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Merchant Shipping (Seafarers) (Tankers) Regulation

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Merchant Shipping (Seafarers) (Tankers) 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 1 December 2016.

2. Interpretation

In this Regulation—

certificate of competency (適任證書) means a valid certificate of competency, other than a river trade certificate of competency, issued under the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

certificate of proficiency (培訓合格證書) means any of the following certificates of proficiency issued under this Regulation—

- (a) certificate of proficiency in basic training for oil and chemical tanker cargo operations;
- (b) certificate of proficiency in advanced training for oil tanker cargo operations;
- (c) certificate of proficiency in advanced training for chemical tanker cargo operations;

- (d) certificate of proficiency in basic training for liquefied gas tanker cargo operations;
- (e) certificate of proficiency in advanced training for liquefied gas tanker cargo operations;

certificate of service (服務資歷證書) means a certificate of service referred to in the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J) that is valid;

chemical tanker (化學品船) means a ship constructed or adapted and used for the carriage in bulk of any liquid chemical;

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

- (a) the registered owner of the ship; or
- (b) a person who has assumed responsibility for the operation of the ship from the owner and who, on assuming the responsibility, has agreed to take over the obligations imposed on the owner of the ship under the Convention;

Convention (《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;

IGC Code (《守則》) means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk published by the International Maritime Organization, as from time to time revised or amended by the International Maritime Organization;

licence (執照) means a valid licence issued under Part V of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

liquefied gas (液化氣體) means—

- (a) liquefied petroleum gas;
- (b) liquefied natural gas; or
- (c) any of the gases listed in the IGC Code;

liquefied gas tanker (液化氣體船) means a ship constructed or adapted and used for the carriage in bulk of any liquefied gas or other product listed in Chapter 19 of the IGC Code;

liquid chemical (液體化學品) means any liquid product listed in Chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the International Maritime Organization, as from time to time revised or amended by the International Maritime Organization;

oil tanker (油輪) means a ship constructed and used for the carriage of petroleum and petroleum products in bulk;

petroleum products (石油產品) means—

- (a) fuel;
- (b) lubricant;
- (c) bitumen;
- (d) wax;
- (e) industrial spirits; or
- (f) any substance that—
 - (i) is produced directly or indirectly from crude petroleum (other than liquefied gas); and

- (ii) has a final boiling point at normal atmospheric pressure of more than 50°C higher than its initial boiling point;

seagoing tanker (海油船) means a chemical tanker, a liquefied gas tanker or an oil tanker, other than one which navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply.

3. **Application**

- (1) Subject to subsection (2), this Regulation applies to—
 - (a) all seagoing tankers that are Hong Kong ships; and
 - (b) all seagoing tankers that—
 - (i) are not Hong Kong ships;
 - (ii) are within the waters of Hong Kong; and
 - (iii) have entered those waters in the normal course of business or for operational reasons.
 - (2) This Regulation does not apply to seagoing tankers owned or operated by a government and engaged only on governmental non-commercial service.
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Part 2

Requirements for Service on Certain Tankers

4. Requirements for service on certain tankers

- (1) Subject to section 5(1), the company and the master of an oil tanker or a chemical tanker must ensure that every seafarer on the tanker who is assigned to undertake specific duties or responsibilities related to cargo or cargo equipment on board has, before being assigned to undertake any of those duties or responsibilities—
 - (a) if the seafarer does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in basic training for oil and chemical tanker cargo operations; or
 - (b) if the seafarer holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-1, paragraph 2 of the Convention have been met for service on oil tankers and chemical tankers.
- (2) Subject to section 5(2), the company and the master of an oil tanker must ensure that each of the persons specified in subsection (6) on the tanker has, before being assigned to undertake any cargo operations duties on board—
 - (a) if the person does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in advanced training for oil tanker cargo operations; or

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- (b) if the person holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-1, paragraph 4 of the Convention have been met for service on oil tankers.
- (3) Subject to section 5(3), the company and the master of a chemical tanker must ensure that each of the persons specified in subsection (6) on the tanker has, before being assigned to undertake any cargo operations duties on board—
- (a) if the person does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in advanced training for chemical tanker cargo operations; or
- (b) if the person holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-1, paragraph 6 of the Convention have been met for service on chemical tankers.
- (4) Subject to section 5(4), the company and the master of a liquefied gas tanker must ensure that every seafarer on the tanker who is assigned to undertake specific duties or responsibilities related to cargo or cargo equipment on board has, before being assigned to undertake any of those duties or responsibilities—
- (a) if the seafarer does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in basic training for liquefied gas tanker cargo operations; or

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- (b) if the seafarer holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-2, paragraph 2 of the Convention have been met for service on liquefied gas tankers.
- (5) Subject to section 5(5), the company and the master of a liquefied gas tanker must ensure that each of the persons specified in subsection (6) on the tanker has, before being assigned to undertake any cargo operations duties on board—
- (a) if the person does not hold a certificate of competency, certificate of service or licence—obtained a certificate of proficiency in advanced training for liquefied gas tanker cargo operations; or
 - (b) if the person holds a certificate of competency, certificate of service or licence—obtained an endorsement on the certificate or licence that the requirements specified in Regulation V/1-2, paragraph 4 of the Convention have been met for service on liquefied gas tankers.
- (6) The persons are—
- (a) the master;
 - (b) the chief engineer officer;
 - (c) the chief mate;
 - (d) the second engineer officer; and
 - (e) a person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on the tanker concerned.

