

Merchant Shipping (Local Vessels) Ordinance

January 2007

This Ordinance (Cap. 548) and regulations made under it came into force 2 January 2007. It rationalises and simplifies legislation previously scattered over a number of different Ordinances. Local vessels are now categorised in four classes of which Class IV is for vessels exclusively used for pleasure purposes ("Pleasure Vessels").

This update summarises the main changes in so far as they apply to Pleasure Vessels, with the exception of Pleasure Vessels licensed to carry more than 60 passengers, or less than 60 passengers but let for hire or reward, to which additional Safety and Survey Regulations apply.

SUMMARY - Existing Pleasure Vessel licences owners need to:-

1. Obtain a new Certificate of Ownership and Operating Licence prior to expiry of the period of validity of their existing licence. Where the licence number has been allocated by a Yacht Club, a new different Certificate number will be issued and the number on the side of the hull will have to be changed.
2. Prior to expiry of their Certificates of Competency, apply to replace it with a new Certificate of Competency covering both deck and engineering qualifications.
3. On renewal of their insurance policy, increase the third party liability cover to at least HK\$1 million, if the existing cover is less.

Class IV Pleasure Vessels are required to be:-

1. Licenced,
2. In charge of a properly certified Pleasure Vessel Operator, and
3. Covered for third party risks by authorized third party liability insurers.

It should also be noted that the Ordinance and Regulations do not apply requirements 1 and 2 to Pleasure Vessels not fitted with an engine and, in the opinion of the Director of Marine, incapable of being fitted with an engine. Previously the requirements applied to any Pleasure Vessels "with an engine installed in or carried on it or designed" to have one.

Although the legislation does not generally apply to non-mechanically propelled Pleasure Vessels, the compulsory third party liability insurance requirements are extended to non-mechanically propelled vessels exceeding 4 metres in overall length. Furthermore, all sailing dinghy owners are strongly advised to arrange insurance and especially the compulsory third party liability insurance. Members of sailing clubs and participants in various events are liable to be required to produce a certificate of such insurance cover.

1. Licence

There are new requirements for every Pleasure Vessel based in Hong Kong which must now have a Certificate of Ownership and, unless laid up, an annual Operating Licence, the latter to be carried on board at all times. These documents will replace the existing licence book. *A Pleasure Vessel's current licence issued prior to 2007 is deemed to be the required Certificate of Ownership and Operating Licence up to the date of its expiry.*

The application to the Director of Marine for a Certificate of Ownership shall be made at the time of application for the Operating Licence, or permission to lay up, and shall comply with the requirements of Section 10(4) of the Certification and Licensing Regulation (Cap. 548D). An ancillary vessel (e.g. tender) may be included. *For further information or application forms contact the Licensing and Port Formalities Section tel: +852 2852 4455 or visit <http://www.mardep.gov.hk>.*

Note: Clyde & Co has been appointed by the Hong Kong Sailing Federation to compile this newsletter.

If you would like to have further information on any issue raised in this update please contact:

Martin Heath, Partner (author)
martin.heath@clyde.com.hk

Simon Baker, Partner
simon.baker@clyde.com.hk

Michael Kelly, Partner
michael.kelly@clyde.com.hk

or your usual contact at:

Clyde & Co
18th Floor CITIC Tower
1 Tim Mei Avenue
Central
Hong Kong

Tel: +852 2878 8600
Fax: +852 2522 5907

www.clydeco.com

The Certificate of Ownership number must be painted or mounted on each side of the deck housing or hull where it can best be seen. There are max. and min. dimensions for this in Section 38 of the Regulation. The number will be the same as the existing licence number except for those previously issued by a Yacht Club.

The owner must be an individual ordinarily resident in Hong Kong with a valid ID card or a company registered in Hong Kong. A company or co-owners are no longer required to nominate one individual to be the licensed owner and in such cases the current nominated owner will be deleted on renewal of the licence.

The owner may appoint an agent in his place. Such agent must similarly be a Hong Kong resident or company registered in Hong Kong.

2. Certified Pleasure Vessel Operator

The syllabus for the examination and the eligibility conditions have been revised. The new local certificates of competency have only one class covering both deck and engineering qualifications and can be Grade 1 for Pleasure Vessels of any size or Grade 2 restricted to those not more than 15 metres in overall length.

Certificates issued under the previous Ordinance will remain valid until expiry and may be replaced with a new class / grade certificate upon payment of a fee.

Candidates who applied for the former certificate examination(s) prior to 2007 will take the former examination(s) under the then applicable syllabus and upon passing will be granted the equivalent new class and grade of certificate.

The Examination Rules for Pleasure Vessel Operating Certificates of Competency can be found at <http://www.mardep.gov.hk> or more information is available from the Seafarers' Certification Section, 3/F, Harbour Government Building, 38 Pier Road, Central, tel: +852 2544 7214.

3. Compulsory Third Party Liability Insurance

From 2 January to 1 July 2007, the required compulsory cover will remain limited to the rather inadequate amount of HK\$600,000. On 2 July 2007 this amount will be increased to HK\$1 million.

The requirements are set out in Part VA of the Ordinance and Regulation Cap. 548H. Local authorised insurers offering cover should be familiar with the requirements. Owners of Pleasure Vessels may be required to produce their policy of insurance for inspection by an authorised public officer, Marine Department officer holding the rank of Marine Inspector Class II or above, or Police Officer of or above the rank of Sergeant, either on the spot or within 5 days at a place specified by the officer.

A policy of insurance issued in compliance with Section 107C(1) of Cap. 281 before 2007 (which may be limited to the lower amount of HK\$600,000 for third party liability) shall be deemed to comply with the new requirements in Cap. 548 until the earliest of:-

- (a) the date of expiry of the policy,*
- (b) 1 January 2008, or*
- (c) the date of any alterations to the policy terms so that it ceases to comply with Section 107C(1).*

This newsletter is intended to provide general information on issues which may be of interest. It is not intended to provide specific legal advice. Further advice should be taken before relying on the contents of this summary.

No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photo-copying, reading or otherwise without the permission of Clyde & Co.

Regulated by the Law Society
© Clyde & Co 2007