

(譯文)

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港口航運物流發展組  
(經辦人：助理秘書長陳可恩小姐)

**傳真文件(共6頁)**  
傳真號碼：2523 0030

陳小姐：

**《商船(本地船隻)(證明書及牌照事宜)規例》  
(2004年第27號法律公告)**

本部現正研究上述規例，以便向議員提出意見，謹請閣下澄清下述事宜：

第18(2)及20(2)條

當局的原意，是否讓海事處處長(下稱“處長”)可在正式牌照或臨時牌照有效的任何時間，行使其修訂有關牌照附加的任何條件或限制的權力？若然，此原意是否應在有關條文中清晰表達？閣下可參考一項類似的條文(即《商船(本地船隻)(住家船隻)規例》(第548章，附屬法例A)第3(6)條。

根據有關規例針對海事處處長所作的決定提出上訴

- (a) 為協助因海事處處長根據第19、23、26、33、34、35或44條作出的決定而感到受屈的人針對有關決定向行政上訴委員會提出上訴，是否應規定處長就其決定提供原因？若然，是否應在該等條文中清楚訂明此項規定？正如閣下知道，就處長決定拒絕發出擁有權證明書及拒絕發出正式牌照或其續期的申請的情況而言，有關規例第10及15條中已分別清楚訂立處長須就其決定提供原因的規定。
- (b) 當局的原意，是否讓因處長分別根據第18(2)及20(2)條作出修訂本地船隻的正式牌照或臨時牌照附加的任何條件或限制的決定而感到受屈的人，可針對有關決定提出上訴？若然，煩

請在有關規例第53條中作出清楚的規定。正如閣下知道，處長根據《商船(本地船隻)(住家船隻)規例》對發給住家船隻牌照內指明的條件作出任何修訂或增補的決定是可予以上訴的。這做法是否應同樣適用於此項規例？

- (c) 因海事處處長根據有關規例第28及31條作出的決定而感到受屈的人為何不獲給予提出上訴的權利？
- (d) 謹請證實會否就《行政上訴委員會條例》(第442章)作出相應修訂，以配合根據有關規例第53條提出的上訴；若然，將於何時作出修訂？

#### 第55條 —— 豁免權

- (a) 有關豁免權的條文似乎並不屬於根據《商船(本地船隻)條例》(第548章)第89條訂立規例的權力範圍之內。謹請澄清第55條的法律依據為何？鑒於豁免權條文有重大影響，若認為此等條文確有需要，是否應在主體條例而非附屬法例中訂明？
- (b) 為何認為有需要授予政府及其人員就根據有關規例執行職能時享有豁免權？一如本部了解，政府及其人員根據《道路交通條例》(第374章)及其附屬法例執行與車輛登記及發牌有關的職能時，並無享有類似的豁免權。為何在有關本地船隻的證明書及牌照事宜方面採用不同的考慮因素？
- (c) 考慮到《官方法律程序條例》(第300章)第4條，有何理據豁免政府無須就公職人員根據有關規例執行職能時作出的侵權行為負上法律責任？閣下諒必注意到若干現行法例，例如《電子交易條例》(第553章)，便明確保留政府就公職人員根據有關條例執行有關職能時的作為或不作為而招致的法律責任。

#### 第57條 —— 過渡性條文

據立法會參考資料摘要所述，《商船(遊樂船隻)規例》(第313章，附屬法例G)將於《商船(本地船隻)條例》(第548章)生效後便會廢除。有鑒於此，為何在有關規例中並無就根據《商船(遊樂船隻)規例》發出的牌照訂定任何過渡性條文？

#### 草擬方面的事宜

- (a) 有關規例多次提及本地船隻的“總長度”，例如在第13(1)、38(2)、47(4)條及附表3。如何釐定一艘船隻的總長度？“總長度”與第11(2)(h)條中提述的“長度”是否一樣？是否需要在規例中界定此詞的定義？正如閣下知道，《商船(本地船隻)(避風塘)規例》(2004年第28號法律公告)有對“總長度”一詞作出界定。