5. Exceptions to section 4

- (1) A seafarer on an oil tanker or a chemical tanker who has not obtained a certificate of proficiency in basic training for oil and chemical tanker cargo operations, or an endorsement, as required by section 4(1) may be assigned to undertake a specific duty or responsibility related to cargo or cargo equipment on board if—
 - (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 7(2)(a); and
 - (b) the duty or responsibility is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in basic training for oil and chemical tanker cargo operations;
 - (ii) a certificate of proficiency in advanced training for oil tanker cargo operations;
 - (iii) a certificate of proficiency in advanced training for chemical tanker cargo operations; or
 - (iv) an endorsement referred to in section 4(1)(b), (2)(b) or (3)(b).
- (2) A person specified in section 4(6) on an oil tanker who has not obtained a certificate of proficiency in advanced training for oil tanker cargo operations, or an endorsement, as required by section 4(2) may be assigned to undertake a cargo operations duty on board if—
 - (a) the assignment is made for the purpose of enabling the person to meet the requirements referred to in section 7(2)(b); and
 - (b) the duty is undertaken under the supervision of a person who holds—

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- (i) a certificate of proficiency in advanced training for oil tanker cargo operations; or
 - (ii) an endorsement referred to in section 4(2)(b).
 - (3) A person specified in section 4(6) on a chemical tanker who has not obtained a certificate of proficiency in advanced training for chemical tanker cargo operations, or an endorsement, as required by section 4(3) may be assigned to undertake a cargo operations duty on board if—
 - (a) the assignment is made for the purpose of enabling the person to meet the requirements referred to in section 7(2)(c); and
 - (b) the duty is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in advanced training for chemical tanker cargo operations; or
 - (ii) an endorsement referred to in section 4(3)(b).
 - (4) A seafarer on a liquefied gas tanker who has not obtained a certificate of proficiency in basic training for liquefied gas tanker cargo operations, or an endorsement, as required by section 4(4) may be assigned to undertake a specific duty or responsibility related to cargo or cargo equipment on board if—
 - (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 7(2)(d); and
 - (b) the duty or responsibility is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in basic training for liquefied gas tanker cargo operations;

- (ii) a certificate of proficiency in advanced training for liquefied gas tanker cargo operations; or
 - (iii) an endorsement referred to in section 4(4)(b) or (5)(b).
 - (5) A person specified in section 4(6) on a liquefied gas tanker who has not obtained a certificate of proficiency in advanced training for liquefied gas tanker cargo operations, or an endorsement, as required by section 4(5) may be assigned to undertake a cargo operations duty on board if—
 - (a) the assignment is made for the purpose of enabling the person to meet the requirements referred to in section 7(2)(e); and
 - (b) the duty is undertaken under the supervision of a person who holds—
 - (i) a certificate of proficiency in advanced training for liquefied gas tanker cargo operations; or
 - (ii) an endorsement referred to in section 4(5)(b).
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Part 3

Application for and Issue of Certificates of Proficiency and Endorsements

- 6. Application for issue of certificates of proficiency and endorsements and renewal of endorsements**
- (1) A person may apply to the Authority for—
 - (a) the issue of a certificate of proficiency or an endorsement referred to in section 4; or
 - (b) the renewal of such an endorsement.
 - (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue of the certificate or endorsement being applied for, or the conditions for renewal of the endorsement, have been satisfied; and
 - (b) the prescribed fee.
 - (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate or endorsement being applied for, may issue the certificate or endorsement to the applicant;
 - (b) if satisfied that the applicant is entitled to the renewal of the endorsement being applied for, may renew the endorsement; or
 - (c) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.

- (4) If an applicant is aggrieved by a decision of the Authority to refuse to issue a certificate of proficiency or an endorsement, or to refuse to renew an endorsement, the applicant may appeal against the decision to the Administrative Appeals Board.

7. Requirements for issue of certificates of proficiency and endorsements

- (1) The Authority must not issue a certificate of proficiency or an endorsement referred to in subsection (2) to an applicant unless the requirements for the issue of the certificate or endorsement are satisfied.
- (2) The requirements are—
- (a) for a certificate of proficiency in basic training for oil and chemical tanker cargo operations or an endorsement referred to in section 4(1)(b), the applicant has met the requirements specified in Regulation V/1-1, paragraph 2 of the Convention;
 - (b) for a certificate of proficiency in advanced training for oil tanker cargo operations or an endorsement referred to in section 4(2)(b), the applicant has met the requirements specified in Regulation V/1-1, paragraph 4 of the Convention;
 - (c) for a certificate of proficiency in advanced training for chemical tanker cargo operations or an endorsement referred to in section 4(3)(b), the applicant has met the requirements specified in Regulation V/1-1, paragraph 6 of the Convention;

