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Merchant Shipping (Safety) (Ships Operating in Polar Waters) Regulation

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# Merchant Shipping (Safety) (Ships Operating in Polar Waters) Regulation

(Made by the Secretary for Transport and Housing under sections 107 and 112B of the Merchant Shipping (Safety) Ordinance (Cap. 369))

## Part 1

### Preliminary

#### 1. Commencement

This Regulation comes into operation on 31 May 2019.

#### 2. Interpretation

In this Regulation—

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

***cargo ship*** (貨船) means a ship other than a passenger ship;

***Cargo Ship Safety Certificate*** (貨船安全證明書) means a certificate issued under section 21A of the Ordinance;

***Cargo Ship Safety Construction Certificate*** (貨船構造安全證明書), except in section 16(2)(b), means a certificate issued under section 21(1) of the Ordinance;

***Cargo Ship Safety Equipment Certificate*** (貨船設備安全證明書) means a certificate issued under section 17(1) of the Ordinance;

***Cargo Ship Safety Radio Certificate*** (貨船無線電安全證明書) means a certificate issued under section 18(1) of the Ordinance;

**Convention** (《公約》) means the International Convention for the Safety of Life at Sea signed in London on 1 November 1974, or any convention that replaces that Convention or any successor convention, as amended from time to time and as applicable to Hong Kong;

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

**Government surveyor** (政府驗船師) means a Government surveyor appointed under section 5 of the Ordinance;

**Hong Kong ship** (香港船舶) means a ship registered in Hong Kong;

**owner** (船東), in relation to a ship, means—

- (a) the owner of the ship; or
- (b) a person who—
  - (i) has assumed responsibility for the operation of the ship from the owner; and
  - (ii) on assuming the responsibility, has agreed to take over all the duties and responsibilities imposed in respect of the ship by the Convention;

**Passenger Ship Safety Certificate** (客船安全證明書), except in section 16(2)(a), means a certificate issued under section 15(1) of the Ordinance;

**Polar Code** (《極地規則》) means the International Code for Ships Operating in Polar Waters, adopted by International Maritime Organization Resolutions MSC.385(94) and MEPC.264(68), as from time to time revised or amended by any revision or amendment to any provision of such Code that applies to Hong Kong;

**Polar Ship Certificate** (極地船舶證書) means—

- (a) a certificate issued under section 12, 13 or 14; or
- (b) a certificate issued at a request made under section 4(1) and containing a statement that the certificate is so issued;

***polar waters*** (極地水域) has the meaning given by Regulation 1 of Chapter XIV of the Annex to the Convention.

### 3. Application

- (1) Subject to subsection (2) and section 5, this Regulation applies to a Hong Kong ship, wherever it is.
- (2) This Regulation does not apply to—
  - (a) a cargo ship of less than 500 gross tonnage determined in accordance with the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C);
  - (b) a ship not propelled by mechanical means;
  - (c) a wooden ship of primitive build;
  - (d) a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;
  - (e) a vessel (other than a passenger ship) that—
    - (i) is primarily used for sport or recreation; and
    - (ii) is not engaged in trade; or
  - (f) a ship owned or operated by the Government and engaged only on governmental non-commercial service.

### 4. Director may request Convention countries to issue Polar Ship Certificates etc. in respect of Hong Kong ships

- (1) The Director may request the government of a Convention country—

- (a) to cause a Hong Kong ship within the waters of that country to be surveyed; and
  - (b) to—
    - (i) issue a Polar Ship Certificate in accordance with Chapter 1 of Part I-A of the Polar Code in respect of the ship, or authorize the issue of such a Certificate in respect of the ship; or
    - (ii) make, in accordance with Chapter I of the Annex to the Convention, an endorsement on a Polar Ship Certificate issued in respect of the ship, or authorize such an endorsement.
- (2) For the purposes of section 18(3) or 20(d)(i), (ii) or (iii), an endorsement made or authorized at a request made under subsection (1) has effect as if it were an endorsement made under section 18(2), 31(2), 32(2) or 33(3).