- (b) 在第7(7)條，是否需要在“地址”之前加入“岸上”？
- (c) 在第10(4)(a)(v)條，是否應在“construction”之後加上“of the vessel”，以反映中文本的意思？閣下諒必會注意到，在第11(2)(f)條中有類似的內容，所作的提述是“the year and place of construction of the vessel”(該船隻的建造年份及地點)。為求一致，第10(4)(a)(v)條是否應採用同樣的英文本？
- (d) 關於有關規例的中文本，謹請參考本人在隨附文件中標明的意見。

對現行法例中提及根據《商船及港口管制條例》(第313章)訂立的已廢除規例作出的相應修訂

據立法會參考資料摘要所述，《商船(小輪及渡輪船隻)規例》(第313章，附屬法例E)、《商船(雜類航行器)規例》(第313章，附屬法例F)和《商船(遊樂船隻)規例》將在《商船(本地船隻)條例》(第548章)及其附屬法例生效後便會廢除。有鑒於此，當局會否對現行法例中提及此等規例的條文作出相應修訂；若然，將於何時作出？閣下諒必注意到，《進出口條例》(第60章)第6E(5)條有提及《商船(小輪及渡輪船隻)規例》及《商船(雜類航行器)規例》。其他提及此等規例的例子包括《渡輪服務條例》(第104章)第5條及《應課稅品(碳氫油的標記及染色)規例》(第109章，附屬法例C)第2條。亦謹請考慮是否需要對《水務設施規例》(第102章，附屬法例A)第2條中“船舶用途”的定義作出相應修訂。

謹請閣下盡早(最好是在2004年3月8日或以前)以中英文就上述問題向本部提供政府當局的回應。

助理法律顧問

(馮秀娟)

連附件

副本致：律政司(經辦人：高級政府律師張月華小姐)  
法律顧問

2004年3月4日

m5309

- (2) 除非符合以下條件，否則不得收取租金或報酬而將第 IV 類別船隻出租——
- 該船隻根據書面租船協議或書面租購協議的條款出租；
  - 上述協議載有一項清楚述明以下事宜的警告——
    - 承租該船隻的人如不遵守《商船(本地船隻)(證明書及牌照事宜)規例》(2004 年第 27 號法律公告)第 6(5)(b) 條，即屬犯罪；
    - 承租該船隻的人應仔細閱讀該規例第 6 條(第(1)、(2)及(4)款除外)；及
    - 上述協議內何處載有該等條文的全文；
  - 上述協議的內文或附件載有本條(第(1)、(2)及(4)款除外)的全文；
  - (b) 及 (c) 段提述的警告及條文全文採用上述協議餘下部分所採用的同一語文，並且須以顯著方式於上述協議內呈示；及
  - 上述協議由船東及承租該船隻的人簽署。
- (3) 除非有以下文件就作為某類型而領有證明書的第 IV 類別船隻具有效力，否則不得收取租金或報酬而將該船隻為擬用於涉及載客的服務的用途出租——
- 根據《驗船規例》規定屬該類型的第 IV 類別船隻須有的、證明該船隻適合用於該服務的有效期證明書；及
  - 在顧及上述擬用於的服務下，根據《保險規例》規定屬該類型的第 IV 類別船隻須有的第三者風險保險單。
- (4) 如第(1)、(2)或(3)款在沒有合理辯解的情況下遭違反，有關船隻的船東、其代理人及船長每人均屬犯罪，一經定罪，可處第 3 級罰款。
- (5) 凡收取租金或報酬而將第 IV 類別船隻出租——
- 船東、其代理人及船長須確保——
    - 有關書面租船協議或書面租購協議存放於該船隻上；及
    - (如該船隻運載任何乘客)第(3)款提述的檢查證明書及保險單、或它們的核證副本存放於該船隻上；

The meaning of "有效" does not appear in the corresponding English text. Should the term be repealed?

