate of Fitness

The Director may specify the form of a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.

5J. Alteration of Certificate of Fitness

- (1) The owner of a ship in respect of which a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk has been issued by the Director 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.

5K. Certified true copies of Certificate of Fitness

- (1) The owner of a ship in respect of which a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk has been issued by the Director 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.”.

13. Regulation 6 amended (maintenance of conditions after survey)

- (1) Regulation 6(2)—

Repeal

“of the ship under regulation 4 has been completed”

Substitute

“referred to in regulation 4 has been completed in respect of a Hong Kong ship”.

- (2) Regulation 6(3)—

Repeal

everything after “affects the safety” and before “, the master”

Substitute

“of the ship or the efficiency or completeness of its life-saving appliances or other equipment covered by the BCH Code”.

- (3) Regulation 6(3), after “who shall”—

Add

“, in the case of a Hong Kong ship, cause investigations to be initiated to”.

- (4) Regulation 6(3)—

Repeal

“of another State”

Substitute

“other than a port in Hong Kong,”.

14. Regulations 8A and 8B added

After regulation 8—

Add

“8A. General power of Government surveyors to inspect, examine etc. ships

- (1) Any of the powers conferred by this regulation may be exercised for ascertaining whether these regulations have been or are 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 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 these regulations 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 these regulations;
- (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 these regulations; 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 regulation.
- (4) If an inspection of a ship under paragraph (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.
- (5) A master to whom a direction is given under paragraph (4) must—
 - (a) comply with the direction;
 - (b) take steps to rectify the deficiency; and
 - (c) inform the Director once the deficiency is rectified.
- (6) 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 master of the ship, require the surrender of the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship to the Director.
- (7) On receiving a notice under paragraph (6), the owner and master of the ship must deliver the Certificate to the Director immediately.
- (8) The owner or 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.
- (9) On receiving an application under paragraph (8), 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.

8B. Obstruction and non-compliance with requirements

- (1) A person must not—
- (a) wilfully obstruct a Government surveyor in the exercise of any power conferred by regulation 8A; 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 regulation 8A(3)(h).
- (2) A person must comply with a requirement imposed on the person under regulation 8A(3).”.

15. Regulation 9 amended (loading and carriage in bulk of listed chemicals)

- (1) Regulation 9—

Repeal

“A, Category B or Category C”

Substitute

“X, Y or Z”.

- (2) Regulation 9(b)—

Repeal

“the government of a State party to MARPOL 1973/78”

Substitute

“an Administration”.

16. Regulation 10 amended (penalties)

- (1) Regulation 10(1)—

Repeal

“5(8), 6”

Substitute

“5A, 5G(4), 5H(4), 6, 8A(5) and (7), 8B”.

- (2) Regulation 10—

Repeal paragraph (1A).

- (3) After regulation 10(2)—

Add

“(3) If an offence under this regulation is committed or would, but for the operation of paragraph (2), have been committed by the owner or 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 master.”.

17. Schedule repealed (tables of corresponding regulations)

The Schedule—

Repeal the Schedule.


Secretary for Transport and Housing

10th May 2018

Explanatory Note

This Regulation amends the Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D) (*principal Regulations*) to give effect to certain changes made to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (*BCH Code*).

2. Certain provisions of the principal Regulations impose requirements on ships in relation to surveys and related matters. The Regulation amends those provisions to reflect the latest requirements of the BCH Code.
3. New provisions have been introduced to provide for—
 - (a) the meaning of various new terms used in the principal Regulations;
 - (b) the power of the Director of Marine (*Director*) to recognize organizations to perform certain functions;
 - (c) the power of the Director to specify the form in relation to certain certificates; and
 - (d) the general power of Government surveyors to inspect or examine ships within the waters of Hong Kong.
4. The Regulation removes from the principal Regulations certain provisions that are obsolete or outdated, including some definitions and the Schedule.