**5. Director may at Convention countries' requests issue certificates etc. in respect of non-Hong Kong ships**

- (1) This section applies in relation to a ship that—
  - (a) is not a Hong Kong ship;
  - (b) is registered in a Convention country; and
  - (c) is within the waters of Hong Kong.
- (2) The Director may, at the request of the government of the country in which a ship is registered—
  - (a) cause the ship to be surveyed; and

- (b) if the Director is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Part I-A of the Polar Code—
    - (i) issue a certificate in accordance with Chapter 1 of Part I-A of the Polar Code in respect of the ship, or authorize the issue of such a certificate in respect of the ship; or
    - (ii) make, in accordance with Chapter I of the Annex to the Convention, an endorsement on a certificate issued in accordance with Chapter 1 of Part I-A of the Polar Code in respect of the ship, or authorize such an endorsement.
-

## **Part 2**

### **Ships Operating in Polar Waters: Duties**

#### **6. Duty to have voyage plans**

- (1) The master of a ship must have in place a voyage plan for each voyage in polar waters in compliance with Chapter 11 of Part I-A of the Polar Code when the ship enters polar waters.
- (2) A master who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.

#### **7. Duty to comply with certain requirements in Polar Code**

- (1) A ship must comply with the applicable requirements specified in Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Part I-A of the Polar Code when it is operating in polar waters.
- (2) If subsection (1) is contravened in respect of a ship, the owner and the master of the ship each commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.

#### **8. Duty to have Polar Ship Certificates**

- (1) A ship must have a Polar Ship Certificate in force in respect of it when it is operating in polar waters.
- (2) If subsection (1) is contravened in respect of a ship, the owner and the master of the ship each commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.

**9. Duty to keep Polar Ship Certificates on board**

- (1) The owner and the master of a ship must ensure that the Polar Ship Certificate in force in respect of the ship—
  - (a) is kept on board the ship; and
  - (b) is available for inspection by a Government surveyor at all reasonable times.
- (2) If subsection (1) is contravened in respect of a ship, the owner and the master of the ship each commits an offence and is liable on conviction to a fine at level 2.

**10. Duty to maintain conditions of ships**

- (1) The owner and the master of a ship in respect of which a Polar Ship Certificate is in force must maintain the condition of the structure, equipment, fittings, machinery, arrangements and materials of the ship in compliance with the applicable requirements specified in Part I-A of the Polar Code.
- (2) No change may be made to the structure, equipment, fittings, machinery, arrangements or materials of a ship in respect of which a Polar Ship Certificate is in force, except with the approval of the Director.
- (3) Subsection (2) does not prohibit a replacement of a part by another part of a type approved by the Director.
- (4) If subsection (1) or (2) is contravened in respect of a ship, the owner and the master of the ship each commits an offence and is liable on conviction to a fine at level 3.

**11. Duty to report certain accidents or defects**

- (1) If a reportable incident happens to a ship, the owner or the master of the ship must, as soon as practicable, report the incident to—

- (a) the Director; and
  - (b) if the ship is in a port of a Convention country—the government of the country.
- (2) After receiving a report made under subsection (1)(a), the Director may require the ship to be subject to an additional survey if the Director considers the survey is necessary.
- (3) A ship that is required to be subject to an additional survey must not operate in polar waters until the Director is satisfied by the result of the survey that the structure, equipment, fittings, machinery, arrangements and materials of the ship comply with the applicable requirements specified in Part I-A of the Polar Code.
- (4) If subsection (1) or (3) is contravened in respect of a ship, the owner and the master of the ship each commits an offence and is liable on conviction to a fine at level 3.
- (5) In this section—

***reportable incident*** (須報告事故), in relation to a ship, means the occurrence of an accident that affects the following matter, or the discovery of a defect in the ship that affects the following matter—

- (a) the safety of the ship in polar waters;
  - (b) the safety of the persons on board when the ship is operating in polar waters; or
  - (c) the efficiency or completeness of the structure, equipment, fittings, machinery, arrangements or materials of the ship for operation in polar waters.
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## **Part 3**

### **Polar Ship Certificates**

#### **Division 1—Issue and Form of Polar Ship Certificates**

##### **12. Issue of Polar Ship Certificates—general**

- (1) This section applies to a ship—
  - (a) to which Division 1 or 2 of Part 4 applies; and
  - (b) to which section 13 or 14 does not apply.
- (2) The owner of a ship may apply to the Director for a Polar Ship Certificate in respect of the ship.
- (3) The application must be accompanied by the prescribed fee.
- (4) The Director may issue a Polar Ship Certificate in respect of a ship if—
  - (a) satisfied that—
    - (i) if a Polar Ship Certificate has never been issued in respect of the ship—an initial survey of the ship has been carried out under—
      - (A) for a ship to which Division 1 of Part 4 applies—section 25; or
      - (B) for a ship to which Division 2 of Part 4 applies—section 29; or
    - (ii) if a Polar Ship Certificate has been issued in respect of the ship—a renewal survey of the ship has been carried out under—
      - (A) for a ship to which Division 1 of Part 4 applies—section 26; or

