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

Contents

| Section | Page |
|---------|------|
|---------|------|

Part 1

Preliminary

| | | |
|----|----------------------|------|
| 1. | Commencement | B219 |
| 2. | Interpretation | B219 |
| 3. | Application | B223 |

Part 2

Requirements for Training and Certificates of Proficiency

| | | |
|----|---|------|
| 4. | Requirements for training and certificates of proficiency | B225 |
| 5. | Alternative way to comply with section 4(2), (3) or (4) | B227 |

Part 3

Certificates of Proficiency

| | | |
|----|--|------|
| 6. | Issue and renewal of certificates of proficiency | B233 |
| 7. | Authority may specify standards of competency, conditions, etc. | B237 |
| 8. | Validity period of certificates of proficiency | B237 |
| 9. | Recognition of non-local certificates as equivalents | B239 |

| Section | Page |
|---------|------|
|---------|------|

Part 4

Miscellaneous

| | | |
|-----|---|------|
| 10. | Replacement of certificates of proficiency that are lost etc. | B243 |
| 11. | Offence for false pretences and information | B243 |
| 12. | Record of certificates of proficiency | B247 |
| 13. | Exemption from this Regulation | B247 |
| 14. | Transitional arrangements | B247 |

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

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 31 May 2019.

2. Interpretation

In this Regulation—

advanced certificate (高級證書)—

- (a) means a certificate issued under section 6(4); and
- (b) includes—
 - (i) a certificate mentioned in paragraph (a) as renewed under section 6(5); and
 - (ii) a certificate issued under section 10 to replace a certificate mentioned in subparagraph (i) or paragraph (a);

basic certificate (基本證書)—

- (a) means a certificate issued under section 6(3); and
- (b) includes—
 - (i) a certificate mentioned in paragraph (a) as renewed under section 6(5); and

- (ii) a certificate issued under section 10 to replace a certificate mentioned in subparagraph (i) or paragraph (a);

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

certificate of proficiency (培訓合格證書) means—

- (a) a basic certificate; or
- (b) an advanced certificate;

company (公司), in relation to a ship, means—

- (a) the registered 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 the obligations imposed on the owner under the STCW Convention;

open waters (開敞水域) has the meaning given by section 2 of the Introduction of the Polar Code;

passenger ship (客船) means a ship carrying more than 12 passengers;

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 waters (極地水域) has the meaning given by Regulation 1 of Chapter XIV of the Annex to the SOLAS Convention;

SOLAS Convention (《安全公約》) 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;

STCW Convention (《培訓公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong;

tanker (液貨船) has the meaning given by paragraph 1.2 of Chapter 1 of Part I-A of the Polar Code.

3. Application

- (1) This Regulation applies to a Hong Kong ship operating in polar waters.
 - (2) However, 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 fishing vessel;
 - (e) a pleasure yacht not engaged in trade; or
 - (f) a ship owned or operated by the Government and engaged only on governmental non-commercial service.
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Part 2

Requirements for Training and Certificates of Proficiency

4. Requirements for training and certificates of proficiency

- (1) The company and the master of a ship must ensure that every seafarer on the ship has, before being assigned to undertake any duties on board, received familiarization training on the procedures and equipment that are—
 - (a) contained or referenced in the polar water operational manual required to be kept on board the ship; and
 - (b) relevant to the duties.
- (2) Subject to section 5(2), for a tanker, or a passenger ship, operating in open waters within polar waters (*ship*)—
 - (a) the company of the ship must ensure that the master of the ship holds a basic certificate; and
 - (b) the company and the master of the ship must ensure that each of the following seafarers holds a basic certificate—
 - (i) the chief mates of the ship;
 - (ii) the officers in charge of a navigational watch on the ship.
- (3) Subject to section 5(2), the company and the master of a ship operating in specified waters within polar waters must ensure that every officer in charge of a navigational watch on the ship holds a basic certificate.
- (4) Subject to section 5(2), for a ship operating in specified waters within polar waters—

- (a) the company of the ship must ensure that the master of the ship holds an advanced certificate; and
 - (b) the company and the master of the ship must ensure that every chief mate of the ship holds an advanced certificate.
- (5) A company who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (6) A master who contravenes subsection (1), (2)(b), (3) or (4)(b) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.
- (7) In this section—
 - (a) a reference to a basic certificate includes a certificate recognized under section 9(1) as being equivalent to a basic certificate; and
 - (b) a reference to an advanced certificate includes a certificate recognized under section 9(2) as being equivalent to an advanced certificate.
- (8) In this section—

specified waters (指明水域) means waters other than ice free waters within the meaning of section 2 of the Introduction of the Polar Code or open waters.

