

L.N. 138 of 2016

**Merchant Shipping (Seafarers) (Safety, Security and
Designated Duties Training) Regulation**

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Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) 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;
- (b) certificate of proficiency in designated security duties;
- (c) certificate of proficiency in security awareness;
- (d) certificate of proficiency for ship security officers;
- (e) certificate of proficiency in survival craft and rescue boats other than fast rescue boats;

- (f) certificate of proficiency in fast rescue boats;
- (g) certificate of proficiency in advanced fire fighting;
- (h) certificate of proficiency in medical first aid;
- (i) certificate of proficiency in medical care;

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;

designated security duties (指定保安職責) means the duties designated in accordance with the ship security plan of a ship;

fast rescue boat (快速救助艇) means a boat complying with the requirements of the Guidelines for Fast Rescue Boats adopted by the International Maritime Organization by resolution A.656(16);

rescue boat (救助艇) means a boat designed to rescue persons in distress and to marshal a survival craft;

seagoing ship (海船) means a ship 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;

ship security officer (船舶保安員) means a ship security officer as defined by rule 1 of the Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582 sub. leg. A);

ship security plan (船舶保安計劃) means a ship security plan as defined by rule 1 of the Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582 sub. leg. A);

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;

survival craft (救生艇筏) means a craft of a ship capable of sustaining the lives of persons in distress from the time of abandoning the ship.

3. Application

- (1) Subject to subsection (2), this Regulation applies to—
 - (a) all seagoing ships that are Hong Kong ships; and
 - (b) all seagoing ships 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—
 - (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
 - (b) fishing vessels;

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- (c) pleasure yachts not engaged in trade; or
 - (d) wooden ships of primitive build.
-

Part 2

Safety, Security and Designated Duties Training

4. Safety training

The company and the master of a ship must ensure that—

- (a) every seafarer on the ship has, before being assigned to undertake any duties on board, received safety familiarization training or instruction in accordance with section A-VI/1, paragraph 1 of the STCW Code and met the appropriate standard of competence specified in that paragraph; and
- (b) every seafarer on the ship who is assigned to undertake any safety or prevention of pollution duties on board has, before being assigned to undertake any of those duties, obtained a certificate of proficiency in basic training.

5. Security training

Without limiting section 4 or 7, if a ship is one to which the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582) applies, the company and the master of the ship must ensure that—

- (a) every seafarer on the ship has, before being assigned to undertake any duties on board, received security-related familiarization training or instruction in accordance with section A-VI/6, paragraphs 1 and 3 of the STCW Code and met the appropriate standard of competence specified in those paragraphs;

- (b) every seafarer on the ship who is assigned to undertake any designated security duties on board has, before being assigned to undertake any of those duties—
 - (i) received security-related familiarization training or instruction in accordance with section A-VI/6, paragraphs 2 and 3 of the STCW Code and met the appropriate standard of competence specified in those paragraphs; and
 - (ii) obtained a certificate of proficiency in designated security duties;
- (c) every seafarer without being assigned to undertake any designated security duties on board the ship has, before being assigned to undertake any duties on board, obtained a certificate of proficiency in security awareness; and
- (d) subject to section 6, every seafarer on the ship who is assigned to undertake any duties of a ship security officer on board has, before being assigned to undertake any of those duties, obtained a certificate of proficiency for ship security officers.

6. Exception to section 5(d)

A seafarer who has not obtained a certificate of proficiency for ship security officers as required by section 5(d) may be assigned to undertake any of the duties of a ship security officer if—

- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 10(2)(d); and
- (b) the duty is undertaken under the supervision of a person who holds a certificate of proficiency for ship security officers.

7. Designated duties training

Without limiting section 4 or 5, the company and the master of a ship must ensure that—

- (a) subject to section 8, every seafarer on the ship has, before being designated to launch or take charge of a survival craft or rescue boat (other than a fast rescue boat), obtained a certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
- (b) every seafarer on the ship has, before being designated to launch or take charge of a fast rescue boat, obtained a certificate of proficiency in fast rescue boats;
- (c) every seafarer on the ship has, before being designated to control fire fighting operations, obtained a certificate of proficiency in advanced fire fighting;
- (d) every seafarer on the ship has, before being designated to provide medical first aid on board, obtained a certificate of proficiency in medical first aid; and
- (e) every seafarer on the ship has, before being designated to take charge of medical care on board, obtained a certificate of proficiency in medical care.

