

L.N. 247 of 2018

**Merchant Shipping (Local Vessels) (General)
(Amendment) Regulation 2018**

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Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2018

(Made by the Secretary for Transport and Housing under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548))

1. Commencement

This Regulation comes into operation on 1 March 2019.

2. Merchant Shipping (Local Vessels) (General) Regulation amended

The Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) is amended as set out in sections 3, 4 and 5.

3. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

“*cargo transport unit* (貨物運輸單元) has the meaning given by section 1(1) of the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation (Cap. 413 sub. leg. H);

dangerous goods declaration (危險貨物聲明) means a certificate or declaration in writing, signed by the person making it, that the shipment offered for carriage is—

- (a) properly classified, packaged, marked, labelled or placarded, as appropriate, in accordance with the IMDG Code; and
- (b) in a proper condition for carriage by sea;

forwarder (代運人) has the meaning given by section 1(1) of the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation (Cap. 413 sub. leg. H);

IMDG Code (《海運危險貨物規則》) means the International Maritime Dangerous Goods Code adopted by the Maritime Safety Committee of the International Maritime Organization by resolution MSC.406(96) on 13 May 2016;

packaged form (有包裝) means the form of containment specified in the IMDG Code;

shipper (付運人), in relation to any cargo carried by a vessel or delivered to a vessel for carriage, means the person who, whether as principal or agent, consigns the cargo for carriage by the vessel;”.

4. Section 34 amended (stowage and securing of cargo)

(1) Section 34(9), English text, definition of *cargo unit*—

Repeal

“vessel;”

Substitute

“vessel.”.

(2) Section 34(9)—

Repeal the definition of *shipper*.

5. Sections 34A to 34J added

After section 34—

Add

“34A. Packing of dangerous goods in packaged form

- (1) No dangerous goods in packaged form may be delivered to a local vessel for carriage unless—
 - (a) they are packed in accordance with Part 4 of the IMDG Code; and
 - (b) the packaging of the goods has undergone the applicable performance test specified in Part 6 of the IMDG Code.
- (2) Dangerous goods in packaged form must not be taken on board a local vessel for carriage if the owner or coxswain of the vessel knows, or ought to know, that the goods are not packed in a way as to withstand the ordinary risk of carriage by sea.
- (3) If subsection (1) is contravened in relation to any dangerous goods, the shipper of the goods commits an offence.
- (4) If subsection (2) is contravened in relation to a local vessel, the owner and coxswain of the vessel each commits an offence.

34B. Marking and labelling of dangerous goods in packaged form

- (1) For the purposes of this section, dangerous goods in packaged form are properly identified if—
 - (a) the packages containing the goods are marked or labelled in accordance with Chapter 5.2 of the IMDG Code;
 - (b) the marks or labels on the packages are affixed in accordance with Chapter 5.2 of the IMDG Code; and

- (c) for dangerous goods contained in a cargo transport unit—the cargo transport unit bears on its exterior distinctive placards or other appropriate marking in accordance with Chapter 5.3 of the IMDG Code.
- (2) The shipper of any dangerous goods in packaged form must not deliver the goods to a local vessel for carriage unless the goods are properly identified.
- (3) The owner or coxswain of a local vessel must not accept for carriage on, or take on board for carriage on, the vessel any dangerous goods in packaged form unless the goods are properly identified.
- (4) A shipper who contravenes subsection (2) commits an offence.
- (5) An owner or coxswain of a local vessel who contravenes subsection (3) commits an offence.

34C. Dangerous goods declaration for dangerous goods in packaged form

- (1) The shipper of any dangerous goods in packaged form must—
 - (a) provide the owner or coxswain of the local vessel on which the goods are to be carried with a dangerous goods declaration; or
 - (b) if the shipper delivers the goods to the vessel or the owner’s agent through a forwarder—provide the forwarder with the declaration.
- (2) After receiving a dangerous goods declaration under subsection (1)(b), the forwarder must provide the owner or coxswain of the local vessel on which the dangerous goods are to be carried with the declaration.

- (3) The owner or coxswain of a local vessel must not accept for carriage on, or take on board for carriage on, the vessel any dangerous goods in packaged form unless the owner or coxswain has received a dangerous goods declaration in respect of the goods.
- (4) A dangerous goods declaration must contain—
 - (a) all information relating to the dangerous goods concerned required by Chapter 5.4 of the IMDG Code; and
 - (b) a statement required by Chapter 5.4 of the IMDG Code.
- (5) A shipper—
 - (a) who contravenes subsection (1); or
 - (b) who provides a dangerous goods declaration that the shipper knew, or ought to have known, to be false,
commits an offence.
- (6) A forwarder—
 - (a) who contravenes subsection (2); or
 - (b) who provides a dangerous goods declaration that the forwarder knew, or ought to have known, to be false,
commits an offence.
- (7) An owner or coxswain of a local vessel who contravenes subsection (3) commits an offence.

34D. Packing certificates for dangerous goods in packaged form

- (1) The person responsible for packing any dangerous goods in packaged form into a cargo transport unit for carriage on a local vessel must, after the packing,

provide the owner or coxswain of the vessel with a signed packing certificate in accordance with Chapter 5.4 of the IMDG Code.