5. Alternative way to comply with section 4(2), (3) or (4)

- (1) Subject to subsections (5) and (6), subsection (2) applies if the master or any chief mate of a ship, or any officer in charge of a navigational watch on the ship, does not hold a certificate of proficiency as required by section 4(2), (3) or (4).
- (2) If the conditions set out in subsection (3) are met in relation to a ship—

- (a) the company of the ship is regarded as having complied with section 4(2), (3) or (4) (as the case requires); and
 - (b) the master of the ship is regarded as having complied with section 4(2)(b), (3) or (4)(b) (as the case requires).
- (3) The conditions are—
 - (a) a sufficient number of ice navigators are engaged on board the ship to cover all navigational watches; and
 - (b) each of the ice navigators is allowed at least the minimum hours of rest specified in section 7B(1) and (2) of the Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation (Cap. 478 sub. leg. T).
- (4) In determining, for the purposes of subsection (3)(a), whether there are a sufficient number of ice navigators on board a ship to cover all navigational watches, the company and the master of the ship must have regard to the hours of rest required by subsection (3)(b).
- (5) Subsection (2) does not apply in relation to a tanker, or a passenger ship, operating in polar waters (other than in bergy waters within the meaning of paragraph 1.2 of Chapter 1 of Part I-A of the Polar Code or open waters) (*ship*) if any of the following seafarers does not hold a basic certificate—
 - (a) the master of the ship;
 - (b) the chief mates of the ship;
 - (c) the officers in charge of a navigational watch on the ship.

(6) Subsection (2) does not apply in relation to a ship (other than a tanker or a passenger ship) operating in waters with an ice concentration of more than 2/10 within polar waters if any of the following seafarers does not hold a basic certificate—

- (a) the master of the ship;
- (b) the chief mates of the ship;
- (c) the officers in charge of a navigational watch on the ship.

(7) In this section—

ice navigator (冰域導航員)—

- (a) means a person who—
 - (i) is qualified and certified in accordance with Regulation II/2 of the STCW Convention and section A-II/2 of the STCW Code;
 - (ii) holds an advanced certificate or a certificate referred to in Regulation V/4, paragraph 3 of the STCW Convention that is issued by, or under the authority of, the government of a state party to the STCW Convention; but
- (b) does not include the master or a chief mate of a ship, or an officer in charge of a navigational watch on a ship;

STCW Code (《培訓規則》) means the Seafarers' Training, Certification and Watchkeeping Code published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment to any provision of such Code that applies to Hong Kong.

Part 3

Certificates of Proficiency

6. Issue and renewal of certificates of proficiency

- (1) A person may apply to the Authority for—
 - (a) the issue or renewal of a certificate in basic training for ships operating in polar waters; or
 - (b) the issue or renewal of a certificate in advanced training for ships operating in polar waters.
- (2) The application must be accompanied by—
 - (a) evidence establishing that the applicant—
 - (i) for the issue of a certificate—
 - (A) has satisfied the requirements mentioned in subsection (3)(a) or (4)(a) (as the case requires); and
 - (B) has attained the applicable standards of competency, and has satisfied the applicable conditions, specified under section 7(1)(a); or
 - (ii) for the renewal of a certificate—has satisfied the applicable conditions specified under section 7(1)(b); and
 - (b) the prescribed fee.
- (3) The Authority may issue a certificate in basic training for ships operating in polar waters if satisfied that—
 - (a) the applicant—
 - (i) has satisfied the requirements specified in Regulation V/4, paragraph 2 of the STCW Convention; or

