

**L.N. 54 of 2015**

**Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation**

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## Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation

(Made by the Secretary for Transport and Housing under section 3 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413))

### Part 1

#### Preliminary

##### 1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

##### 2. Interpretation

In this Regulation—

**Administration** (主管機關), in relation to a ship, means the government of any place outside Hong Kong whose flag the ship is entitled to fly;

**anti-fouling system** (防污底系統) means a coating, paint, surface or device that is used on a ship to control or prevent attachment of unwanted organisms;

**commencement date** (生效日期) means the date on which this Regulation comes into operation;

**Convention** (《公約》) means the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, as from time to time revised or amended by the revision or amendment to any provision of such Convention that applies to Hong Kong;

**Convention country** (公約國) means a country that is a party to the Convention;

**Government surveyor** (政府驗船師) means a person appointed under section 12 to be a Government surveyor;

**IAFS Certificate** (IAFS證書) means a certificate issued by the Director under section 7;

**International Anti-Fouling System Certificate** (國際防污底系統證書) means—

- (a) an IAFS Certificate;
- (b) a certificate entitled “International Anti-Fouling System Certificate” issued by a recognized organization in conformity with Annex 4 to the Convention; or
- (c) a certificate issued by or under the authority of an Administration in conformity with Annex 4 to the Convention;

**international voyage** (國際航程) means a voyage between—

- (a) Hong Kong and a port outside the People’s Republic of China; or
- (b) a port in a Convention country and a port outside that country (whether in another Convention country or not);

**length** (長度), in relation to a ship, means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating to it, or any successor convention, as amended from time to time and as applicable to Hong Kong;

**non-Hong Kong ship** (非香港船舶) means a ship other than a Hong Kong ship;

***recognized organization*** (認可機構) means an organization recognized by the Director under section 15;

***ship*** (船舶) means a vessel of any type operating in the marine environment and includes an air-cushion vehicle, a hydrofoil boat, a submersible, a floating craft, a fixed or floating platform, a floating storage unit and a floating production storage and off-loading unit.

### 3. **Application**

- (1) This Regulation applies to—
    - (a) a Hong Kong ship wherever it may be; and
    - (b) a non-Hong Kong ship within the waters of Hong Kong.
  - (2) This Regulation does not apply to—
    - (a) a warship;
    - (b) a naval auxiliary; or
    - (c) any other ship owned or operated by a government and used only on government non-commercial service.
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## Part 2

### Control on Anti-Fouling Systems on Ships

#### 4. Controls on anti-fouling systems

- (1) Subject to subsections (2) and (3), a ship must not, on or after the commencement date, bear any organotin compounds that act as biocides in the anti-fouling system of the ship.
  - (2) Subject to subsection (3), if a ship bore any organotin compounds that act as biocides in its anti-fouling system before the commencement date, it must, as from that date, bear a coating that forms a barrier to the compounds.
  - (3) Subsections (1) and (2) do not apply to the following platform or unit that was constructed before 1 January 2003 and has not been in dry-dock on or after that date—
    - (a) a fixed or floating platform;
    - (b) a floating storage unit; or
    - (c) a floating production storage and off-loading unit.
  - (4) If subsection (1) is contravened or subsection (2) is not complied with, the owner and the master of the ship concerned each commits an offence and is liable to a fine at level 6.
  - (5) If an offence under subsection (4) is committed by the owner or the master of a ship due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.
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## **Part 3**

### **Certification and Means of Control on Anti-Fouling Systems**

#### **5. Application of Part 3**

This Part (except section 11) applies to a ship of 400 gross tonnage or above and engaged in an international voyage (excluding a fixed or floating platform, floating storage unit and floating production storage and off-loading unit).

#### **6. Ships must have International Anti-Fouling System Certificates**

- (1) A ship must have a valid International Anti-Fouling System Certificate in respect of the ship.
- (2) If subsection (1) is not complied with, the owner and the master of the ship concerned each commits an offence and is liable to a fine at level 6.
- (3) If an offence under subsection (2) is committed by the owner or the master of a ship due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.

#### **7. Application for and issue of IAFS Certificates**

- (1) The owner of a Hong Kong ship may apply to the Director for an IAFS Certificate in respect of the ship.
- (2) The application must be accompanied by the prescribed fee for the issue of an IAFS Certificate.

- (3) Except as provided in subsection (4), the Director must not issue an IAFS Certificate in respect of a Hong Kong ship unless the Director is satisfied that—
  - (a) an initial survey of the ship has been carried out by a Government surveyor on payment of the prescribed fee for the survey; and
  - (b) on completion of the survey, the anti-fouling system of the ship complies with section 4.
- (4) The Director may issue an IAFS Certificate in respect of a ship if—
  - (a) it is a ship that has been transferred to the registry in Hong Kong;
  - (b) there is a valid International Anti-Fouling System Certificate issued in respect of the ship by or under the authority of an Administration; and
  - (c) the record of the ship's anti-fouling system in the form specified in Appendix 1 to Annex 4 to the Convention is up to date.

