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**Paper for the House Committee Meeting
on 1 March 2019**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 22 February 2019**

Tabling in LegCo : Council meeting of 27 February 2019

Amendment to be made by : Council meeting of 27 March 2019 (or that of 17 April 2019 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION MADE UNDER THE
MERCHANT SHIPPING (SEAFARERS) ORDINANCE
(CAP. 478) AND THE ADMINISTRATIVE APPEALS BOARD
ORDINANCE (CAP. 442)**

**Merchant Shipping (Seafarers) (Ships Using Low-flashpoint
Fuels) Regulation** (L.N. 15)

**Merchant Shipping (Seafarers) (Passenger Ships—Training)
(Amendment) Regulation 2019** (L.N. 16)

**Merchant Shipping (Seafarers) (Ships Operating in Polar
Waters) Regulation** (L.N. 17)

**Administrative Appeals Board Ordinance (Amendment of
Schedule) Order 2019** (L.N. 18)

**Merchant Shipping (Seafarers) (Fees) (Amendment)
Regulation 2019** (L.N. 19)

**Merchant Shipping (Seafarers) (Certification and
Watchkeeping) (Amendment) Regulation 2019** (L.N. 20)

Subsidiary legislation relating to the implementation of the latest seafarers' training requirements under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 ("STCW Convention")

The STCW Convention promotes the safety of life and property at sea, as well as the protection of the marine environment by establishing international standards on training, certification and watchkeeping for seafarers. The International Maritime Organization ("IMO") adopts resolutions from time to time to amend the STCW Convention to ensure that seafarers possess the necessary qualification and skills for operating ships with new technological and operational practices. The requirements of the STCW Convention are implemented in Hong Kong through the Merchant Shipping (Seafarers) Ordinance (Cap. 478) and its subsidiary legislation.

2. L.N. 15 and L.N. 16 are made by the Secretary for Transport and Housing ("STH") under sections 72, 73, 96 and 134 of Cap. 478 to give effect to the latest requirements of the STCW Convention. L.N. 15 provides for the following matters:

- (a) the requirements in relation to training (i.e. familiarization training on equipment and procedures relevant to duties) and certificates of proficiency (i.e. certificates in basic training or certificates in advanced training) ("Certificates") that a seafarer on a specified ocean-going vessel using low-flashpoint fuels¹ must receive and hold before being assigned to undertake and/or while undertaking certain duties on the ship;
- (b) contravention of the relevant requirements by the company or the master of a ship is an offence punishable by a fine (at level 5 for the company (i.e. \$50,000) and at level 3 for the master of the ship (i.e. \$10,000)) and imprisonment for two years; and
- (c) the issue, renewal, and validity period of the Certificates, recognition of non-local Certificates issued by the government of a state party to the STCW Convention and other miscellaneous matters (such as loss of Certificates, offence for false pretences and information, keeping of record of Certificates and grant of exemptions).

¹ L.N. 15 applies to a ship (a) to which the Merchant Shipping (Safety) (Construction and Survey) Regulation (Cap. 369BD) applies; (b) that is not a specified ship as defined by section 28(3) of Cap. 369BD and is not engaged only on governmental non-commercial service if the ship is owned or operated by a government; and (c) that uses low-flashpoint fuels as defined by that section (i.e. gaseous or liquid fuel that has a flashpoint lower than that permitted under the relevant regulation of the International Convention for the Safety of Life at Sea, 1974 (at present 60°C)).

3. L.N. 16 amends the Merchant Shipping (Seafarers) (Passenger Ships—Training) Regulation (Cap. 478AD) to add passenger ship emergency familiarization training as a type of required training for seafarers working on seagoing passenger ships.² Non-compliance with the requirement by the company or the master of a ship is an offence punishable by a fine (at level 5 for the company (i.e. \$50,000) and at level 3 for the master of the ship (i.e. \$10,000)) and imprisonment for two years. L.N. 16 also updates the requirement of passenger ship crowd management training and certain references to the Seafarers' Training, Certification and Watchkeeping Code ("STCW Code") as referred to in Cap. 478AD.

Subsidiary legislation relating to the implementation of the latest requirements under the International Code for Ships Operating in Polar Waters ("Polar Code")

4. The Polar Code (which took effect in 2017) was adopted by IMO to regulate ships operating in polar waters (i.e. Arctic waters and/or the Antarctic area). It sets out requirements concerning safe operation of ships, protection of marine environment, and manning and training requirements of seafarers on board ships navigating in polar waters.

