

LEGISLATIVE COUNCIL BRIEF

Shipping and Port Control Ordinance
(Cap. 313)

Merchant Shipping (Local Vessels) Ordinance
(Cap. 548)

**SHIPPING AND PORT CONTROL (FERRY TERMINALS)
(AMENDMENT) REGULATION 2020**

**MERCHANT SHIPPING (LOCAL VESSELS) (FERRY TERMINALS)
(AMENDMENT) REGULATION 2020**

**MERCHANT SHIPPING (LOCAL VESSELS) (FEES)
(AMENDMENT) REGULATION 2020**

INTRODUCTION

At the meeting of the Executive Council on 7 April 2020, the Council ADVISED and the Chief Executive (“CE”) ORDERED that the Shipping and Port Control (Ferry Terminals) (Amendment) Regulation 2020 at Annex A should be made under section 80 of the Shipping and Port Control Ordinance (Cap. 313) to abolish the embarkation fee for cross-boundary ferry passengers (“embarkation fee”). The Secretary for Transport and Housing (“STH”) and the Secretary for Financial Services and the Treasury (“SFST”) have also made the Merchant Shipping (Local Vessels) (Ferry Terminals) (Amendment) Regulation 2020 and the Merchant Shipping (Local Vessels) (Fees) (Amendment) Regulation 2020 (at Annex B and Annex C) under section 89 and section 88 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) respectively for the same purpose.

JUSTIFICATIONS

Existing arrangement on embarkation fee

2. There are three cross-boundary ferry terminuses owned by the Government, with two being operated by the Government (i.e. Hong Kong-Macau Ferry Terminal (“MFT”) and China Ferry Terminal (“CFT”))

and one by a private operator (i.e. Tuen Mun Ferry Terminal (“TMFT”)). MFT and CFT provide a total of 13 routes of cross-boundary ferry services connecting Hong Kong and Macau Outer Harbour Ferry Terminal and Taipa Ferry Terminal in Macao, as well as 11 Mainland cities¹. TMFT provides cross-boundary ferry services connecting Hong Kong and the above two ferry terminuses in Macao².

3. While there are currently seven land-based cross-boundary control points³, cross-boundary ferry services are an integral part of cross-boundary transport services. This is especially the case, historically, for the cross-boundary ferry services between Hong Kong and Macao since the Hong Kong-Zhuhai-Macao Bridge (“HZMB”), being the first cross-boundary land link connecting Hong Kong and Macao, only came into operation in late October 2018.

4. Under the law, the owner of a cross-boundary ferry vessel plying regularly from any of the three ferry terminuses mentioned in paragraph 2 above for the conveyance of passengers shall pay the Government a prescribed embarkation fee in respect of each passenger embarking on the cross-boundary ferry vessel at the terminus. The purpose of charging the embarkation fee is to recover the relevant cost to the Government of providing the ferry terminus services. While two levels of embarkation fee are prescribed under the relevant legislation according to the amount of fare payable by a passenger for a single journey, currently there is only one level of embarkation fee payable by the existing cross-boundary ferry operators, which is \$11 per passenger for a single trip, having regard to the actual fee levels of cross-boundary ferry fares.

The proposal

5. CE announced in her 2019 Policy Address Supplement that the embarkation fee would be abolished. The cross-boundary ferry operators have undertaken to reduce ticket fares by \$11 after the embarkation fee is abolished and to hold such reduced fares for at least one year. The arrangement should facilitate the development of cross-boundary ferry services while promoting,

¹ They include Zhuhai (Jiuzhou Port), Zhongshan, Panyu Lianhuashan, Nansha, Heshan, Shunde, Gaoming, Jiangmen, Doumen, Shekou and Shenzhen Airport.

² The operator may provide cross-boundary ferry services between Hong Kong and cities in the Pearl River Delta having regard to commercial principles.

³ There are six land-based boundary control points (“BCP”) on the boundary of Shenzhen and Hong Kong, namely Sha Tau Kok BCP, Man Kam To BCP, Shenzhen Bay Port, Lok Ma Chau BCP, Lok Ma Chau Spur Line BCP and Lo Wu BCP. As the seventh land-based BCP, the Hong Kong-Zhuhai-Macao Bridge is the first cross-boundary land link connecting Hong Kong, Zhuhai and Macao.

over the long term, a healthier competition between the land and sea cross-boundary transport modes. Such facilitation is considered especially necessary given the noticeable diversion effect of HZMB. For the short term, the abolition of the fee should help the cross-boundary ferry operators re-gain business when the ferry terminuses concerned are re-open for normal business⁴.