Merchant Shipping (IBC Code) (Amendment) Regulation 2018

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Merchant Shipping (IBC Code) (Amendment) Regulation 2018

(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))

1. Commencement

This Regulation comes into operation on 17 July 2018.

2. Merchant Shipping (IBC Code) Regulations amended

The Merchant Shipping (IBC Code) Regulations (Cap. 413 sub. leg. E) are amended as set out in sections 3 to 15.

3. Regulation 1 amended (citation and interpretation)

(1) Regulation 1(2), definition of *1974 SOLAS Convention*—

Repeal

everything after “1974,”

Substitute

“or any convention that replaces that Convention or any successor convention, as amended from time to time and as applicable to Hong Kong;”.

(2) Regulation 1(2), definition of *BCH Code*—

Repeal

everything after “Bulk”

Substitute

“published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment that applies to Hong Kong;”.

- (3) Regulation 1(2), definition of *Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Radiotelegraphy Certificate and Cargo Ship Safety Radiotelephony Certificate*—

Repeal

“Radiotelegraphy Certificate” (貨船無線電報安全證書) and “Cargo Ship Safety Radiotelephony Certificate” (貨船無線電話)

Substitute

“Radio Certificate” (貨船無線電安全證書) and “Cargo Ship Safety Certificate” (貨船”.

- (4) Regulation 1(2)—

Repeal the definition of *chemical tanker***Substitute**

“*chemical tanker* (化學品液貨船) means a ship constructed or adapted for the carriage in bulk of any liquid substance listed in Chapter 17 of the IBC Code;”.

- (5) Regulation 1(2), definition of *constructed*—

Repeal

“in regulation 2”.

- (6) Regulation 1(2), definition of *IBC Code*—

Repeal

everything after “Dangerous”

Substitute

“Chemicals in Bulk published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment that applies to Hong Kong;”.

- (7) Regulation 1(2)—

Repeal the definition of *International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk***Substitute**

“*International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk* (國際散裝運輸危險化學品適裝證書) means—

- (a) a certificate issued under regulation 5;
- (b) an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by a recognized organization; or
- (c) an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by or under the authority of an Administration;”.

- (8) Regulation 1(2), English text, definition of *pollution hazard substance*—

Repeal the full stop**Substitute a semicolon.**

- (9) Regulation 1(2), Chinese text, definition of ~~散裝~~—

Repeal the full stop**Substitute a semicolon.**

- (10) Regulation 1(2)—

- (a) definition of *1983 IGC Code*;
- (b) definition of *1993 IGC Code*;
- (c) definition of *MARPOL 1973/78*—

Repeal the definitions.

- (11) Regulation 1(2)—

Add in alphabetical order

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

anniversary date (周年日期), in relation to an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk 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;

applicable IGC Code (適用的 IGC 規則), in relation to a ship, means the code that the ship is required to comply with under regulation 4 of the Merchant Shipping (Safety) (Gas Carriers) Regulations (Cap. 369 sub. leg. Z);

Convention (《公約》) means the International Convention for the Prevention of Pollution from Ships, 1973, including its protocols and appendices, and Annex II (but no other Annex), 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 regulation 2A(1) to be a Government surveyor;

recognized organization (認可機構) means an organization recognized under regulation 2AB;

sea (海、海域) includes all waters navigable by sea-going ships.”.

(12) Regulation 1(3)(b)—

Repeal

“apply;”

Substitute

“apply; and”.

(13) Regulation 1(3)(c)—

Repeal

“Secretary for Transport and Housing”

Substitute

“Director”.

(14) Regulation 1(3)(c)—

Repeal

“Kong, be references to the Director;”

Substitute

“Kong, be references to the Director.”.

(15) Regulation 1(3)—

Repeal subparagraphs (d) and (e).

4. Regulation 2 amended (application)

(1) Regulation 2(1)(b)—

Repeal sub-subparagraph (iii).

