

For discussion
On 18 July 2003

Legislative Council Panel on Economic Services

Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2003

INTRODUCTION

This paper briefs Members on the Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2003 (“the Bill”).

BACKGROUND

2. The Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap. 434 (“the Ordinance”) gives effect to two international conventions, namely the Convention on Limitation of Liability for Maritime Claims, 1976 (“LLMC”) and the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (“Athens Convention”). The Bill will cover amendments relating to both.

The Protocol of 1996 to amend the LLMC (“1996 Protocol”)

3. The LLMC limits shipowners’ liability for claims in respect of loss of life or personal injury and property claims such as claims relating to damage to other ships, property or harbour works.

4. In May 1996, the International Maritime Organisation adopted the 1996 Protocol which increased the limits of liability set out in the LLMC.

Liability in respect of carriages between Hong Kong/Macau and Hong Kong/Mainland ports

5. The Athens Convention establishes a regime of limited liability for damage suffered by passengers carried on a seagoing vessel. It declares that a carrier is liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was

due to the fault or neglect of the carrier.

6. The Convention governs the liability of international carriages and has been applied to Hong Kong since 1989. It has ceased to apply to carriages between Hong Kong/Macau and Hong Kong/Mainland ports since Hong Kong and Macau's reunification with China in 1997 and 1999 respectively, because these are no longer regarded as international carriages as defined in the Athens Convention. (please see paragraph 10 below)

PROPOSED AMENDMENTS

7. The Bill seeks to give effect to the 1996 Protocol and expand the coverage of Part II of the Ordinance.

Implementing the 1996 Protocol and Other Amendments relating to the LLMC

8. The 1996 Protocol will enter into force 90 days after ratification by 10 States. As at 31 May 2003, eight states have ratified it. We expect that the Protocol will soon receive sufficient subscription for entering into force. It is advisable for us to amend the Ordinance to enhance protection for passengers and cargo owners and make our domestic legislation in line with international standards as prescribed in the 1996 Protocol.

9. At present, section 17(1) of the Ordinance provides for a lower level of liability limit for ships of less than 300 tons. This is permitted under the LLMC. However, ships of less than 300 gross tonnage could cause considerable damage to other ships, port facilities, terminals and fish farms, etc. To ensure proper compensation to third parties who may be affected by damage caused by such ships, we propose to delete section 17(1) of the Ordinance. By deleting this subsection, the limitation amounts provided under our domestic legislation will be the same as those under the 1996 Protocol.

Expansion of coverage of Part II of the Ordinance

10. The application of the Athens Convention to Hong Kong is stipulated in Part II of the Ordinance. We propose to expand the coverage of Part II of the Ordinance to apply the liability regime provided under the Athens Convention also to carriage between Hong Kong/Macau and Hong Kong/Mainland ports. Carriers running the above carriage will then be subject to the same liability limits as stipulated in the Athens Convention.

11. The proposed amendments to be incorporated in the Bill are set out in **Annex**.

12. We plan to introduce the Bill into the Legislative Council in January 2004.

CONSULTATION

13. We have consulted the Shipping Consultative Committee and the Port Operations Committee on the proposed amendments to implement the 1996 Protocol and obtained their support. The Port Operation Committee also raised no objection to the proposal to delete section 17(1) of the Ordinance.

14. The Hong Kong Shipowners' Association, Hong Kong Maritime Law Association and Consumer Council have been consulted on the proposal to expand the coverage of Part II of the Ordinance and are supportive of the proposed amendments. We have also informed the Guangdong Maritime Safety Administration and the Macau Marine Department, and they did not demur.

ADVICE SOUGHT

15. Members are invited to offer views and support the above proposals.

Economic Development and Labour Bureau
July 2003

A. Amendments relating to the LLMC

1. The Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) will be amended to reflect the changes made by the 1996 Protocol as follows:

	Existing limits	New limits under the 1996 protocol
I. Claims for loss of life or personal injury		
<i>Ships up to 500 tons</i>	333,000 SDR ¹	2,000,000 SDR
<i>Ships of 501-2,000 tons</i>	333,500 SDR - 1,083,000 SDR	2,000,000 SDR
<i>For each additional ton in excess of 2,000 tons</i>	varies from 167 SDR - 500 SDR	varies from 400 SDR - 800 SDR
II. Other claims		
<i>Ships up to 500 tons</i>	167,000 SDR	1,000,000 SDR
<i>Ships of 501-2,000 tons</i>	167,167 SDR - 417,500 SDR	1,000,000 SDR
<i>For each additional ton in excess of 2,000 tons</i>	varies from 83 SDR - 167 SDR	varies from 200 SDR - 400 SDR
III. Passenger claims		
<i>All ships</i>	46,666 SDR times the number of passengers which the ship is authorised to carry, but not exceeding 25 million SDR	175,000 SDR times the number of passengers which the ship is authorised to carry

2. Section 17(1) of the Ordinance will be deleted to ensure proper compensation to third parties who may be affected by damages caused by ships of less than 300 tons.

¹ Special Drawing Rights (SDR) means "units of account" and is defined by the International Monetary Fund. As at 2 July 2003, one SDR is about HKD 11.0. This amount varies daily.

B. Amendments to expand the coverage of Part II of the Ordinance

1. Section 5 of the Ordinance will be amended so that the liability regime provided under the Athens Convention will also be applied to carriage between Hong Kong/Macau and Hong Kong/Mainland ports.