5. L.N. 17 is made by STH under sections 72, 73, 96 and 134 of Cap. 478 to give effect to the latest requirements of the Polar Code. It provides for the following matters:

- (a) the training and Certificates that a seafarer on a Hong Kong ship must hold when the ship operates in polar waters;
- (b) contravention of the relevant requirement by the company or the master of a ship is an offence punishable by a fine (at level 5 for the company (i.e. \$50,000) and at level 3 for the master of the ship (i.e. \$10,000)) and imprisonment for two years; and
- (c) the issue, renewal, and validity period of the Certificates, recognition of non-local Certificates issued by the government of a state party to the STCW Convention and other miscellaneous matters (such as loss of Certificates, offence for false pretences and information, keeping of record of Certificates, grant of exemptions and transitional arrangements).

² Under section 1 of Cap. 478AD, "seagoing passenger ship" means a passenger ship (i.e. a ship carrying more than 12 passengers) other than one which navigates exclusively in one or more of the following areas – (a) inland waters; (b) waters within, or closely adjacent to, sheltered waters; (c) areas where port regulations apply.

6. It is noted that the Administration has, pursuant to section 134(3A) of Cap. 478, adopted the direct reference approach in L.N. 15 to L.N. 17 by referring directly to the STCW Convention, the STCW Code and the Polar Code, as revised or amended from time to time. According to paragraph 13 of the Legislative Council ("LegCo") Brief (File Ref: THB (T) PML 8/10/120/7) and paragraph 10 of the LegCo Brief (File Ref: THB (T) PML CR 8/10/130/45) (collectively called "the LegCo Briefs") issued by the Transport and Housing Bureau ("THB") and the Marine Department in February 2019, this approach allows the local legislation to remain up-to-date as far as practicable.

Consequential amendments

7. L.N. 18 to L.N. 20 introduce amendments consequential upon the making of L.N. 15 and L.N. 17. These amendments are summarized as follows:

- (a) L.N. 18 is made by the Chief Executive ("CE") in Council under section 4 of the Administrative Appeals Board Ordinance (Cap. 442) to amend the Schedule to Cap. 442 to provide for appeals to the Administrative Appeals Board in respect of the decisions of the Seafarers' Authority ("SA") to refuse to issue or renew a Certificate under L.N. 15 and L.N. 17;
- (b) L.N. 19 is made by the Secretary for Financial Services and the Treasury under section 133 of Cap. 478 to amend the Schedule to the Merchant Shipping (Seafarers) (Fees) Regulation (Cap. 478AB) to provide for fees payable for the issue, renewal or replacement of a Certificate issued under L.N. 15 and L.N. 17, and for a copy of a written determination made by SA under section 7 of L.N. 15 and L.N. 17 relating to the applicable standards or conditions to be satisfied for the issue or renewal of Certificates; and
- (c) L.N. 20 is made by STH under sections 72, 73, 96 and 134 of Cap. 478 to amend the Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation (Cap. 478T) to require a Certificate issued under L.N. 15 or L.N. 17 to be kept available in its original form on board the ship on which the holder is serving.

Consultation

8. According to the LegCo Briefs, the Administration had consulted the Shipping Consultative Committee of the Marine Department on the above legislative proposals and members supported the proposals.

9. As advised by the Clerk to the Panel on Economic Development ("ED Panel"), the Administration consulted the Panel on 22 January 2018 and 26 November 2018 on the legislative proposals to incorporate into the local legislation the latest requirements of the Polar Code and the STCW Convention respectively. Members were generally supportive of the proposals. Concerning the implementation of the mandatory requirements of the Polar Code, issues on the number of Hong Kong-registered ships operating in polar waters, protection of marine environment and enforcement of the new requirements were discussed. Regarding the implementation of the latest seafarers' training requirements under the STCW Convention, issues on the availability of relevant training courses in Hong Kong as well as the frequency of training and assessment under the new requirements were discussed.

Commencement

10. L.N. 15 to L.N. 20 come into operation on 31 May 2019.

PART II SUBSIDIARY LEGISLATION MADE UNDER THE MERCHANT SHIPPING (PREVENTION AND CONTROL OF POLLUTION) ORDINANCE (CAP. 413)

**Merchant Shipping (Prevention of Air Pollution)
(Amendment) Regulation 2019 (L.N. 21)**

**Merchant Shipping (Prevention and Control of Pollution)
(Fees) (Amendment) Regulation 2019 (L.N. 22)**

L.N. 21

11. L.N. 21 is made by STH under section 3 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) to amend the Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413P) to give effect to the latest amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973 ("MARPOL")³ as adopted by IMO in relation to the prevention of air pollution from ships.

12. The major amendments in L.N. 21 are summarized below:

³ MARPOL (adopted by IMO in 1973) came into force in 1983 and has six annexes regulating the discharge of different pollutants. Annex VI (regulating the prevention of air pollution from ships) was adopted in 1997 to prohibit the emissions of ozone-depleting substances and regulate the emission of air pollutants such as sulphur oxides and nitrogen oxides from ships, as well as to introduce emission control areas in designated waters.