(2) Regulation 2(2)(a) and (b)—

Repeal

“1983 IGC Code or the 1993 IGC Code, as the case may be”

Substitute

“applicable IGC Code”.

(3) Regulation 2(2)—

Repeal

“1983 IGC Code or the 1993 IGC Code, as the case may be,”

Substitute

“applicable IGC Code”.

- (4) Regulation 2(3), proviso—

Repeal

“1974 SOLAS Convention or to MARPOL 1973/78”

Substitute

“Convention or to the 1974 SOLAS Convention”.

- (5) After regulation 2(3)—

Add

“(4) These regulations do not apply to—

- (a) a warship;
- (b) a naval auxiliary; or
- (c) any other ship owned or operated by a government and used only on government non-commercial service.”.

5. Regulation 2A amended (power of Director in respect of appointments and delegations)

Regulation 2A(1), after “be”—

Add

“Government”.

6. Regulations 2AB, 2AC and 2AD added

After regulation 2A—

Add

“2AB. Director may recognize organizations to survey ships and issue International Certificates of Fitness etc.

The Director may recognize an organization for—

- (a) carrying out surveys of Hong Kong ships;

- (b) issuing International Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk in respect of Hong Kong ships;
- (c) making endorsements on the International Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization;
- (d) with the prior written consent of the Director, granting extensions of the validity periods of the International Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization;
- (e) altering any particulars contained in the International Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization;
- (f) issuing certified true copies of the International Certificates of Fitness for the Carriage of Dangerous Chemicals in Bulk issued by the organization; and
- (g) specifying any corrective actions which the organization considers necessary to be taken in respect of Hong Kong ships.

2AC. Director may request Convention countries to survey Hong Kong ships and issue or endorse International Certificates of Fitness

The Director may request any Convention country—

- (a) to carry out a survey of a Hong Kong ship on behalf of the Director in conformity with Chapter 1 of the IBC Code; and

- (b) to do the following—
- (i) issue an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk in respect of the ship in conformity with Chapter 1 of the IBC Code; or
 - (ii) endorse on an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship in conformity with Chapter 1 of the IBC Code.

2AD. Director may at request of Convention countries survey non-Hong Kong ships and issue or endorse International Certificates of Fitness

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 regulation 4 as if the ship were a Hong Kong ship; and
- (b) do the following—
 - (i) issue an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk in respect of the ship under regulation 5 as if the ship were a Hong Kong ship; or
 - (ii) endorse on an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship in conformity with Chapter 1 of the IBC Code.”.

7. Regulation 2B amended (fees)

- (1) Regulation 2B—

Repeal

everything after “provided” and before “shall be determined”

Substitute

“by the Director or a Government surveyor under these regulations and”.

- (2) Regulation 2B—

Repeal

“(Fees) Regulations (Cap. 281 sub. leg.)”

Substitute

“(Prevention and Control of Pollution) (Fees) Regulation (Cap. 413 sub. leg. L)”.

- (3) Regulation 2B, English text—

Repeal

“those regulations”

Substitute

“the Regulation”.

8. Regulation 4 amended (survey requirements)

- (1) Regulation 4(1)—

Repeal

“, Cargo Ship Safety Radiotelegraphy Certificate or Cargo Ship Safety Radiotelephony”

Substitute

“and Cargo Ship Safety Radio Certificate or Cargo Ship Safety”.

- (2) Regulation 4(1)(a)—

Repeal

everything before “; an”

Substitute

“(a) an initial survey before the ship is put in service or before the International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk is issued in respect of the ship for the first time”.

(3) Regulation 4(1)(b)—

Repeal

“periodical”

Substitute

“renewal”.

(4) Regulation 4(1)(b), after “materials”—

Add

“fully”.

(5) Regulation 4(1)(c)—

Repeal

everything before “; intermediate”

Substitute

“(c) an intermediate survey within the period commencing 3 months before and ending 3 months after the second anniversary date of the International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship or within the period commencing 3 months before and ending 3 months after the third anniversary date of the International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship”.