- (2) A Class IV vessel shall not be let for hire or reward unless—
- it is let under the terms of a written charter agreement or written hire-purchase agreement;
  - the agreement contains a warning that states clearly—
    - that the person to whom the vessel is let commits an offence if he does not comply with section 6(5)(b) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (L.N. 27 of 2004);
    - that the person to whom the vessel is let should read carefully section 6 (except subsections (1), (2) and (4)) of the Regulation; and
    - where in the agreement the full text of those provisions may be found;
  - the agreement contains, either in its body or as its attachment, the full text of this section (except subsections (1), (2) and (4));
  - the warning and text referred to in paragraphs (b) and (c) are in the same language as that of the remaining parts of the agreement and are presented prominently in the agreement; and
  - the agreement is signed by the owner and the person to whom the vessel is let.
- (3) A Class IV vessel shall not be let for hire or reward for an intended service that involves the carriage of passengers unless there is in force in respect of the vessel—
- such certificate of inspection certifying that the vessel is fit for the intended service as is required under the Survey Regulation for a Class IV vessel of the type for which the vessel is certificated; and
  - such policy of insurance in respect of third party risks as is required under the Insurance Regulation for a Class IV vessel of the type for which the vessel is certificated, having regard to the intended service.
- (4) If, without reasonable excuse, subsection (1), (2) or (3) is contravened the owner of the vessel, his agent and the coxswain each commits an offence and is liable on conviction to a fine at level 3.
- (5) Where a Class IV vessel is let for hire or reward—
- the owner, his agent and the coxswain shall ensure that there is kept on board the vessel—
    - the relevant written charter agreement or written hire-purchase agreement; and
    - if any passenger is carried in the vessel, the certificate of inspection and the policy of insurance referred to in subsection (3), or certified copies of them;

(4) 如第 IV 類別船隻或第 IV 類別船隻的附屬船隻的總長度大於 3 米或已裝設總推進功率大於 3 千瓦的引擎，則除非在該船隻上有人掌管該船隻，而該人持有遊樂船隻操作人本地合格證明書或《本地合格證明書規則》所指明的任何同等證明書，否則該船隻或附屬船隻不得在航。

(5) 如第 (1) 或 (4) 款遭違反，有關本地船隻的船東及船長每人均屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月。

#### 48. 未滿 16 歲的人禁止操作某些船隻

(1) 任何未滿 16 歲的人不得在已裝設推進引擎的本地船隻上操舵、亦不得駕駛或運作該等船隻。

(2) 如任何人違反第 (1) 款，該人、有關本地船隻的船東及船長每人均屬犯罪，一經定罪，可處第 3 級罰款。

#### 49. 動力承托的航行器的船長及輪機操作員額外需要的證明書

(1) 屬動力承托的航行器的第 I 類別船隻除非符合以下規定，否則不得於香港水域在航——

- (a) 在該船隻上有人掌管該船隻，而該人除持有任何其他合適的船長本地合格證明書外，亦持有根據《本地合格證明書規則》所發出、名為類型級別證明書的本地合格證明書；及
- (b) 在該船隻上有人掌管輪機，而該人除持有任何其他合適的輪機操作員本地合格證明書外，亦持有根據《本地合格證明書規則》所發出、名為類型級別證明書的本地合格證明書。

(2) 如第 (1) 款遭違反，船隻的船東及船長每人均屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月。

Should "有關" be added here as the English text refers to "the vessel" specifically rather than any vessel? Please refer to the Chinese text of a similar provision (i.e. section 47(t)) above.

(4) A Class IV vessel or an ancillary vessel of a Class IV vessel that is more than 3 metres in length overall or is fitted with engines of more than 3 kilowatts total propulsion power shall not be underway unless there is on board a person in charge of the vessel who is the holder of a local certificate of competency as a pleasure vessel operator, or any equivalent certificate as specified in the Local Certificate of Competency Rules.

(5) If subsection (1) or (4) is contravened, the owner and the coxswain of the local vessel each commits an offence and is liable on conviction to a fine at level 3 and imprisonment for 6 months.

#### 48. Person under 16 prohibited from operating certain vessels

(1) A person under the age of 16 shall not steer, navigate or operate a local vessel that is fitted with a propulsion engine.

(2) If subsection (1) is contravened by any person, that person, the owner and the coxswain of the local vessel each commits an offence and is liable on conviction to a fine at level 3.

#### 49. Additional certificates required for coxswains and engine operators of dynamically supported craft

(1) A Class I vessel that is a dynamically supported craft shall not be underway in the waters of Hong Kong unless there is—

- (a) on board and in charge thereof a person who, in addition to holding any other appropriate local certificate of competency as a coxswain, holds a local certificate of competency issued under the Local Certificate of Competency Rules and known as a Type Rating Certificate; and
- (b) on board a person in charge of the engines who, in addition to holding any other appropriate local certificate of competency as an engine operator, holds a local certificate of competency issued under the Local Certificate of Competency Rules and known as a Type Rating Certificate.