- (B) for a ship to which Division 2 of Part 4 applies—section 30; and
- (b) satisfied on the basis of a declaration of survey provided under—
  - (i) for a ship to which Division 1 of Part 4 applies and in respect of which a Polar Ship Certificate has never been issued—section 25(2);
  - (ii) for a ship to which Division 1 of Part 4 applies and in respect of which a Polar Ship Certificate has been issued—section 26(3);
  - (iii) for a ship to which Division 2 of Part 4 applies and in respect of which a Polar Ship Certificate has never been issued—section 29(2); or
  - (iv) for a ship to which Division 2 of Part 4 applies and in respect of which a Polar Ship Certificate has been issued—section 30(3),

that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Part I-A of the Polar Code.

### **13. Issue of Polar Ship Certificates—Category C ships**

- (1) This section applies to a cargo ship if—
  - (a) it is a Category C ship within the meaning of section 2 of the Introduction of the Polar Code;
  - (b) an application for a Polar Ship Certificate has never been made to the Director in respect of it; and
  - (c) it is a ship to which section 14 does not apply.
- (2) The owner of a ship may apply to the Director for a Polar Ship Certificate in respect of the ship.

- (3) The application must be accompanied by the prescribed fee.
- (4) The Director may issue a Polar Ship Certificate in respect of a ship if satisfied—
  - (a) that an assessment of the ship and its equipment has been undertaken by its owner in accordance with paragraph 1.5 of Chapter 1 of Part I-A of the Polar Code;
  - (b) that the result of the assessment is that the ship requires no additional equipment or structural modification to comply with the Polar Code; and
  - (c) on the basis of documented verification that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Part I-A of the Polar Code.

**14. Issue of Polar Ship Certificates—ships transferred from other Convention countries’ registries**

- (1) This section applies to a ship if—
  - (a) the ship ceased to be registered in a Convention country (*previous country*) and is registered in Hong Kong instead; and
  - (b) no survey of the ship has been carried out for the issue of a Polar Ship Certificate in respect of the ship.
- (2) The owner of a ship may apply to the Director for a Polar Ship Certificate in respect of the ship.
- (3) The application must be accompanied by the prescribed fee.

- (4) The Director may issue a Polar Ship Certificate in respect of a ship if satisfied that—
  - (a) a certificate (*non-local certificate*) was issued in respect of the ship in accordance with paragraph 1.3.2 or 1.3.3 of Chapter 1 of Part I-A of the Polar Code by, or under the authority of, the government of the previous country;
  - (b) the non-local certificate would, but for the change in the place of registration of the ship, have remained valid;
  - (c) since the day on which the non-local certificate was issued, no change (other than the replacement of a part by another part of a type approved by the government of the previous country or the Director) has been made to the structure, equipment, fittings, machinery, arrangements or materials of the ship, except with the approval of that government or the Director; and
  - (d) the condition of the structure, equipment, fittings, machinery, arrangements and materials of the ship has been maintained in compliance with the applicable requirements specified in Part I-A of the Polar Code.
- (5) A Polar Ship Certificate issued in respect of a ship under this section is valid until the expiry of the date specified by the Director in the Certificate, which must be a date not later than the expiry date of the non-local certificate of the ship.

## 15. Form of Polar Ship Certificates

A Polar Ship Certificate must be in the form specified in Appendix 1 to the Polar Code.

## **Division 2—Duration of Polar Ship Certificates**

### **16. Duration of Polar Ship Certificates issued after initial surveys or verifications**

**(1) Subject to this Division and Division 3—**

- (a)** a Polar Ship Certificate issued in respect of a passenger ship under section 12 as a result of an initial survey of the ship is valid until the expiry of the date specified by the Director in the Certificate, which must be a date within 1 year beginning on the date of completion of the initial survey;
- (b)** a Polar Ship Certificate issued in respect of a cargo ship under section 12 as a result of an initial survey of the ship is valid until the expiry of the date specified by the Director in the Certificate, which must be a date within 5 years beginning on the date of completion of the initial survey; and
- (c)** a Polar Ship Certificate issued in respect of a cargo ship under section 13 is valid until the expiry of the date specified by the Director in the Certificate, which must be a date within 5 years beginning on the date of completion of the verification mentioned in section 13(4)(c) of the ship.