(6) Regulation 4(1)(c)—

Repeal

“comply with the relevant provisions of the IBC Code and are in good working order and condition”

Substitute

“fully comply with the relevant provisions of the IBC Code and are in good working order”.

(7) Regulation 4(1)(c), Chinese text—

Repeal

“驗船師在國際散裝運輸危險化學品適裝證書上批註”

Substitute

“有關驗船師在國際散裝運輸危險化學品適裝證書上簽註”.

(8) Regulation 4(1)(d)—

Repeal

everything after “within” and before “satisfactory”

Substitute

“the period commencing 3 months before and ending 3 months after each anniversary date of the International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship which is to include a general inspection of the structure, equipment, fittings, arrangements and materials referred to in subparagraph (a) to ensure that they have been maintained in accordance with regulation 6 and that they remain”.

(9) Regulation 4(1)(d), Chinese text—

Repeal

“驗船師在國際散裝運輸危險化學品適裝證書上批註”

Substitute

“有關驗船師在國際散裝運輸危險化學品適裝證書上簽註”.

- (10) Regulation 4(1)(e)—

Repeal

everything after “board”

Substitute

“or without presenting any unreasonable threat of harm to the marine environment.”.

- (11) Regulation 4—

Repeal paragraph (2)**Substitute**

“(2) If an intermediate survey of the ship has been carried out 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.”.

9. Regulation 5 amended (issue of International Certificate of Fitness)

- (1) Regulation 5(1)—

Repeal

“of an initial or periodical”

Substitute

“by a Government surveyor of an initial or renewal”.

- (2) Regulation 5(1)—

Repeal

everything after “and of”

Substitute

“Annex II to the Convention an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.”.

- (3) Regulation 5—

Repeal paragraphs (2) and (3)**Substitute**

“(2) The Certificate is valid for the period specified by the Director in the Certificate.

(3) The period specified by the Director must not exceed 5 years from the date of issue stated in the Certificate.”.

- (4) Regulation 5(4)—

Repeal

“another State”

Substitute

“another Convention country”.

- (5) Regulation 5(4)—

Repeal

“were not carried out by a surveyor appointed as required by regulation 4(2)”

Substitute

“referred to in regulation 4 were not carried out by a Government surveyor”.

- (6) Regulation 5(4)(a)—

Repeal

“already been subjected to a satisfactory initial or periodical”

Substitute

“, in conformity with Chapter 1 of the IBC Code, already been subjected to an initial or renewal”.

- (7) Regulation 5(4)(b)—

Repeal

“government of that other State with a certificate of fitness”

Substitute

“Convention country concerned with an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk”.

- (8) Regulation 5(4)(d)—

Repeal

“government of that other State”

Substitute

“Convention country concerned”.

- (9) Regulation 5(4)—

Repeal

everything after “ship an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk”

Substitute a full stop.

- (10) Regulation 5—

Repeal paragraph (5)**Substitute**

“(5) The Certificate issued under paragraph (4) must not expire after the expiry date of the Certificate mentioned in subparagraph (b) of that paragraph.”.

- (11) Regulation 5—

Repeal paragraphs (6), (7) and (8).**10. Regulations 5A to 5K added**

After regulation 5—

Add**“5A. Keeping and inspection of International Certificate of Fitness**

An International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk must be kept on board the ship and must be readily available for inspection at all reasonable times.

5B. Duration of International Certificate of Fitness issued after renewal survey

A new International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of a ship as a result of a renewal survey under regulation 4 is valid for such period as may be specified by the Director in the Certificate in accordance with paragraph 1.5.6 of Chapter 1 of the IBC Code.