8. Exception to section 7(a)

A seafarer who has not obtained a certificate of proficiency in survival craft and rescue boats other than fast rescue boats as required by section 7(a) may be designated to launch or take charge of a survival craft or rescue boat (other than a fast rescue boat) if—

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- (a) the designation is made for the purpose of enabling the seafarer to meet the requirements referred to in section 10(2)(e); and
 - (b) the seafarer launches or takes charge of the craft or boat under the supervision of a person who holds a certificate of proficiency in survival craft and rescue boats other than fast rescue boats.
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Part 3

Application for and Issue of Certificates of Proficiency

- 9. Application for issue and renewal of certificates of proficiency**
- (1) A person may apply to the Authority for the issue or, if applicable, renewal of a certificate of proficiency.
 - (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue or the conditions for renewal of the certificate being applied for 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 being applied for, may issue the certificate to the applicant;
 - (b) if satisfied that the applicant is entitled to the renewal of the certificate being applied for, may renew the certificate; 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 or renew a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.

10. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency referred to in subsection (2) to an applicant unless the requirements for the issue of the certificate are satisfied.
- (2) The requirements are—
 - (a) for a certificate of proficiency in basic training, the applicant has received training or instruction in accordance with section A-VI/1, paragraph 2 of the STCW Code and met the appropriate standard of competence specified in that paragraph;
 - (b) for a certificate of proficiency in designated security duties, the applicant has met the standard of competence specified in section A-VI/6, paragraphs 6 to 8 of the STCW Code;
 - (c) for a certificate of proficiency in security awareness, the applicant has received training or instruction in accordance with section A-VI/6, paragraph 4 of the STCW Code and met the appropriate standard of competence specified in that paragraph;
 - (d) for a certificate of proficiency for ship security officers, the applicant has met the requirements specified in Regulation VI/5, paragraph 1 of the Convention;
 - (e) for a certificate of proficiency in survival craft and rescue boats other than fast rescue boats, the applicant has met the requirements specified in Regulation VI/2, paragraph 1 of the Convention;
 - (f) for a certificate of proficiency in fast rescue boats, the applicant has met the requirements specified in Regulation VI/2, paragraph 2 of the Convention;

- (g) for a certificate of proficiency in advanced fire fighting, the applicant has received training or instruction in accordance with section A-VI/3, paragraphs 1 to 4 of the STCW Code and met the appropriate standard of competence specified in those paragraphs;
 - (h) for a certificate of proficiency in medical first aid, the applicant has met the standard of competence specified in section A-VI/4, paragraphs 1 to 3 of the STCW Code; and
 - (i) for a certificate of proficiency in medical care, the applicant has met the standard of competence specified in section A-VI/4, paragraphs 4 to 6 of the STCW Code.
- (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;
 - (b) the conditions to be satisfied by an applicant to qualify for the renewal of the applicant's certificate of proficiency; or
 - (c) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.

11. Validity of certificates of proficiency

- (1) Any of the following certificates is valid for the period specified in the certificate unless it is cancelled or suspended for any period under section 13(1) or 14(3)—

- (a) certificate of proficiency in basic training;
 - (b) certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
 - (c) certificate of proficiency in fast rescue boats;
 - (d) certificate of proficiency in advanced fire fighting.
- (2) The period specified in the certificate must not exceed 5 years beginning on the date of issue of the certificate.
- (3) A person who holds a certificate of proficiency referred to in subsection (1) may apply to the Authority to renew the certificate.

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

- (1) This section applies for the purposes of sections 4, 5, 6, 7 and 8.
- (2) A certificate of competency is equivalent to—
- (a) a certificate of proficiency in basic training;
 - (b) a certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
 - (c) a certificate of proficiency in advanced fire fighting;
or
 - (d) a certificate of proficiency in medical first aid.
- (3) 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

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(c) shows that the person concerned has met the requirements referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i) of section 10(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

13. 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.

14. False pretences and supply of false information

- (1) A person who, in connection with an application for, or the issue or renewal of, a certificate of proficiency—
 - (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 to which that other person is not entitled; or
- (b) falsely pretends to be entitled to a certificate of proficiency,

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;
 - (c) conspiracy to commit any offence mentioned in paragraph (a) or (b); or
 - (d) 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.

15. 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.

16. 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).

17. Offences and penalties

- (1) A company who contravenes section 4, 5 or 7 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, 5 or 7 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

18. Transitional provision

- (1) During the transitional period, a contravention of section 4, 5 or 7 does not constitute an offence under section 17.
- (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 safety, security and designated duties training 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—Safety, security and designated duties training

4. Part 2 provides for the training, instructions or certificates that a seafarer must receive or obtain before the seafarer is assigned to undertake certain duties on a ship.

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

6. Part 3 provides for the application for, the requirements for the issue of, and the validity of, certificates of proficiency.
7. The Part also provides for the recognition of a certificate of competency as equivalent to certain certificates of proficiency. 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.