**(2) For the purposes of this Division—**

- (a)** a Polar Ship Certificate issued in respect of a passenger ship is regarded as a Passenger Ship Safety Certificate mentioned in Regulation 14 of Chapter I of the Annex to the Convention; and
- (b)** a Polar Ship Certificate issued in respect of a cargo ship is regarded as a Cargo Ship Safety Construction Certificate mentioned in Regulation 14 of Chapter I of the Annex to the Convention.

**17. Duration of Polar Ship Certificates issued after renewal surveys**

A Polar Ship Certificate issued in respect of a ship under section 12 as a result of a renewal survey of the ship is valid until the expiry of the date specified by the Director in the Certificate in accordance with Regulation 14 of Chapter I of the Annex to the Convention.

**18. Duration of Polar Ship Certificates after early completion of certain surveys of cargo ships**

- (1) This section applies if—
  - (a) an intermediate survey of a cargo ship is completed before the period within which the survey is required to be carried out under section 31;
  - (b) a periodical survey of a cargo ship is completed before the period within which the survey is required to be carried out under section 32; or
  - (c) an annual survey of a cargo ship is completed before the period within which the survey is required to be carried out under section 33.
- (2) After a survey of a cargo ship is completed as described in subsection (1), the existing Polar Ship Certificate issued in respect of the ship must be endorsed to show a date described in the endorsement as the “new anniversary date” (*new anniversary date*), which must be a date within 3 months from the date of completion of the survey.
- (3) The period within which an intermediate survey, periodical survey or annual survey of the ship must be carried out under section 31, 32 or 33 after the endorsement is to be determined by reference to the new anniversary date.

- (4) The validity period of the existing Polar Ship Certificate issued in respect of the ship may be varied by the Director in accordance with Regulation 14 of Chapter I of the Annex to the Convention.

## 19. **Extend duration of Polar Ship Certificates**

The Director may extend the validity period of an existing Polar Ship Certificate (*existing Certificate*) issued in respect of a ship in accordance with Regulation 14 of Chapter I of the Annex to the Convention if—

- (a) the ship—
  - (i) is a passenger ship and the validity period is shorter than 1 year; or
  - (ii) is a cargo ship and the validity period is shorter than 5 years;
- (b) after a renewal survey of the ship has been completed, a new Polar Ship Certificate cannot be issued or placed on board the ship before the expiry of the existing Certificate;
- (c) the ship is not in the port in which it is to be surveyed when the existing Certificate expires; or
- (d) the ship is engaged in short voyages and the validity period has not been extended in the situation specified in paragraph (a), (b) or (c).

## **Division 3—Cessation and Cancellation of Polar Ship Certificates**

### 20. **Polar Ship Certificates cease to be valid**

A Polar Ship Certificate of a ship ceases to be valid if—

- (a) a survey of the ship is not carried out in compliance with—
  - (i) for a passenger ship—Division 1 of Part 4; or
  - (ii) for a cargo ship—Division 2 of Part 4,before the expiry of the period specified for the survey in that Division;
- (b) the following certificate of the ship ceases to be valid—
  - (i) for a passenger ship—a Passenger Ship Safety Certificate; or
  - (ii) for a cargo ship—a Cargo Ship Safety Certificate, a Cargo Ship Safety Construction Certificate, a Cargo Ship Safety Equipment Certificate or a Cargo Ship Safety Radio Certificate;
- (c) for a passenger ship—no declaration of survey is provided to the Director under section 27(4) after an additional survey of the ship is carried out;
- (d) for a cargo ship—
  - (i) no endorsement is made under section 31(2) on the Polar Ship Certificate after an intermediate survey of the ship is carried out;
  - (ii) no endorsement is made under section 32(2) on the Polar Ship Certificate after a periodical survey of the ship is carried out;
  - (iii) no endorsement is made under section 33(3) on the Polar Ship Certificate after an annual survey of the ship is carried out; or

- (iv) no declaration of survey is provided to the Director under section 34(4) after an additional survey of the ship is carried out; or
- (e) the ship ceases to be registered in Hong Kong.