- (ii) has performed duties in the deck department at the operational or management level, while providing the specified sea-going service, for a period of at least 3 months in total during the period from 1 July 2013 to 30 June 2018 (both dates inclusive); and
 - (b) the applicant has attained the applicable standards of competency, and has satisfied the applicable conditions, specified under section 7(1)(a).
- (4) The Authority may issue a certificate in advanced training for ships operating in polar waters if satisfied that—
- (a) the applicant—
 - (i) has satisfied the requirements specified in Regulation V/4, paragraph 4 of the STCW Convention; or
 - (ii) has performed duties in the deck department at the management level, while providing the specified sea-going service, for a period of at least 3 months in total during the period from 1 July 2013 to 30 June 2018 (both dates inclusive); and
 - (b) the applicant has attained the applicable standards of competency, and has satisfied the applicable conditions, specified under section 7(1)(a).
- (5) The Authority may renew a certificate of proficiency if satisfied that the applicant has satisfied the applicable conditions specified under section 7(1)(b).
- (6) If the Authority decides to refuse an application, the Authority must notify the applicant in writing of the refusal and the reasons for the refusal.

- (7) If an applicant is aggrieved by a decision of the Authority to refuse to issue or renew a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.
- (8) Subsections (3)(a)(ii) and (4)(a)(ii) do not have effect after 30 June 2020.
- (9) In this section—
specified sea-going service (指明海域航行服務) means sea-going service specified by the Authority.

7. Authority may specify standards of competency, conditions, etc.

- (1) The Authority may make determinations in writing specifying—
 - (a) the details of the applicable standards of competency to be attained, or the details of the applicable conditions to be satisfied, by an applicant to qualify for the issue of a certificate of proficiency;
 - (b) the applicable conditions to be satisfied by an applicant to qualify for the renewal of the applicant's certificate of proficiency; and
 - (c) the way in which the attainment of any such standards or the satisfaction of any such conditions is to be established.
- (2) A person may apply to the Authority for a copy of a determination made under subsection (1) on payment of the prescribed fee.

8. Validity period of certificates of proficiency

- (1) A certificate of proficiency is valid for the period specified in it unless it is cancelled or suspended under section 10(1)(a) or 11(4).

- (2) The period specified in a certificate of proficiency must not exceed 5 years beginning on the date of issue or renewal (as the case requires) of the certificate.

9. Recognition of non-local certificates as equivalents

- (1) If the Authority is satisfied that a certificate (*non-local basic certificate*)—

- (a) is issued by, or under the authority of, the government of a state party to the STCW Convention;
- (b) is not issued on the basis of recognition by such a government of a certificate issued by another government; and
- (c) shows that the holder of the non-local basic certificate has satisfied the requirements mentioned in section 6(3)(a),

the Authority may recognize the non-local basic certificate as being equivalent to a basic certificate for the purposes of this Regulation.

- (2) If the Authority is satisfied that a certificate (*non-local advanced certificate*)—

- (a) is issued by, or under the authority of, the government of a state party to the STCW Convention;
- (b) is not issued on the basis of recognition by such a government of a certificate issued by another government; and
- (c) shows that the holder of the non-local advanced certificate has satisfied the requirements mentioned in section 6(4)(a),

the Authority may recognize the non-local advanced certificate as being equivalent to an advanced certificate for the purposes of this Regulation.

Part 4

Miscellaneous

10. Replacement of certificates of proficiency that are lost etc.

- (1) Subject to subsections (3) and (4), if a certificate of proficiency (*original certificate*) issued to a person has been lost, defaced or destroyed, the Authority—
 - (a) may cancel the original certificate; and
 - (b) may issue to the person a certificate of proficiency (*replacement certificate*) in like terms on payment of the prescribed fee.
- (2) A replacement certificate—
 - (a) has the same effect as the original certificate; and
 - (b) unless cancelled or suspended under subsection (1)(a) or section 11(4), is valid until the validity period of the original certificate expires.
- (3) The Authority may issue a replacement certificate only if satisfied that the original certificate has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee mentioned in subsection (1)(b) if satisfied that the original certificate has been lost, defaced or destroyed without fault on the part of the holder of the certificate.