5C. Duration of International Certificate of Fitness after early completion of surveys

(1) This regulation applies if—

- (a) an intermediate survey of a ship is completed before the period within which the survey is required to be completed under regulation 4(1)(c); or
- (b) an annual survey of a ship is completed before the period within which the survey is required to be completed under regulation 4(1)(d).

(2) After a survey in respect of a ship is completed as described in paragraph (1), the existing International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk 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 regulation 4(1)(c) or (d) 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 International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship may be varied by the Director in accordance with paragraph 1.5.6 of Chapter 1 of the IBC Code.

5D. Extension of validity period of International Certificate of Fitness in certain circumstances

The Director may extend the validity period of an existing International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of a ship in accordance with paragraph 1.5.6 of Chapter 1 of the IBC Code if—

- (a) the Certificate is valid for a period of less than 5 years;
- (b) a new International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk 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.

5E. International Certificate of Fitness ceases to be valid

- (1) An International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of a Hong Kong ship ceases to be valid if—
 - (a) after a survey, without the sanction of the Director, a material change has been made to the structure, equipment, fittings, arrangements or materials covered by the survey, other than the direct replacement of them;
 - (b) a survey referred to in regulation 4(1)(b), (c) or (d) is not carried out within the period specified for the survey in that regulation;
 - (c) an additional survey referred to in regulation 4(1)(e) is not carried out within such reasonable time as the Government surveyor or recognized organization may specify;
 - (d) the Certificate is not endorsed under regulation 4(1)(c) or under Chapter 1 of the IBC Code, after an intermediate survey of the ship is carried out;
 - (e) the Certificate is not endorsed under regulation 4(1)(d) or under Chapter 1 of the IBC Code, after an annual survey of the ship is carried out; or
 - (f) the ship is transferred to the registry of a place outside Hong Kong.
- (2) In any of the cases specified in paragraph (1)(b), (c), (d) or (e), the owner of the ship must deliver the Certificate to the Director on demand.

5F. International Certificates of Fitness issued under regulation 5 regarded as International Certificates of Fitness in Chapter 1 of IBC Code

For the purposes of regulations 5B, 5C and 5D, a certificate issued under regulation 5 is to be regarded as an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk referred to in paragraph 1.5 of Chapter 1 of the IBC Code.

5G. Withdrawal of International Certificate of Fitness

- (1) A Government surveyor may, by written notice, require the owner or master of a Hong Kong ship in respect of which an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk has been issued to take such corrective action which the surveyor considers necessary if on a survey (other than an initial survey) of the ship referred to in regulation 4, the surveyor determines that the condition of the ship or its equipment does not correspond substantially with the particulars in the Certificate.
- (2) The surveyor must, on giving notice under paragraph (1), inform the Director.
- (3) If the corrective action is not taken within the period specified by the surveyor, the surveyor must inform the Director and the Director may, by written notice to the owner and master of the ship, withdraw the Certificate.
- (4) On receiving a notice under paragraph (3), the owner and master of the ship must deliver the Certificate to the Director immediately.
- (5) The owner or master of the ship may, after the corrective action in respect of the ship has been taken, apply to the Director for the return of the Certificate.

- (6) On receiving an application under paragraph (5), if the Director is satisfied that the corrective action in respect of the ship has been taken, the Director must, by written notice to the owner or master of the ship, return the Certificate to the owner or master.

5H. Cancellation of International Certificate of Fitness

- (1) The Director may, by written notice to the owner and master of a Hong Kong ship, cancel an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued in respect of the ship in the circumstances set out in paragraph (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 under paragraph (1).
- (4) On receiving a notice under paragraph (1), the owner and master of the ship must deliver the Certificate to the Director immediately.

5I. Form of International Certificate of Fitness

The Director may specify the form of an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.

5J. Alteration of International Certificate of Fitness

- (1) The owner of a ship in respect of which an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk has been issued by the Director 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.

5K. Certified true copies of International Certificate of Fitness

- (1) The owner of a ship in respect of which an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk has been issued by the Director 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.”.