## **8. Endorsements of International Anti-Fouling System Certificates**

- (1) If, after an International Anti-Fouling System Certificate has been issued in respect of a ship, 25% or more of the ship's anti-fouling system has been changed or replaced or has been affected by a repair, the Certificate is not to be regarded as valid for the purposes of this Regulation until—
  - (a) the Certificate is endorsed under subsection (2); or
  - (b) the Certificate is endorsed in conformity with Annex 4 to the Convention by the recognized organization who issued the Certificate or by an Administration.



- (2) The Director may endorse on an International Anti-Fouling System Certificate issued in respect of a Hong Kong ship if satisfied that—
  - (a) an additional survey of the ship has been carried out by a Government surveyor on payment of the prescribed fee for the survey; and
  - (b) on completion of the survey, the ship's anti-fouling system so changed or replaced or affected by the repair complies with section 4.

**9. Cancellation of International Anti-Fouling System Certificates**

- (1) The Director may, by notice in writing to the owner and the master of a Hong Kong ship, cancel an International Anti-Fouling System Certificate issued in respect of the ship if the Director has reasonable grounds to believe that the Certificate was issued or endorsed on the basis of false or erroneous information.
- (2) The Director must give reasons for cancelling the Certificate in the notice.
- (3) On receiving the notice, the owner and the master of the ship concerned must forthwith deliver the Certificate to the Director.

**10. Duty to keep International Anti-Fouling System Certificates on ships**

- (1) The owner and the master of a ship must ensure that an International Anti-Fouling System Certificate that is issued in respect of the ship and is for the time being in force—
  - (a) is kept on board the ship; and
  - (b) is made available for inspection by a Government surveyor at all reasonable times.

- (2) The owner and the master of a ship who contravene subsection (1) each commits an offence and is liable to a fine at level 6.
- (3) If an offence under subsection (2) is committed by the owner or the master of a ship due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.

## **11. Declaration on anti-fouling systems**

- (1) This section applies to a ship of 24 meters or more in length, less than 400 gross tonnage and engaged in an international voyage (excluding a fixed or floating platform, floating storage unit and floating production storage and off-loading unit).
- (2) The owner and the master of a ship must ensure that a declaration that is made in respect of the anti-fouling system of the ship and complies with the requirements in subsection (3)—
  - (a) is kept on board the ship; and
  - (b) is made available for inspection by a Government surveyor at all reasonable times.
- (3) The declaration must be—
  - (a) in the form specified in Appendix 2 to Annex 4 to the Convention;
  - (b) signed by the owner of the ship or an agent authorized by the owner; and
  - (c) accompanied by appropriate documentation showing that the anti-fouling system complies with section 4.

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- (4) The owner and the master of a ship who contravene subsection (2) each commits an offence and is liable to a fine at level 6.
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## **Part 4**

### **Powers of Director and Government Surveyors**

#### **12. Appointment of Government surveyors**

The Director may appoint a person to be a Government surveyor for the purposes of this Regulation.

#### **13. Power of Government surveyors to inspect, examine etc. ships**

- (1) Any of the powers conferred by this section may be exercised for the purpose of ascertaining whether this Regulation has been or is being complied with.
- (2) A Government surveyor may, at any reasonable time—
  - (a) board a ship that is within the waters of Hong Kong; and
  - (b) take with the surveyor any other person and any equipment or materials required to assist the surveyor.
- (3) After boarding the ship, the Government surveyor may—
  - (a) inspect the ship;
  - (b) make any examination and investigation as the surveyor considers necessary;
  - (c) take a brief sampling of the ship's anti-fouling system in accordance with the Guidelines for Brief Sampling of Anti-Fouling Systems on Ships adopted by the International Maritime Organization;
  - (d) take samples of any articles or substances found on the ship that the surveyor may reasonably require for the inspection, examination or investigation;

- (e) inspect, seize and remove from the ship any article or substance in respect of which the surveyor suspects on reasonable grounds that an offence under this Regulation has been committed;
- (f) detain the article or substance for so long as is necessary—
  - (i) for the inspection, examination or investigation; and
  - (ii) to ensure that it is available for use as evidence in any proceedings for an offence under this Regulation;
- (g) take any measurements and photographs and make any recordings that the surveyor may reasonably require for the inspection, examination or investigation;
- (h) require that the ship or any part of it, or anything on the ship, is to be left undisturbed (whether generally or in particular respects) for so long as is necessary for the inspection, examination or investigation;
- (i) require any person who the surveyor reasonably believes is able to give any information relevant to the inspection, examination or investigation—
  - (i) to attend at a place and time specified by the surveyor;
  - (ii) to answer the questions that the surveyor thinks fit to ask; and
  - (iii) to sign a declaration of the truth of the person's answers;
- (j) require the production of, and inspect and take copies of or of any entry in—

- (i) any certificates, books or documents that are required to be kept under this Regulation; and
- (ii) any other certificates, books or documents that the surveyor considers necessary for the inspection, examination or investigation; and
- (k) require any person to afford the surveyor such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the surveyor considers necessary to enable the surveyor to exercise any power conferred by this section.