- (2) A packing certificate may be combined with the dangerous goods declaration made in respect of the dangerous goods concerned.
- (3) The owner, owner's agent or coxswain of a local vessel must not accept for carriage on, or take on board for carriage on, the vessel a cargo transport unit containing dangerous goods unless—
 - (a) subsection (1) has been complied with in relation to the goods; or
 - (b) the owner, owner's agent or coxswain is otherwise satisfied that the goods have been packed in the cargo transport unit in accordance with Chapter 5.4 of the IMDG Code.
- (4) A person who contravenes subsection (1) or (3) commits an offence.

34E. Stowage of dangerous goods in packaged form etc.

- (1) Dangerous goods in packaged form taken on board a local vessel for carriage must be stowed, segregated and secured in accordance with Part 7 of the IMDG Code.
- (2) If—
 - (a) dangerous goods in packaged form taken on board a local vessel for carriage are contained in a cargo transport unit; and
 - (b) the cargo transport unit was loaded after the goods left the premises or control of the shipper,

the person responsible for the loading must ensure that the goods are stowed, segregated and secured in the cargo transport unit in accordance with Part 7 of the IMDG Code.

- (3) If subsection (1) is contravened in relation to a local vessel, the owner and coxswain of the vessel each commits an offence.
- (4) A person who fails to comply with subsection (2) commits an offence.

34F. Special list, manifest or stowage plan for dangerous goods in packaged form

- (1) The coxswain of a local vessel carrying dangerous goods in packaged form must ensure that there are on board the vessel—
 - (a) a special list, manifest or stowage plan setting out the details that are obtained from the shipping documents submitted by the shipper of the goods required by Chapters 5.4 and 5.5 of the IMDG Code; and
 - (b) additional special documents required by Chapter 5.4 of the IMDG Code for carrying dangerous goods in packaged form on the vessel.
- (2) A copy of the special list, manifest or stowage plan referred to in subsection (1)(a) must be submitted to the Director before the vessel departs from Hong Kong.

- (3) The special list, manifest or stowage plan and additional special documents required under subsection (1) must be kept available for reference or inspection on board the vessel until the dangerous goods concerned have been discharged from the vessel.
- (4) A coxswain of a local vessel who contravenes subsection (1) commits an offence.
- (5) If subsection (2) is contravened in relation to a local vessel, the owner and coxswain of the vessel each commits an offence.
- (6) If subsection (3) is contravened in relation to a local vessel, the coxswain of the vessel commits an offence.

34G. Carriage of explosives

- (1) Explosives that the owner or coxswain of a local vessel knows or ought to know present a serious risk when carried on the vessel must not be taken on board the vessel for carriage unless the explosives are stowed and segregated in accordance with the IMDG Code.
- (2) If subsection (1) is contravened in relation to a local vessel, the owner and coxswain of the vessel each commits an offence.
- (3) In this section—

explosives (爆炸品) means the articles and substances contained in Class 1 of the IMDG Code.

34H. Penalties for offences under sections 34A, 34B, 34C, 34D, 34E, 34F and 34G

A person who commits an offence under section 34A, 34B, 34C, 34D, 34E, 34F or 34G is liable—

- (a) on summary conviction—to a fine at level 3; or
- (b) on conviction on indictment—to a fine at level 3 and, in the case of an individual, to imprisonment for 1 year.

34I. Defences for offences under sections 34A, 34B, 34C, 34D, 34E, 34F and 34G

- (1) In any proceedings for an offence under section 34A, 34B, 34C, 34D, 34E, 34F or 34G brought in relation to any dangerous goods or explosives, it is a defence for the defendant to show that the defendant took all reasonable steps to ensure compliance with the section.
- (2) In any proceedings for an offence under section 34B, 34C, 34D, 34E or 34F brought in relation to any dangerous goods, it is a defence for the defendant to show that the defendant—
 - (a) neither knew nor ought to have known; or
 - (b) had no reasonable grounds to suspect, that the goods were dangerous goods.

34J. Offences due to fault of another person

- (1) If the commission by a person (*Person A*) of an offence under section 34A, 34B, 34C, 34D, 34E, 34F or 34G is due to the act or default of another person (*Person B*), then Person B also commits the offence.
- (2) Person B may be charged with and convicted of an offence under this section whether or not proceedings are taken against Person A.”

Frank CHAN Fan
Secretary for Transport and
Housing

4 December 2018

Explanatory Note

This Regulation amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) to provide that certain requirements of Annex III to the International Convention for the Prevention of Pollution from Ships, 1973 in respect of carriage of dangerous goods in packaged form and explosives apply to local vessels, and provide for offences.

2. Those requirements include the requirements on—
- (a) documentation and plans for dangerous goods in packaged form;
 - (b) packing of dangerous goods in packaged form;
 - (c) marking and labelling of dangerous goods in packaged form;
 - (d) stowage of dangerous goods in packaged form etc.; and
 - (e) carriage of explosives.