- (a) requiring ships of 5 000 gross tonnage or above (other than a non-Chapter 4 ship⁴) engaged in international voyage to collect and report fuel oil consumption data for the issue of a Fuel Oil Consumption Reporting Compliance Statement ("Compliance Statement") which must be kept on board the ship;
- (b) requiring ships engaged in international voyage to keep a record for a specified regulated diesel engine installed on it for regulating emission of nitrogen oxides from ships in certain emission control areas ("ECAs");⁵
- (c) contravention of the relevant requirements by the owner or the master of a ship is an offence under section 31 of Cap. 413 punishable by a fine at level 6 (i.e. \$100,000) on conviction on indictment and at level 3 (i.e. 10,000) on summary conviction; and
- (d) amendments to Part 4 of Cap. 413P to provide for the cancellation, duration and alteration of the Compliance Statements issued by the Director of Marine ("DM") and the new requirements for initial and additional surveys, etc.

13. It is noted that the Administration has, pursuant to section 3A of Cap. 413, adopted the direct reference approach in L.N. 21 by referring directly to MARPOL Annex VI, as revised or amended from time to time. According to paragraph 8 of the LegCo Brief (File Ref: THB (T) PML CR 8/10/90/1) issued by THB and the Marine Department in February 2019, this approach allows the local legislation to remain up-to-date as far as practicable.

L.N. 22

14. L.N. 22 is made by CE in Council under section 3(2A) of Cap. 413 to consequentially amend the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413L) to provide for the fees payable in respect of Compliance Statements issued by DM under L.N. 21.

⁴ Under section 2(1) of Cap. 413P, "non-Chapter 4 ship" means (a) a ship that is not propelled by mechanical means; or (b) a platform (including a floating production storage and offloading facility, a floating storage unit and a drilling rig).

⁵ ECAs are areas in which stricter controls are established to minimize airborne emissions from ships as defined by MARPOL Annex VI. Currently, the ECAs designated by IMO for controlling the emission of nitrogen oxides from ships are the North American Area and the United States Caribbean Sea Area.

Consultation

15. According to paragraph 12 of the LegCo Brief, the Administration had consulted the Hong Kong Fleet Operation Advisory Committee of the Marine Department in November 2017. Members supported the above legislative proposals.

16. As advised by the Clerk to the ED Panel, the Administration consulted the Panel on 26 November 2018 on the legislative proposals to incorporate into local legislation the latest requirements of MARPOL in relation to prevention of air pollution from ships. Members were generally supportive of the proposals.

Commencement

17. L.N. 21 and L.N. 22 come into operation on 31 May 2019.

PART III SUBSIDIARY LEGISLATION MADE UNDER THE DANGEROUS DRUGS ORDINANCE (CAP. 134)

Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2019

(L.N. 23)

18. L.N. 23 is made by CE under section 50(1) of the Dangerous Drugs Ordinance (Cap. 134) after consultation with the Executive Council. It adds the following five substances to Part I of the First Schedule to Cap. 134 so that these substances would be subject to control under Cap. 134:

- (a) Acryloylfentanyl;
- (b) Furanylfentanyl;
- (c) Methyl 2-{{[1-(5-fluoropentyl)-1H-indazole-3-carbonyl]amino}-3,3-dimethylbutanoate (commonly known as 5F-MDMB-PINACA);
- (d) Ocfentanil; and
- (e) Tetrahydrofuranylfentanyl (commonly known as THF-F).

19. The effect of L.N. 23 is that the newly added substances are subject to the control of a licensing scheme administered by the Department of Health under Cap. 134. Illicit trafficking or manufacturing of any of these substances

is subject to a maximum penalty of life imprisonment and a fine of \$5 million. Possession and consumption of the substances in contravention of Cap. 134 is also a criminal offence punishable by imprisonment for seven years and a fine of \$1 million.

20. According to paragraph 17 of the LegCo Brief (File Ref: NCR 2/1/8 S/F(20) Pt.2) issued by the Narcotics Division of the Security Bureau in February 2019, the proposal represents the Government's ongoing efforts to closely monitor emerging new synthetic drugs and ensure that they are brought under control in a timely manner.

21. According to paragraph 18 of the LegCo Brief, the Administration consulted relevant trades, including holders of licences issued under Cap. 134 and the Pharmacy and Poisons Ordinance (Cap. 138) on the legislative proposal and there was no adverse comment. The Administration also, as stated in paragraph 19 of the LegCo Brief, consulted the Action Committee Against Narcotics on 18 September 2018, which supported the proposed control.

22. As advised by the Clerk to the Panel on Security, the Panel was consulted on the proposed control at its meeting on 4 December 2018. While raising no objection to the proposal, some members enquired about the regulation of the five substances before the legislative amendments coming into force.

23. L.N. 23 comes into operation on 26 April 2019.

Concluding observations

24. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 15 to L.N. 22 and will report further, if necessary. No difficulties have been identified in the legal and drafting aspects of L.N. 23.

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