6. The requirement for the owner of a cross-boundary ferry vessel to pay embarkation fee in respect of each passenger embarking at any of the three ferry terminuses mentioned in paragraph 2 above is stipulated in regulation 34 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) (“Cap. 313H”); there is also a relevant reference in regulation 8(c)⁵. The amount of embarkation fee is set out in Part 3 of Schedule 2 to Cap. 313H, which was made by the CE-in-Council under section 80 of Cap. 313⁶. In order to abolish the embarkation fee, the CE-in-Council has made the Shipping and Port Control (Ferry Terminals) (Amendment) Regulation 2020 to give effect to the proposed abolition.

7. Separately, the requirement for the owner of a ferry vessel to pay embarkation fee in respect of each passenger embarking at any of the three ferry terminuses mentioned in paragraph 2 above is also stipulated in section 29 of Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Cap. 548 sub. leg. B) (“Cap. 548B”); there is also a relevant reference in regulation 8(c). The amount of embarkation fee is specified in section 3(4) of Merchant Shipping (Local Vessels) (Fees) Regulation (Cap. 548 sub. leg. J) (“Cap. 548J”). It should be noted that Cap. 548B applies to local vessels which ply regularly from any of the three ferry terminuses for the conveyance of passengers (a) between Hong Kong and Macao; or (b) between Hong Kong and any other place in the Mainland. However, given the definition of local

⁴ Cross-boundary ferry services at CFT and TMFT have been suspended since 30 January 2020, while that at MFT has been suspended since 4 February 2020. This formed part of the Government’s efforts in consolidating cross-boundary passenger flow with a view to containing the spread of COVID-19. The cross-boundary ferry services have completely come to a halt.

⁵ In the context of embarkation fee, Cap. 313H applies to ferry vessels plying regularly from any of the three ferry terminuses mentioned in paragraph 2 above for the conveyance of passengers (a) between Hong Kong and Macao; or (b) between Hong Kong and any other place in the Mainland; or (c) between Hong Kong and any place outside Hong Kong other than a place referred to in paragraph (a) or (b), where (i) in the course of its voyage the vessel is at no time more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and (ii) neither the distance between the last port of call in the country or territory in which the voyage begins and the final port of destination nor the return voyage exceeds 600 nautical miles, except local vessels whose meaning is defined under Cap. 548. At present, all ferry vessels plying from the three ferry terminuses fall under (a) or (b).

⁶ Section 80(1)(p) of Cap. 313 provides that the CE-in-Council may make regulations for the port dues, fees and charges payable in respect of vessels and port facilities, any other fees or charges payable under Cap. 313, and the recovery of such port dues, fees and charges.

vessels⁷, no local ferry vessel has been engaged in cross-boundary ferry services.

8. Section 89 of Cap. 548 provides that STH may make regulations in respect of local vessels. STH has accordingly made the Merchant Shipping (Local Vessels) (Ferry Terminals) (Amendment) Regulation 2020 for abolishing the embarkation fee. Further, section 88 of Cap. 548 provides that the Financial Secretary (“FS”) may make regulations for fees payable under Cap. 548. By virtue of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), FS means FS and SFST. SFST has accordingly made the Merchant Shipping (Local Vessels) (Fees) (Amendment) Regulation 2020 to remove the embarkation fee.

9. The Amendment Regulations are subsidiary legislation within the meaning of section 3 of Cap. 1 and will be subject to negative vetting by the Legislative Council (“LegCo”).

OTHER OPTIONS

10. The relevant embarkation fees are prescribed in statute. The proposal cannot be effected by non-legislative means.

THE AMENDMENT REGULATIONS

11. The Shipping and Port Control (Ferry Terminals) (Amendment) Regulation 2020 repeals the relevant references to embarkation fee in Cap. 313H. The existing provisions being amended are at **Annex D**.