## **21. Cancellation of Polar Ship Certificates**

- (1) The Director may, by written notice to the owner and the master of a ship, cancel a Polar Ship Certificate of the ship if the Director has reasonable grounds to believe that the Certificate was issued, or any endorsement on the Certificate was made, on the basis of false or erroneous information.
- (2) The Director must give reasons for the cancellation in the notice.
- (3) On receiving the notice, the Certificate must be delivered to the Director by the owner or the master of the ship.

## **Division 4—Alteration and Certified True Copies of Polar Ship Certificates**

### **22. Alteration of Polar Ship Certificates**

- (1) The Director may, at the request of the owner of a ship in respect of which a Polar Ship Certificate has been issued by the Director, 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) No alteration may be made unless the prescribed fee is paid to the Director.

**23. Certified true copies of Polar Ship Certificates**

- (1) The Director may, on application by the owner of a ship in respect of which a Polar Ship Certificate has been issued by the Director, issue a certified true copy of the Certificate.
  - (2) The application must be accompanied by the prescribed fee.
-

## **Part 4**

### **Surveys**

#### **Division 1—Surveys for Passenger Ships**

##### **24. Application of Division 1**

This Division applies to a passenger ship.

##### **25. Initial surveys for passenger ships**

- (1) An initial survey of a ship is to be carried out by a Government surveyor—
  - (a) before the ship is put into service; or
  - (b) before a Polar Ship Certificate is issued for the first time in respect of the ship.
- (2) If, after having carried out an initial survey of the ship, the Government surveyor is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Part I-A of the Polar Code, the surveyor must make a declaration of survey to that effect and provide the Director with the declaration.

##### **26. Renewal surveys for passenger ships**

- (1) Subject to subsection (2), a renewal survey of a ship is to be carried out by a Government surveyor within 1 year—
  - (a) from the date of completion of the initial survey of the ship; or

- (b) if a renewal survey of the ship has been carried out—from the date of completion of the preceding renewal survey.
- (2) If the validity period of a Polar Ship Certificate issued in respect of the ship has been extended under section 19(c) or (d), the period of 1 year mentioned in subsection (1) is to be extended by the period for which the Certificate is extended.
- (3) If, after having carried out a renewal survey of the ship, the Government surveyor is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Part I-A of the Polar Code, the surveyor must make a declaration of survey to that effect and provide the Director with the declaration.

## 27. Additional surveys for passenger ships

- (1) The Director may, by written notice to the owner and the master of a ship, require an additional survey (whether general or partial) of the ship to be carried out by a Government surveyor within a reasonable period specified in the notice.
- (2) The Director may exercise the power under subsection (1) if—
  - (a) after a Polar Ship Certificate has been issued in respect of the ship, significant alterations, replacements or repairs have been made to the structure, equipment, fittings, machinery, arrangements or materials of the ship covered by the survey leading to the issue of the Certificate (*relevant survey*);

- (b) the Director has reasonable grounds to believe that the condition of the structure, equipment, fittings, machinery, arrangements or materials of the ship covered by the relevant survey is not maintained in compliance with the applicable requirements specified in Part I-A of the Polar Code; or
  - (c) the Director considers that an additional survey of the ship is necessary under section 11(2).
- (3) On receiving a notice under subsection (1), the owner and the master of the ship must comply with the notice.
- (4) If, after having carried out an additional survey of the ship, the Government surveyor is satisfied that—
  - (a) the structure, equipment, fittings, machinery, arrangements and materials of the ship comply with the applicable requirements specified in Part I-A of the Polar Code; and
  - (b) if the additional survey is required to be carried out on the ground described in subsection (2)(a)—
    - (i) the alterations, replacements or repairs have been effectively made; and
    - (ii) the materials used in, and the workmanship of, the alterations, replacements or repairs are in all respects satisfactory,

the surveyor must make a declaration of survey to that effect and provide the Director with the declaration.

## **Division 2—Surveys for Cargo Ships**

### **28. Application of Division 2**

This Division applies to a cargo ship.

**29. Initial surveys for cargo ships**

- (1) An initial survey of a ship is to be carried out by a Government surveyor—
  - (a) before the ship is put into service; or
  - (b) before a Polar Ship Certificate is issued under section 12 for the first time in respect of the ship.
- (2) If, after having carried out an initial survey of the ship, the Government surveyor is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Part I-A of the Polar Code, the surveyor must make a declaration of survey to that effect and provide the Director with the declaration.