11. Offence for false pretences and information

- (1) A person who, in connection with an application under this Regulation—
 - (a) makes a false pretence to the Authority; or
 - (b) supplies false information to the Authority,

knowing it to be false, or not having reasonable grounds for believing it to be true, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (2) A person who permits another person to use a certificate of proficiency that is not issued to that other person commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (3) A person who falsely pretends to be the holder of a certificate of proficiency commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (4) If a person is convicted of—
 - (a) an offence under subsection (1), (2) or (3);
 - (b) the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency;
 - (c) the offence of conspiracy to commit an offence mentioned in paragraph (a) or (b); or
 - (d) the offence of conspiracy to defraud in relation to a certificate of proficiency,the Authority may cancel, or suspend for any period, the certificate of proficiency concerned held by the person.
- (5) In this section, a reference to a certificate of proficiency includes—
 - (a) a certificate recognized under section 9(1) as being equivalent to a basic certificate; or
 - (b) a certificate recognized under section 9(2) as being equivalent to an advanced certificate.

12. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the renewal, cancellation or suspension of certificates of proficiency; and
- (c) any other matters affecting certificates of proficiency that the Authority considers appropriate.

13. Exemption from this Regulation

- (1) The Authority may grant exemptions from any of the provisions of this Regulation for any class of cases or individual case on the conditions the Authority considers appropriate.
- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).

14. Transitional arrangements

- (1) Section 4 does not apply in relation to a specified passenger ship until the expiry of the last date of the period within which the next survey of the ship must be completed under section 9(1) of the Merchant Shipping (Safety) Ordinance (Cap. 369), which must be a date after 31 May 2019.
- (2) Section 4 does not apply in relation to a specified cargo ship until the expiry of whichever is the earliest of the following dates—
 - (a) 31 March 2021;

- (b) the last date of the period within which the next renewal survey of the ship must be completed under the renewal survey provision, which must be a date after 31 May 2019;
- (c) the last date of the period within which the next intermediate survey of the ship must be completed under the intermediate survey provision, which must be a date 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 is constructed before 1 January 2017; and
- (b) in respect of which a certificate issued under section 21(1) or 21A(1) of the Merchant Shipping (Safety) Ordinance (Cap. 369) is in force on 30 May 2019;

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

- (a) that is constructed before 1 January 2017; and
- (b) in respect of which a certificate issued under section 15(1) of the Merchant Shipping (Safety) Ordinance (Cap. 369) is in force on 30 May 2019.

Frank CHAN Fan
Secretary for Transport and
Housing

13 February 2019

Explanatory Note

This Regulation implements—

- (a) Chapter 12 of Part I-A of the International Code for Ships Operating in Polar Waters (***Polar Code***) adopted by International Maritime Organization Resolutions MSC.385(94) and MEPC.264(68); and
- (b) the amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (***Convention***), and the Seafarers' Training, Certification and Watchkeeping Code, which relate to the Polar Code.

Part 1—Preliminary

- 2. Part 1 provides for the commencement, interpretation of certain terms and application of this Regulation.

Part 2—Requirements for Training and Certificates of Proficiency

- 3. Part 2 provides for the training that a seafarer must receive before being assigned to undertake duties on a Hong Kong ship operating in polar waters. That Part also provides for the certificate of proficiency (***certificate***) that a seafarer on a Hong Kong ship must hold when the ship operates in certain parts of polar waters, and an alternative way to comply with the requirements for certificates if certain conditions are met.

Part 3—Certificates of Proficiency

- 4. Part 3 provides for the issue and renewal of, and the validity period of, certificates.

5. Non-local certificates issued by, or under the authority of, the government of a state party to the Convention may be recognized under Part 3 as being equivalent to certificates.

Part 4—Miscellaneous

6. Part 4 provides for miscellaneous matters, such as the loss of certificates, offence for false pretences and information, keeping of a record of certificates, grant of exemptions and transitional arrangements.