D

⁷ “Local Vessels” are licensed under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) and its definition is stipulated in section 2 of Cap. 548, as follows—

- (a) any vessel used solely within the waters of Hong Kong, whether registered under the Merchant Shipping (Registration) Ordinance (Cap. 415) or in a place outside Hong Kong;
- (b) any vessel regularly employed in trading to or from Hong Kong unless registered in a place outside Hong Kong;
- (c) any vessel possessed or used for pleasure purposes in the waters of Hong Kong;
- (d) any vessel employed in sea fishing plying regularly in the waters of Hong Kong, or using the waters of Hong Kong as a base; or
- (e) any vessel—
 - (i) registered in the Mainland or Macao;
 - (ii) employed in trading to or from Hong Kong; and
 - (iii) issued with any certificate by a government authority of the Mainland or Macao permitting its trading to Hong Kong other than any accepted convention certificate.

E 12. The Merchant Shipping (Local Vessels) (Ferry Terminals) (Amendment) Regulation 2020 repeals the relevant references to embarkation fee in Cap. 548B. The existing provisions being amended are at **Annex E**.

F 13. The Merchant Shipping (Local Vessels) (Fees) (Amendment) Regulation 2020 repeals the relevant references to embarkation fee in Cap. 548J. The existing provisions being amended are at **Annex F**.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be –

Publication in the Gazette	29 April 2020
Tabling at LegCo	6 May 2020
Commencement	1 August 2020

IMPLICATIONS OF THE PROPOSAL

G 15. The proposal has economic and competition, and financial implications as set out at **Annex G**. It has no significant sustainability implications, other than the said economic and competition implications. It has no civil service, environmental, productivity, family or gender implications. The proposal is in conformity with the Basic Law, including the provisions concerning human rights, and does not affect the binding effect of the Ordinances and the Regulations.

PUBLIC CONSULTATION

16. The cross-boundary ferry operators have been consulted and welcome the proposed fee waiver. The LegCo Panel on Transport was consulted in the context of the Transport and Housing Bureau's policy briefing cum meeting in October 2019. Members had no objection to the proposal.

PUBLICITY

17. A press release will be issued on the day the Amendment Regulations are published in the Gazette. A spokesman will be available to answer media enquiries.

BACKGROUND

18. Under regulation 34 of Cap. 313H and regulation 29 of Cap. 548B, the owner of a cross-boundary ferry vessel shall pay the Government the prescribed embarkation fee in respect of each passenger embarking on the cross-boundary ferry vessel at a terminus which is declared under regulation 3 of Cap. 313H to be any of the three ferry terminuses mentioned in paragraph 2 above. The levels of embarkation fee applicable to Cap. 313H and Cap. 548B are prescribed under Part 3 of Schedule 2 to Cap. 313H and regulation 3(4) of Cap. 548J respectively based on the fare amount that each cross-boundary ferry passenger is paying⁸. The current level of embarkation fee is \$11 for a single journey⁹.

19. The level of embarkation fee was reduced from \$18 to \$15 in 2005 and then to the current level of \$11 in 2007 having regard to the financial position of MFT and CFT at that time. Various stakeholders, including members of LegCo, the cross-boundary passenger ferry service trade, etc. have proposed to the Government the abolition of the embarkation fee. CE included this initiative in her 2019 Policy Address Supplement.

ENQUIRIES

20. Enquiries relating to this Brief can be directed to Miss Shirley LAU, Principal Assistant Secretary for Transport and Housing (Transport) 6, at 3509 8196.

**Transport and Housing Bureau
Marine Department
28 April 2020**

⁸ According to Part 3 of Schedule 2 to Cap. 313H and regulation 3(4) of Cap. 548J, the level of embarkation fee is also \$11 for each passenger who travels free of charge on a complimentary ticket.

⁹ Part 3 of Schedule 2 to Cap. 313H and regulation 3(4) of Cap. 548J also provide for another level of embarkation fee at \$6 but the ferry fare amount based on which the \$6 embarkation fee is determined is currently not available in the market. Hence, the \$6 fee level is presently not applicable.

**Shipping and Port Control (Ferry Terminals)
(Amendment) Regulation 2020**

(Made by the Chief Executive in Council under section 80 of the Shipping
and Port Control Ordinance (Cap. 313))

1. Commencement

This Regulation comes into operation on 1 August 2020.

2. Shipping and Port Control (Ferry Terminals) Regulations amended

The Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) are amended as set out in sections 3, 4 and 5.

3. Regulation 8 amended (returns by owners or masters)

Regulation 8(c)—

Repeal

everything after “vessel”

Substitute a semicolon.