**30. Renewal surveys for cargo ships**

- (1) Subject to subsection (2), a renewal survey of a ship is to be carried out by a Government surveyor within 5 years—
  - (a) from the date of completion of the initial survey of the ship;
  - (b) if the Polar Ship Certificate in force in respect of the ship was issued under section 13—from the date of completion of the verification mentioned in section 13(4)(c) of the ship; or
  - (c) if a renewal survey of the ship has been carried out—from the date of completion of the preceding renewal survey.

- (2) If the validity period of a Polar Ship Certificate issued in respect of the ship has been extended under section 19(c) or (d), the period of 5 years mentioned in subsection (1) is to be extended by the period for which the Certificate is extended.
- (3) If, after having carried out a renewal survey of the ship, the Government surveyor is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Part I-A of the Polar Code, the surveyor must make a declaration of survey to that effect and provide the Director with the declaration.

### **31. Intermediate surveys for cargo ships**

- (1) An intermediate survey of a ship in respect of which a Polar Ship Certificate is in force, and in respect of which a Cargo Ship Safety Certificate or a Cargo Ship Safety Construction Certificate is also in force, is to be carried out by a Government surveyor—
  - (a) within the period commencing 3 months before, and ending 3 months after, the second anniversary date of the Polar Ship Certificate; or
  - (b) within the period commencing 3 months before, and ending 3 months after, the third anniversary date of the Polar Ship Certificate.
- (2) If, after having carried out an intermediate survey of the ship, the Government surveyor is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Chapters 1, 2, 4, 5, 6, 11 and

12 of Part I-A of the Polar Code, the surveyor must make an endorsement to that effect on the Polar Ship Certificate.

### **32. Periodical surveys for cargo ships**

- (1) A periodical survey of a ship in respect of which a Polar Ship Certificate is in force, and in respect of which a Cargo Ship Safety Certificate, a Cargo Ship Safety Equipment Certificate or a Cargo Ship Safety Radio Certificate is also in force, is to be carried out by a Government surveyor—
  - (a) within the period commencing 3 months before, and ending 3 months after, the second anniversary date of the Polar Ship Certificate; or
  - (b) within the period commencing 3 months before, and ending 3 months after, the third anniversary date of the Polar Ship Certificate.
- (2) If, after having carried out a periodical survey of the ship, the Government surveyor is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship comply with the applicable requirements specified in Chapters 1, 2, 4, 7, 8, 9, 10, 11 and 12 of Part I-A of the Polar Code, the surveyor must make an endorsement to that effect on the Polar Ship Certificate.

### **33. Annual surveys for cargo ships**

- (1) Subject to subsection (2), an annual survey of a ship is to be carried out by a Government surveyor within the period commencing 3 months before, and ending 3 months after, each anniversary date of the Polar Ship Certificate issued in respect of the ship.

- (2) If an intermediate survey or periodical survey of the ship has been carried out under section 31 or 32 by reference to an anniversary date, the annual survey of the ship by reference to the anniversary date for the relevant year is not required to be carried out.
- (3) If, after having carried out an annual survey of the ship, the Government surveyor is satisfied that the structure, equipment, fittings, machinery, arrangements and materials of, and the documented procedures in respect of, the ship remain satisfactory for the service for which the ship is intended, the surveyor must make an endorsement to that effect on the Polar Ship Certificate.

#### **34. Additional surveys for cargo ships**

- (1) The Director may, by written notice to the owner and the master of a ship, require an additional survey (whether general or partial) of the ship to be carried out by a Government surveyor within a reasonable period specified in the notice.
- (2) The Director may exercise the power under subsection (1) if—
  - (a) after a Polar Ship Certificate has been issued or endorsed in respect of the ship, significant alterations, replacements or repairs have been made to the structure, equipment, fittings, machinery, arrangements or materials of the ship covered by the survey leading to the issue or endorsement of the Certificate (*relevant survey*);

- (b) the Director has reasonable grounds to believe that the condition of the structure, equipment, fittings, machinery, arrangements or materials of the ship covered by the relevant survey is not maintained in compliance with the applicable requirements specified in Part I-A of the Polar Code; or
  - (c) the Director considers that an additional survey of the ship is necessary under section 11(2).
- (3) On receiving a notice under subsection (1), the owner and the master of the ship must comply with the notice.
- (4) If, after having carried out an additional survey of the ship, the Government surveyor is satisfied that—
  - (a) the structure, equipment, fittings, machinery, arrangements and materials of the ship comply with the applicable requirements specified in Part I-A of the Polar Code; and
  - (b) if the additional survey is required to be carried out on the ground described in subsection (2)(a)—
    - (i) the alterations, replacements or repairs have been effectively made; and
    - (ii) the materials used in, and the workmanship of, the alterations, replacements or repairs are in all respects satisfactory,

the surveyor must make a declaration of survey to that effect and provide the Director with the declaration.

