

MERCHANT SHIPPING (SEAFARERS) (ENGINE ROOM WATCH RATINGS AND ELECTRO-TECHNICAL RATINGS) REGULATION

(L.N. 135 of 2016)

(Cap. 478 sections 72, 73, 96 and 134)

[2 September 1996] L.N. 342 of 1996

1. (Omitted as spent)

2. Interpretation

In this Regulation, unless the context otherwise requires—

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 engine room watch ratings;
- (b) certificate of proficiency for electro-technical ratings;
(L.N. 135 of 2016)

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; (L.N. 135 of 2016)

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; (L.N. 135 of 2016)

qualified able seafarer engine (符合資格的機房高級海員) has the meaning given by section 2 of the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation; (L.N. 135 of 2016)

qualified electro-technical officer (符合資格的電子技術高級船員) means an electro-technical officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J); (L.N. 135 of 2016)

qualified electro-technical rating (符合資格的電子技術普通船員) means a rating who is the holder of a certificate of proficiency for electro-technical ratings or a certificate recognized under section 4C as equivalent to that certificate of proficiency; (L.N. 135 of 2016)

“qualified engine room watch rating” (符合資格的機房值班普通船員) means a rating who is the holder of a certificate of proficiency for engine room watch ratings or a certificate recognized under section 4C as equivalent to that certificate of proficiency; (L.N. 135 of 2016)

“qualified engineer officer” (符合資格的輪機師) means an

engineer officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J); (*L.N. 135 of 2016*)

“rating” (普通船員) means a member of the ship’s crew 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; (*L.N. 135 of 2016*)

seagoing ship (海船) means a ship that is powered by a main propulsion machinery of 750 kilowatts propulsion power or more, 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; (*L.N. 135 of 2016*)

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. (*L.N. 135 of 2016*)

(*L.N. 135 of 2016*)

3. Application

- (1) Subject to subsection (1A), 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. (*L.N. 135 of 2016*)
- (1A) 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. (*L.N. 135 of 2016*)
- (2) 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 he thinks fit and may, subject to giving reasonable notice, alter or cancel any such exemption.

4. Obligation on company, master and chief engineer officer

(L.N. 135 of 2016)

- (1) *(Repealed L.N. 135 of 2016)*
- (2) Neither the company, the master nor the chief engineer officer of a ship shall permit a member of the ship's crew who is not a qualified engineer officer, qualified engine room watch rating or qualified able seafarer engine to form part of an engine room watch or to perform duties for which he is not qualified as part of that watch unless that member's duties while on watch are of an unskilled nature:
Provided that nothing in this section shall prohibit the participation of additional members of the ship's crew in engine room watchkeeping duties as part of their training under the supervision of a qualified engineer officer, qualified engine room watch rating or qualified able seafarer engine.
(L.N. 135 of 2016)
- (3) Subject to subsection (4), the company, the master and the chief engineer officer of a ship must not permit a member of the ship's crew who is not a qualified electro-technical rating to carry out any functions on board as specified in table A-III/7 of the STCW Code. *(L.N. 135 of 2016)*
- (4) Subsection (3) does not apply if—
 - (a) the functions are assigned to the member of the ship's crew for the purpose of enabling the member to meet the requirements referred to in section 4B(2)(c)(i); and
 - (b) the functions are carried out under the supervision of a qualified engineer officer, qualified electro-technical officer or qualified electro-technical rating. *(L.N. 135 of 2016)*
- (5) The company, the master and the chief engineer officer of a ship must ensure that the officer in charge of an engineering watch is a qualified engineer officer. *(L.N. 135 of 2016)*

4A. 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.

(L.N. 135 of 2016)

4B. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency for engine room watch ratings to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and
 - (c) the applicant has met the requirements specified in Regulation III/4, paragraphs 2.2, 2.3 and 3 of the Convention.
- (2) The Authority must not issue a certificate of proficiency for electro-technical ratings 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/7, 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/7 of the STCW Code for an aggregate period of not less than 12 months within the specified period.
- (3) In this section—

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

(L.N. 135 of 2016)

4C. 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 4B 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.

(L.N. 135 of 2016)

5. *(Repealed L.N. 135 of 2016)*

5A. Power to make determinations

The Authority shall have power to make determinations in writing specifying— *(L.N. 135 of 2016)*

- (a) the standards of competency to be attained and conditions to be satisfied by a person or class of persons 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.

(L.N. 104 of 1998; L.N. 135 of 2016)

6. Offences by company, master and chief engineer officer

(L.N. 135 of 2016)

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

(L.N. 135 of 2016)

6A. 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.

(L.N. 135 of 2016)

7. False pretences and supply of false information

- (1) Any person who in connection with an application for or the issue of a certificate of proficiency— *(L.N. 135 of 2016)*
 - (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.
- (1A) 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. *(L.N. 135 of 2016)*

- (2) Where any person is convicted of an offence under subsection (1) or (1A) or of the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency, or of a conspiracy to commit any such offence, or of a 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 such person. *(45 of 1999 s. 10; L.N. 135 of 2016)*

7A. 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.

(L.N. 135 of 2016)

8. Transitional provisions

- (1) A certificate is treated as a certificate of proficiency for engine room watch ratings issued under section 4A during the transitional period if the certificate—
- (a) is issued or deemed to have been issued under the pre-amended Regulation; and
 - (b) is valid immediately before 1 December 2016.
- (2) During the transitional period, a contravention of section 4(3) does not constitute an offence under section 6.
- (3) In this section—

pre-amended Regulation (《修訂前規例》) means the Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap. 478 sub. leg. V) in force immediately before 1 December 2016;

transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.

(L.N. 135 of 2016)

SCHEDULE 1

(Repealed L.N. 135 of 2016)

SCHEDULE 2

(Repealed L.N. 135 of 2016)