(2) If subsection (1) is contravened, the owner and the coxswain of the vessel each commits an offence and is liable on conviction to a fine at level 3 and imprisonment for 6 months.

54. 擁有權證明書、正式牌照、臨時牌照或  
閑置船隻允許書的複本

(1) 如——

- (a) 處長接獲任何本地船隻的船東或其代理人作出的申請，而該申請示明該“written”船隻的擁有權證明書、正式牌照、臨時牌照或閑置船隻允許書遭損毀、污損或遺失並令處長信納該情況；及
- (b) 訂明費用已獲繳付，

則處長可向該船東或其代理人發出上述證明書、牌照或允許書的複本。

(2) 根據第(1)款發出的每份證明書、牌照或允許書的複本上須在顯眼處批註有英文字“DUPLICATE”及中文字“複本”。

(3) 根據第(1)款發出的證明書、牌照或允許書的複本取代有關正本，而有關正本即不再有效，並且——

- (a) (如有關正本遭污損)須於根據第(1)款提出申請時將有關正本交還處長；或
- (b) (如有關正本遭遺失)須於尋回有關正本後盡快將它交還處長。

(4) 如證明書、牌照或允許書的正本在無合理辯解的情況下沒有按第(3)款的規定而交還，有關本地船隻的船東及其代理人每人均屬犯罪，一經定罪，可處第3級罰款。

Should "書面" be added here to reflect the meaning of English text?

Alternatively, amend the English text to make both texts match.

55. 豁免權；不保證資料正確

(1) 如任何錯誤或遺漏是在正常執行本規例所訂職能過程中出於真誠而犯的，不得就任何人因該項錯誤或遺漏所蒙受的損失或損害而針對政府、處長或任何其他人員提起訴訟。

(2) 在不限制第(1)款的一般性的原則下——

- (a) 現宣布根據本規例的條文或本條例第 66 條發出、給予、續期或批註的擁有權證明書、正式牌照、臨時牌照、閑置船隻允許書或任何其他文件均是僅為本條例的施行而發出、給予、續期或批註的，而——
  - (i) 處長不得視作保證該等文件所載任何資料正確；及

Since the English text refers to "this Regulation", there is no need to include "的條文" in the Chinese text.

54. Duplicate certificate of ownership, full licence, temporary licence or permission for a laid-up vessel

(1) The Director may—

- (a) on written application made by the owner of a local vessel or his agent, showing to the Director's satisfaction the destruction, defacement or loss of any certificate of ownership, full licence, temporary licence or permission for a laid-up vessel in respect of the vessel; and
- (b) on payment of the prescribed fee,

issue to the owner or his agent a duplicate of the certificate, licence or permission.

(2) Every duplicate certificate, licence or permission issued under subsection (1) shall be clearly endorsed in a conspicuous place with the English word "DUPLICATE" and the Chinese characters "複本".

(3) A duplicate certificate, licence or permission issued under subsection (1) shall supersede the original which shall cease to have effect and shall be returned to the Director—

- (a) if the original is defaced, on the making of an application under subsection (1); or
- (b) if the original is lost, as soon as it is found.

(4) Where without reasonable excuse an original certificate, licence or permission is not returned as required by subsection (3), the owner of the local vessel concerned and his agent each commits an offence and is liable to a fine at level 3.

55. Immunity; no warranty as to correctness of information

(1) No action shall lie against the Government, the Director or any other officer in respect of any loss or damage suffered by any person as a result of any error or omission that was made in good faith and in the ordinary course of the performance of any function under this Regulation.

(2) Without limiting the generality of subsection (1)—

- (a) it is declared that a certificate of ownership, full licence, temporary licence, permission for a laid-up vessel or any other document issued, granted, renewed or endorsed under this Regulation or section 66 of the Ordinance is issued, granted, renewed or endorsed for the purposes of the Ordinance only; and—

(i) the Director shall not be taken to warrant the correctness of any information contained in the document; and