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## Part 5

### Miscellaneous Provisions

#### 35. Defence

It is a defence for a person charged with an offence under section 6(2), 7(2), 8(2), 9(2), 10(4) or 11(4) to show that the person had taken all reasonable steps to prevent the commission of the offence.

#### 36. Transitional provisions

- (1) Part 2 does not apply in relation to a specified passenger ship until the expiry of the last day of the period within which the next survey of the ship must be completed under section 9(1) of the Ordinance, which must be after 31 May 2019.
- (2) Part 2 does not apply in relation to a specified cargo ship until the expiry of the earliest of the following dates—
  - (a) 31 March 2021;
  - (b) the last day of the period within which the next renewal survey of the ship must be completed under the renewal survey provision, which must be after 31 May 2019;
  - (c) the last day of the period within which the next intermediate survey of the ship must be completed under the intermediate survey provision, which must be after 31 May 2019.
- (3) In this section—

**constructed** (建造), in relation to a ship, means the stage at which—

  - (a) the keel of the ship is laid; or

- (b) construction identifiable with the ship begins and assembly of the ship has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is less;

***intermediate survey provision*** (中期檢驗條文) means—

- (a) for a ship constructed before 1 September 1984—regulation 74C of the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) Regulations (Cap. 369 sub. leg. R);
- (b) for a ship constructed on or after 1 September 1984 but before 1 July 2002—regulation 58 of the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg. S);  
or
- (c) for a ship constructed on or after 1 July 2002—section 70 of the Merchant Shipping (Safety) (Construction and Survey) Regulation (Cap. 369 sub. leg. BD);

***renewal survey provision*** (換證檢驗條文) means—

- (a) for a ship constructed before 1 September 1984—regulation 74B of the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) Regulations (Cap. 369 sub. leg. R);
- (b) for a ship constructed on or after 1 September 1984 but before 1 July 2002—regulation 57 of the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg. S);  
or

- (c) for a ship constructed on or after 1 July 2002—  
section 69 of the Merchant Shipping (Safety)  
(Construction and Survey) Regulation (Cap. 369 sub.  
leg. BD);

***specified cargo ship*** (指明貨船) means a cargo ship—

- (a) that operates in polar waters;
- (b) that is constructed before 1 January 2017; and
- (c) in respect of which a Cargo Ship Safety Certificate  
or a Cargo Ship Safety Construction Certificate is in  
force on 30 May 2019;

***specified passenger ship*** (指明客船) means a passenger ship—

- (a) that operates in polar waters;
- (b) that is constructed before 1 January 2017; and
- (c) in respect of which a Passenger Ship Safety  
Certificate is in force on 30 May 2019.

Frank CHAN Fan  
Secretary for Transport and  
Housing

26 March 2019

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### Explanatory Note

This Regulation implements Part I-A of the International Code for Ships Operating in Polar Waters (***Polar Code***), which is adopted by International Maritime Organization Resolutions MSC.385(94) and MEPC.264(68), and made mandatory under Chapter XIV of the Annex to the International Convention for the Safety of Life at Sea (***Convention***). A Hong Kong ship operating in polar waters must comply with Part I-A of the Polar Code and have a Polar Ship Certificate.

2. Part 1 provides for the commencement, interpretation of certain terms and application of this Regulation. That Part also provides that the Director of Marine may request the government of a country that is a party to the Convention to survey a Hong Kong ship within the waters of that country and to issue a Polar Ship Certificate in respect of the ship, to endorse a Polar Ship Certificate of the ship or to authorize such an issuance or endorsement.
3. Part 2 provides for the duties required in respect of a Hong Kong ship operating in polar waters.
4. Part 3 governs the issue, form, duration, cessation, cancellation and alteration of, and issue of certified true copies of, a Polar Ship Certificate.
5. Part 4 sets out the various types of surveys that are required to be carried out for a passenger ship and a cargo ship.
6. The defence and transitional provisions are set out in Part 5.