11. Regulation 6 amended (maintenance of conditions after survey)

- (1) Regulation 6(2)—

Repeal

“of the ship under regulation 4 has been completed”

Substitute

“referred to in regulation 4 has been completed in respect of a Hong Kong ship”.

- (2) Regulation 6(3)—

Repeal

everything after “affects the safety” and before “, the master”

Substitute

“of the ship or the efficiency or completeness of its life-saving appliances or other equipment covered by the IBC Code”.

- (3) Regulation 6(3), after “who shall”—

Add

“, in the case of a Hong Kong ship, cause investigations to be initiated to”.

- (4) Regulation 6(3)—

Repeal

“of another State”

Substitute

“other than a port in Hong Kong.”.

12. Regulations 8A and 8B added

After regulation 8—

Add

“8A. General power of Government surveyors to inspect, examine etc. ships

- (1) Any of the powers conferred by this regulation may be exercised for ascertaining whether these regulations have been or are 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 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 these regulations 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 these regulations;
- (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 these regulations; 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 regulation.
- (4) If an inspection of a ship under paragraph (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.
 - (5) A master to whom a direction is given under paragraph (4) must—
 - (a) comply with the direction;
 - (b) take steps to rectify the deficiency; and
 - (c) inform the Director once the deficiency is rectified.
 - (6) 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 master of the ship, require the surrender of the International Certificate of Fitness for the Carriage of Dangerous

Chemicals in Bulk issued in respect of the ship to the Director.

- (7) On receiving a notice under paragraph (6), the owner and master of the ship must deliver the Certificate to the Director immediately.
- (8) The owner or 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.
- (9) On receiving an application under paragraph (8), 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.

8B. Obstruction and non-compliance with requirements

- (1) A person must not—
 - (a) wilfully obstruct a Government surveyor in the exercise of any power conferred by regulation 8A; 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 regulation 8A(3)(h).
- (2) A person must comply with a requirement imposed on the person under regulation 8A(3).”.

13. Regulation 9 amended (loading and carriage in bulk of listed chemicals)

Regulation 9(b)(i)—

Repeal

“the government of a State party of MARPOL 1973/78”

Substitute

“an Administration”.

14. Regulation 10 amended (penalties)

- (1) Regulation 10(1)—

Repeal

“5(8), 6”

Substitute

“5A, 5G(4), 5H(4), 6, 8A(5) and (7), 8B”.

- (2) Regulation 10—

Repeal paragraph (1A).

- (3) After regulation 10(2)—

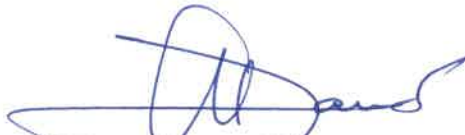
Add

“(3) If an offence under this regulation is committed or would, but for the operation of paragraph (2), have been committed by the owner or 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 master.”.

15. Schedule repealed (table of corresponding regulations)

The Schedule—

Repeal the Schedule.



Secretary for Transport and Housing

10th May 2018

Explanatory Note

This Regulation amends the Merchant Shipping (IBC Code) Regulations (Cap. 413 sub. leg. E) (*principal Regulations*) to give effect to certain changes made to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (*IBC Code*).

2. Certain provisions of the principal Regulations impose requirements on ships in relation to surveys and related matters. The Regulation amends those provisions to reflect the latest requirements of the IBC Code.
3. New provisions have been introduced to provide for—
 - (a) the meaning of various new terms used in the principal Regulations;
 - (b) the power of the Director of Marine (*Director*) to recognize organizations to perform certain functions;
 - (c) the power of the Director to specify the form in relation to certain certificates; and
 - (d) the general power of Government surveyors to inspect or examine ships within the waters of Hong Kong.
4. The Regulation removes from the principal Regulations certain provisions that are obsolete or outdated, including some definitions and the Schedule.