

L.N. 141 of 2016

**Merchant Shipping (Seafarers) (Health and Safety:
General Duties) (Amendment) (No. 2) Regulation 2016**

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Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) (No. 2) Regulation 2016

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

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation amended

The Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478 sub. leg. C) is amended as set out in sections 3 to 11.

3. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

“*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;”.

Section 4

4. Section 3 amended (application)

Section 3(2)—

Repeal

everything after “apply to”

Substitute

“—

- (a) a ship owned or operated by a government and engaged only on governmental non-commercial service;
- (b) a fishing vessel;
- (c) a pleasure yacht not engaged in trade; or
- (d) a wooden ship of primitive build.”.

5. Section 4 amended (general duties of employers)

(1) Section 4, heading—

Repeal

“employers”

Substitute

“companies”.

(2) Section 4—

Repeal subsection (1)

Substitute

- “(1) The company of a ship has the duty to ensure, so far as is reasonably practicable, the health and safety of—
- (a) the seafarers on board the ship; and
 - (b) other persons on board the ship who may be affected by the company’s acts or omissions.”.

Section 6

- (3) Section 4(2)—

Repeal

“employer’s”

Substitute

“company’s”.

- (4) Section 4(3)—

Repeal

everything before “general policy”

Substitute

“(3) The company of a ship has the duty to prepare and, as often as may be appropriate, revise a written statement of the company’s”.

- (5) Section 4(3)—

Repeal

“those seafarers”

Substitute

“the seafarers on board the ship”.

- (6) Section 4(3), proviso—

Repeal

“an employer”

Substitute

“a company”.

6. Section 5 amended (general duties of seafarers)

- (1) Section 5(b)—

Repeal

Section 7

“on his employer”

Substitute

“on the company of the ship”.

- (2) Section 5(b)—

Repeal

“with his employer”

Substitute

“with the company”.

7. Section 5A added

After section 5—

Add

“5A. Seafarers must not be under influence of alcohol or drugs

- (1) This section applies to every seafarer on board a ship who is performing any of the designated duties set out in subsection (2).
- (2) The designated duties are duties relating to—
 - (a) the safety of the ship;
 - (b) the security of the ship; or
 - (c) the protection of the marine environment.
- (3) Without limiting section 5, a seafarer must ensure that—
 - (a) he or she is not under the influence of alcohol or drugs to an extent that—
 - (i) he or she behaves in a disorderly manner; or
 - (ii) his or her ability to perform the designated duties is impaired; and

- (b) the proportion of alcohol in his or her breath or blood does not exceed the limit set out in subsection (4).
- (4) The limit is—
 - (a) 25 micrograms of alcohol in 100 millilitres of breath; or
 - (b) 50 milligrams of alcohol in 100 millilitres of blood.
- (5) The company and the master of a ship must ensure that every seafarer on board the ship to which this section applies complies with subsection (3).”.

8. Section 6 amended (prohibition on levy)

Section 6—

Repeal

everything before “any charge”

Substitute

“The company of a ship must not levy or permit to be levied on any seafarer on board the ship”.

9. Section 7A added

After section 7—

Add

“7A. 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).”.

10. Section 8 amended (penalties)

- (1) Section 8(1)—

Repeal

“Any employer”

Substitute

“A company”.

- (2) After section 8(2)—

Add

“(2A) A master or officer who contravenes section 5A(3) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

(2B) A seafarer (other than a master or officer) who contravenes section 5A(3) commits an offence and is liable on conviction to a fine at level 1.

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

- (3) Section 8(4)—

Repeal

“or (2)”

Substitute

“, (2) or (2C)”.

11. Section 12 amended (inspection and detention of ships which are not Hong Kong ships)

Section 12(2)(a)—

Repeal

everything after “is registered”

Substitute

“; and”.

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 Convention as revised by the Manila Amendments requires the government of each party to the Convention to, among others, take measures to prevent the abuse of alcohol or drugs by seafarers. The main purpose of this Regulation is to amend the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478 sub. leg. C) to provide that it is an offence on board a ship for a seafarer to be under the influence of alcohol or drugs while the seafarer is performing certain duties.