4. Regulation 34 repealed (embarkation fee)

Regulation 34—

Repeal the regulation.

5. Schedule 2 amended (fees)

Schedule 2—

Repeal Part 3.

Clerk to the Executive Council

COUNCIL CHAMBER

2020

Explanatory Note

This Regulation amends the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) (*principal Regulations*) to abolish the embarkation fee payable under regulation 34 of the principal Regulations. The fee is payable by the owner of a ferry vessel to which the principal Regulations apply, in respect of each passenger embarking on the vessel at the China Ferry Terminal, the Hong Kong—Macau Ferry Terminal or the Tuen Mun Ferry Terminal.

**Merchant Shipping (Local Vessels) (Ferry Terminals)
(Amendment) Regulation 2020**

(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 August 2020.

**2. Merchant Shipping (Local Vessels) (Ferry Terminals)
Regulation amended**

The Merchant Shipping (Local Vessels) (Ferry Terminals)
Regulation (Cap. 548 sub. leg. B) is amended as set out in sections 3
and 4.

3. Section 8 amended (returns by owners, agents or coxswains)

Section 8(c)—

Repeal

everything after “vessel”

Substitute a semicolon.

4. Section 29 repealed (embarkation fee)

Section 29—

Repeal the section.

Secretary for Transport and Housing

2020

Explanatory Note

This Regulation amends the Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Cap. 548 sub. leg. B) (*principal Regulation*) to abolish the embarkation fee payable under section 29 of the principal Regulation. The fee is payable by the owner of a ferry vessel to which the principal Regulation applies, or by the owner's agent, in respect of each passenger embarking on the vessel at the China Ferry Terminal, the Hong Kong—Macau Ferry Terminal or the Tuen Mun Ferry Terminal.

Merchant Shipping (Local Vessels) (Fees) (Amendment) Regulation 2020

(Made by the Secretary for Financial Services and the Treasury under section 88 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548))

1. Commencement

This Regulation comes into operation on 1 August 2020.

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

The Merchant Shipping (Local Vessels) (Fees) Regulation (Cap. 548 sub. leg. J) is amended as set out in section 3.

2020

3. Section 3 amended (fees for application for issue of passes, issue of replacement passes, berthing and passenger embarkation)

(1) Section 3, heading—

Repeal

“, berthing and passenger embarkation”

Substitute

“and berthing”.

(2) Section 3—

Repeal subsection (4).

Secretary for Financial Services and
the Treasury

Explanatory Note

This Regulation amends the Merchant Shipping (Local Vessels) (Fees) Regulation (Cap. 548 sub. leg. J) (*principal Regulation*) to repeal section 3(4) of the principal Regulation. This amendment is consequential to the abolition of the embarkation fee that is currently payable under section 29 of the Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Cap. 548 sub. leg. B) by the Merchant Shipping (Local Vessels) (Ferry Terminals) (Amendment) Regulation 2020.

SHIPPING AND PORT CONTROL (FERRY TERMINALS) REGULATIONS (Cap./Instrument No.: 313H)
(Version date: 19.11.2007)

8. Returns by owners or masters

The owner or master of a ferry vessel shall, at such times as the Director may require, make to the Director a return showing, in respect of such period as may be specified by the Director, such particulars as the Director may require—

- (a) of each voyage made by the ferry vessel;
- (b) of the cargo carried on each voyage of the ferry vessel;
- (c) of the number of passengers carried on each voyage of the ferry vessel, and the category of such passengers for the purposes of regulation 34;
- (d) of the number of persons embarking and disembarking at each port of call during each voyage of the ferry vessel; and
- (e) relating to the manning or operation of the ferry vessel.

34. Embarkation fee

The passenger embarkation fee prescribed shall be paid by the owner of a ferry vessel in respect of each passenger embarking on the ferry vessel at a terminal.