- (d) for a certificate of proficiency in basic training for liquefied gas tanker cargo operations or an endorsement referred to in section 4(4)(b), the applicant has met the requirements specified in Regulation V/1-2, paragraph 2 of the Convention; and
 - (e) for a certificate of proficiency in advanced training for liquefied gas tanker cargo operations or an endorsement referred to in section 4(5)(b), the applicant has met the requirements specified in Regulation V/1-2, paragraph 4 of the Convention.
- (3) The Authority may make determinations in writing specifying—
- (a) the details of the standards of competency to be attained or the conditions to be satisfied by an applicant to qualify for the issue of a certificate of proficiency or an endorsement;
 - (b) the conditions to be satisfied by an applicant to qualify for the renewal of the applicant's endorsement; or
 - (c) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.

8. Validity of endorsements

- (1) Subject to subsection (3), an endorsement referred to in section 4 is valid for the period specified in the endorsement unless it is cancelled or suspended for any period under section 10(1) or 11(3).
- (2) The period specified in the endorsement must not exceed 5 years beginning on the date of issue of the endorsement.

- (3) An endorsement referred to in section 4 on a certificate or licence is valid only if the certificate or licence is valid.

9. Recognition of other certificates as equivalent to certificates of proficiency

- (1) This section applies for the purposes of sections 4 and 5.
- (2) If the Authority is satisfied that a certificate—
- (a) is issued by, or under the authority of, the government of a state party to the Convention;
 - (b) is issued not on the basis of recognition by such a government of any certificate issued by another government; and
 - (c) shows that the person concerned has met the requirements referred to in paragraph (a), (b), (c), (d) or (e) of section 7(2) for the issue of the certificate of proficiency referred to in that paragraph,

the Authority may recognize the certificate as equivalent to that certificate of proficiency.

Part 4

Miscellaneous

10. Loss of certificates of proficiency

- (1) Subject to subsections (3) and (4), if a certificate of proficiency issued to a person has been lost, defaced or destroyed, the Authority may cancel the certificate and issue to the person another certificate in like terms on payment of the prescribed fee.
- (2) A certificate issued under subsection (1) has the same effect as the certificate lost, defaced or destroyed.
- (3) The Authority may only issue a certificate under subsection (1) if the Authority is satisfied that the certificate to be replaced has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee referred to in subsection (1) if the Authority is satisfied that the certificate to be replaced has been lost, defaced or destroyed without fault on the part of the person to whom it was issued.

11. False pretences and supply of false information

- (1) A person who, in connection with an application for, or the issue of, a certificate of proficiency or an endorsement referred to in section 4, or the renewal of such an endorsement—
 - (a) makes a false pretence; or
 - (b) supplies false information,knowing it to be false or not 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—
- (a) permits any other person to use a certificate of proficiency or an endorsement referred to in section 4 to which that other person is not entitled; or
 - (b) falsely pretends to be entitled to a certificate of proficiency or an endorsement referred to in section 4,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (3) If a person is convicted of—
- (a) an offence under subsection (1) or (2);
 - (b) the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency or an endorsement referred to in section 4;
 - (c) conspiracy to commit any offence mentioned in paragraph (a) or (b); or
 - (d) conspiracy to defraud in relation to a certificate of proficiency or an endorsement referred to in section 4,

the Authority may cancel or suspend for any period the certificate of proficiency or the endorsement concerned held by the person.

12. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the cancellation or suspension of the certificates; and
- (c) any other matters affecting the certificates.

13. Exemption

- (1) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or individual cases on such conditions, if any, as the Authority thinks fit.
- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).

14. Offences and penalties

- (1) A company who contravenes section 4 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (2) A master who contravenes section 4 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

15. Transitional provision

- (1) During the transitional period, a contravention of section 4 does not constitute an offence under section 14.
- (2) In this section—
transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.

Anthony B. L. CHEUNG
Secretary for Transport and
Housing

30 September 2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to implement the requirements relating to undertaking duties or responsibilities on certain tankers under the Convention as revised by the Manila Amendments.

Part 1—Preliminary

3. Part 1 provides for the commencement, the interpretation of certain terms and the scope of application of the Regulation.

Part 2—Requirements for service on certain tankers

4. Part 2 provides for the certificates or endorsements that a seafarer must obtain before the seafarer is assigned to undertake certain duties or responsibilities on certain tankers.

5. The Part also provides for exceptions, namely when a seafarer carries out a duty for the purpose of obtaining certain certificates of proficiency.

Part 3—Application for and issue of certificates of proficiency and endorsements

6. Part 3 provides for the application for, the requirements for the issue of, and the validity of, certificates of proficiency and endorsements.
7. The Part also provides that certain certificates issued by, or under the authority of, the government of a state party to the Convention are recognized as equivalent to a certificate of proficiency.

Part 4—Miscellaneous

8. Part 4 provides for miscellaneous matters, including the keeping of a record of certificates of proficiency, the grant of exemptions, and offences and penalties.