

L.N. 137 of 2016

Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation

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Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) 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 proficiency (培訓合格證書) means any of the following certificates of proficiency issued under this Regulation—

- (a) certificate of proficiency for able seafarers deck;
- (b) certificate of proficiency for able seafarers engine;

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;

gross tonnage (總噸), in relation to a ship, means the gross tonnage of the ship determined in accordance with regulation 6 of the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C);

qualified able seafarer deck (合資格甲板高級海員) means a rating who is the holder of a certificate of proficiency for able seafarers deck or a certificate recognized under section 10 as equivalent to that certificate of proficiency;

qualified able seafarer engine (合資格機房高級海員) means a rating who is the holder of a certificate of proficiency for able seafarers engine or a certificate recognized under section 10 as equivalent to that certificate of proficiency;

qualified deck officer (合資格甲板高級船員) means a deck officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

qualified engineer officer (合資格輪機師) means an engineer officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

rating (普通船員) means a seafarer other than—

- (a) the master;
- (b) an officer; or
- (c) a seafarer not directly connected with the normal manning of the ship;

registered person (註冊人士) means a person whose name is entered in the register kept pursuant to section 7 of the Ordinance;

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;

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.

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;
 - (c) pleasure yachts not engaged in trade; or
 - (d) wooden ships of primitive build.
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Part 2

Able Seafarer

4. Qualified able seafarer deck

Subject to section 5, the company and the master of a seagoing ship of 500 gross tonnage or more must ensure that every seafarer working in the deck department of the ship is a qualified able seafarer deck before the seafarer is being assigned to carry out any functions on board as specified in table A-II/5 of the STCW Code.

5. Exception to section 4

A seafarer who is not a qualified able seafarer deck may be assigned to carry out any of the functions referred to in section 4 if—

- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 9(1)(c)(i); and
- (b) the function is carried out under the supervision of a qualified able seafarer deck or a qualified deck officer.

6. Qualified able seafarer engine

Subject to section 7, the company, the master and the chief engineer officer of a seagoing ship, powered by a main propulsion machinery of 750 kilowatts propulsion power or more, must ensure that every seafarer working in the engine department of the ship is a qualified able seafarer engine before the seafarer is being assigned to carry out any functions on board as specified in table A-III/5 of the STCW Code.

7. Exception to section 6

A seafarer who is not a qualified able seafarer engine may be assigned to carry out any of the functions referred to in section 6 if—

- (a) the assignment is made for the purpose of enabling the seafarer to meet the requirements referred to in section 9(2)(c)(i); and
 - (b) the function is carried out under the supervision of a qualified able seafarer engine or a qualified engineer officer.
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Part 3

Application for and Issue of Certificates of Proficiency

8. Application for issue of certificates of proficiency

- (1) A person may apply to the Authority for the issue 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 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; or
 - (b) 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, the applicant may appeal against the decision to the Administrative Appeals Board.

9. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency for able seafarers deck to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and
 - (c) the applicant—

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- (i) has met the requirements specified in Regulation II/5, paragraph 2 of the Convention; or
 - (ii) has worked in the deck department of a ship as a rating to carry out any functions on board as specified in table A-II/5 of the STCW Code for an aggregate period of not less than 12 months within the specified period.
- (2) The Authority must not issue a certificate of proficiency for able seafarers engine to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and
 - (c) the applicant—
 - (i) has met the requirements specified in Regulation III/5, paragraph 2 of the Convention; or
 - (ii) has worked in the engine department of a ship as a rating to carry out any functions on board as specified in table A-III/5 of the STCW Code for an aggregate period of not less than 12 months within the specified period.
- (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
 - (b) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.
- (4) In this section—

specified period (指明期間) means the period beginning on 1 December 2011 and ending on 30 November 2016.

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

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 subsection (1)(c) or (2)(c) of section 9 for the issue of the certificate of proficiency referred to in that subsection,

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

Part 4

Miscellaneous

11. 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.

12. 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—
 - (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.

13. 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.

14. 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).

15. Offences and penalties

- (1) A company who contravenes section 4 or 6 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 or 6 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.
- (3) A chief engineer officer who contravenes section 6 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.

16. Transitional provision

- (1) During the transitional period, a contravention of section 4 or 6 does not constitute an offence under section 15.
- (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 the certification of able seafarers 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—Able seafarer

4. Part 2 provides for the certificate that a seafarer must obtain before the seafarer is assigned to carry out certain functions on a ship as an able seafarer.
5. The Part also provides for exceptions, namely when a seafarer carries out a function for the purpose of obtaining a certificate of proficiency.

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Explanatory Note
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Part 3—Application for and issue of certificates of proficiency

6. Part 3 provides for the application for, and the requirements for the issue of, certificates of proficiency.
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.