SCHEDULE 2

[reg. 37]
(L.N. 57 of 2004)

FEES

PART 1—PASSES

	\$
(a) A standard pass.....	105
(b) A replacement pass	180
(c) <i>(Repealed L.N. 253 of 1994)</i>	

(L.N. 254 of 1992; L.N. 340 of 1993; L.N. 253 of 1994)

PART 2—BERTHING

	\$
(a) For a ferry vessel, per ton for each berthing in the case of—	
(i) a dynamically supported craft	3
(ii) a ferry vessel, other than a dynamically supported craft	1.5
(b) For a vessel, not being a ferry vessel, per ton for each berthing	3

(L.N. 168 of 1988; L.N. 97 of 1990; 40 of 1991 s. 2; L.N. 380 of 1992)

PART 3—PASSENGER EMBARKATION

	\$
(a) For each passenger paying an amount exceeding \$12 for a single journey	11
(b) For each passenger travelling free of charge on a complimentary ticket	11
(c) For each passenger not falling within (a) or (b)	6

(L.N. 168 of 1988; L.N. 314 of 1989; L.N. 97 of 1990; 40 of 1991 s. 3; L.N. 380 of 1992; L.N. 148 of 1998; L.N. 157 of 2005; L.N. 147 of 2007)

MERCHANT SHIPPING (LOCAL VESSELS) (FERRY TERMINALS) REGULATION (Cap./Instrument No.: 548B) (Version date: 3.1.2007)

8. Returns by owners, agents or coxswains

The owner, his agent or the coxswain of a ferry vessel shall, at such times as the Director may require, submit to the Director a return showing, in respect of such period as may be specified by the Director, such particulars as the Director may require—

- (a) of each voyage made by the vessel;
- (b) of the cargo carried on each voyage of the vessel;
- (c) of the number of passengers carried on each voyage of the vessel, and the category of the passengers for the purposes of section 29;
- (d) of the number of persons embarking and disembarking at each port of call during each voyage of the vessel; and
- (e) relating to the manning or operation of the vessel.

29. Embarkation fee

The owner of a ferry vessel or his agent shall pay the prescribed fee for passenger embarkation in respect of each passenger embarking on the vessel at a terminal.

MERCHANT SHIPPING (LOCAL VESSELS) (FEES) REGULATION (Cap./Instrument No.: 548J) (Version date: 1.11.2019)
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3. Fees for application for issue of passes, issue of replacement passes, berthing and passenger embarkation

- (1) The fee to be paid in respect of an application under section 13 of the Ferry Terminals Regulation for the issue of a standard pass by a person who is not an authorized officer is \$105.
- (2) The fee to be paid in respect of the issue of a replacement pass under section 24 of the Ferry Terminals Regulation is \$180.
- (3) The fee to be paid under section 28 of the Ferry Terminals Regulation for berthing in respect of a local vessel is—
 - (a) in the case where the vessel is a ferry vessel that is a dynamically supported craft, \$3 per unit of the chargeable net tonnage of the vessel;
 - (b) in the case where the vessel is a ferry vessel that is not a dynamically supported craft, \$1.5 per unit of the chargeable net tonnage of the vessel;
 - (c) in the case of any other vessel, \$3 per unit of the chargeable net tonnage of the vessel.
- (4) The fee to be paid under section 29 of the Ferry Terminals Regulation for passenger embarkation is, in respect of each passenger embarking on a ferry vessel at a terminal—
 - (a) in the case where the passenger pays \$12 or more for a single journey on the ferry vessel, \$11;
 - (b) in the case where the passenger travels free of charge on a complimentary ticket on the ferry vessel, \$11;
 - (c) in the case of any other passenger, \$6. (*L.N. 148 of 2007*)
- (5) In this section—

“authorized officer” (獲授權人員) means an authorized officer within the meaning of section 2 of the Ferry Terminals Regulation;

“chargeable net tonnage” (須予繳費淨噸位), in relation to a local vessel, means—

- (a) the net tonnage of the vessel; or
- (b) if that net tonnage is not a whole number, the net tonnage rounded up to the next whole number;

“ferry vessel” (渡輪船隻) means a ferry vessel within the meaning of section 2 of the Ferry Terminals Regulation.

ECONOMIC AND FINANCIAL IMPLICATIONS

Economic and Competition Implications

The proposed abolition of the embarkation fee and the corresponding reduction in the ticket fares would help attract more people to embark on cross-boundary travels to/from Macao and various Mainland cities by ferry, thereby facilitating the further development of cross-boundary passenger ferry services. As to competition implications, the proposed abolition of the embarkation fee would promote a healthier competition between the land and sea cross-boundary transport modes over the long term. That said, as the amount of embarkation fee is \$11 per passenger per trip only, the positive impact on competition will unlikely be significant.

Financial Implications

2. The proposed abolition of the embarkation fee will lead to a reduction of around \$77 million in the Government revenue per annum.