**14. Obstruction and non-compliance with requirements**

- (1) A person must not—
  - (a) wilfully obstruct a Government surveyor in the exercise of any power conferred by section 13; or
  - (b) make a statement or sign a declaration that the person knows is false, or recklessly make a statement or sign a declaration that is false, in purported compliance with a requirement under section 13(3)(i).
- (2) A person must comply with a requirement imposed on the person under section 13(3).
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 6.
- (4) A person who without reasonable excuse fails to comply with subsection (2) commits an offence and is liable to a fine at level 6.

**15. Director may recognize organizations to survey ships and issue certificates etc.**

The Director may recognize an organization for—

- (a) carrying out surveys of anti-fouling systems of Hong Kong ships of 400 gross tonnage or above and engaged in international voyages in conformity with Annex 4 to the Convention;
- (b) issuing International Anti-Fouling System Certificates in respect of those ships in conformity with Annex 4 to the Convention;
- (c) making endorsements in conformity with Annex 4 to the Convention on International Anti-Fouling System Certificates issued by the organization;
- (d) altering any particulars contained in International Anti-Fouling System Certificates issued by the organization; and
- (e) issuing certified true copies of International Anti-Fouling System Certificates issued by the organization.

**16. Director may issue IAFS Certificates etc. at request of Convention countries**

The Director may, at the request of any Convention country—

- (a) cause a non-Hong Kong ship that is within the waters of Hong Kong to be surveyed under section 7 or 8 as if the ship were a Hong Kong ship;
- (b) issue an IAFS Certificate in respect of the ship under section 7 as if the ship were a Hong Kong ship; and
- (c) endorse on an International Anti-Fouling System Certificate in conformity with Annex 4 to the Convention or under section 8(2) as if the Certificate were issued in respect of a Hong Kong ship.

**17. Director may request Convention countries to survey Hong Kong ships etc.**

The Director may request any Convention country—

- (a) to carry out a survey in respect of a Hong Kong ship of 400 gross tonnage or above and engaged in an international voyage on behalf of the Director in conformity with Annex 4 to the Convention;
- (b) to issue an International Anti-Fouling System Certificate in respect of the ship in conformity with Annex 4 to the Convention; and
- (c) to endorse on an International Anti-Fouling System Certificate in conformity with Annex 4 to the Convention.

**18. Alteration of IAFS Certificates**

- (1) The owner of a Hong Kong ship may apply to the Director for altering any particulars contained in an IAFS Certificate issued in respect of the ship by the Director.
- (2) The Director may, on payment of the prescribed fee, alter the particulars contained in the IAFS Certificate if the Director considers that the alteration is not a material one.

**19. Certified true copies of IAFS Certificates**

- (1) The owner of a Hong Kong ship may apply to the Director for the issue of a certified true copy of an IAFS Certificate issued in respect of the ship by the Director.
- (2) The application must be accompanied by the prescribed fee for the issue of a certified true copy.



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**Anthony B. L. CHEUNG**  
Secretary for Transport and Housing

13 March 2015

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## Explanatory Note

This Regulation implements the International Convention on Control of Harmful Anti-Fouling Systems on Ships, 2001 (*Convention*). The Convention seeks to protect the marine environment and human health from adverse effects of certain anti-fouling systems used on ships.

2. Part 1 contains preliminary provisions that provide for the commencement and application of the Regulation and define various terms used in the Regulation.
3. Part 2 prohibits ships from bearing organotin compounds that act as biocides in the anti-fouling systems of the ships.
4. Part 3 covers certification and means of control on anti-fouling systems. In particular section 6 requires ships of 400 gross tonnage or above and engaged in international voyages to have valid International Anti-Fouling System Certificates. Other provisions of Part 3 cover—
  - (a) applications for and issue of IAFS Certificates;
  - (b) endorsements and cancellation of International Anti-Fouling System Certificates; and
  - (c) the duty to keep on ships International Anti-Fouling System Certificates and declarations made in respect of anti-fouling systems.
5. Part 4 contains provisions dealing with—
  - (a) appointment of Government surveyors and their power to inspect, examine etc. ships;
  - (b) obstructing Government surveyors in exercising their power;

- (c) the power of the Director of Marine (***Director***) to recognize organizations to survey ships and issue certificates;
- (d) the Director's power to survey non-Hong Kong ships and issue certificates;
- (e) the Director's power to request Convention countries to survey Hong Kong ships and issue certificates; and
- (f) the Director's power to alter certificates and issue certified true copies of certificates.