

**MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS  
LIABILITY) (AMENDMENT) BILL 2005**

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# A BILL

## To

Amend the Merchant Shipping (Limitation of Shipowners Liability) Ordinance.

Enacted by the Legislative Council.

### 1. Short title and commencement

(1) This Ordinance may be cited as the Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Ordinance 2005.

(2) Subject to subsections (3) and (4), this Ordinance shall come into operation on the day on which this Ordinance is published in the Gazette.

(3) Sections 2(*b*), 11, 12, 14(*a*) and (*b*)(*i*) and 20 shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

(4) Sections 5(*b*), 9, 13, 14(*b*)(*ii*) and (*c*), 16, 18 and 19(*a*) shall be deemed to have come into operation on 1 July 1997.

(5) Subsection (4) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

### 2. Interpretation

Section 2 of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) is amended—

- (*a*) in the definition of “Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974”, in paragraph (*a*), by adding “and” after the semicolon;
- (*b*) by repealing the definition of “Convention on Limitation of Liability for Maritime Claims, 1976” and substituting—

““Convention on Limitation of Liability for Maritime Claims, 1976” (《1976年海事索賠責任限制公約》) means—

- (a) the convention of that name done at London on 19 November 1976, which was established in a single original in the English, French, Russian and Spanish languages; and
  - (b) the protocol to that convention done at London on 2 May 1996, which was established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages;”;
- (c) by adding—
- ““contract of carriage” (運輸合約) has the meaning assigned to it in Article 1 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974;
  - “international carriage” (國際運輸) has the meaning assigned to it in Article 1 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974;
  - “the Mainland” (內地) means any part of China other than Hong Kong, Macau and Taiwan;
  - “regional carriage” (區域運輸) means any carriage in which—
    - (a) according to the contract of carriage, the place of departure and the place of destination are situated in—
      - (i) Hong Kong and Macau, or vice versa; or
      - (ii) Hong Kong and any port in the Mainland, or vice versa; and
    - (b) according to the contract of carriage or the scheduled itinerary, the intermediate port of call, if any, is in Hong Kong, Macau or the Mainland.”.

### **3. Convention to have force of law**

Section 3 is amended—

- (a) by renumbering it as section 3(1);
- (b) in subsection (1)—

- (i) by adding “the provisions of” before “the Athens Convention”;
- (ii) by repealing “as” where it first appears;
- (iii) by repealing “has” and substituting “have”;
- (c) by adding—
  - “(2) Notwithstanding paragraph 1 of Article 2 of the Convention, and subject to this Part, the Convention applies to regional carriage.”.

#### **4. Application**

Section 5 is amended—

- (a) by renumbering it as section 5(1);
- (b) in subsection (1)—
  - (i) by repealing “section” and substituting “subsection”;
  - (ii) by adding “international” after “to” where it first and secondly appears;
- (c) by adding—
  - “(2) In its application to regional carriage, the Convention is to be read as if paragraph 2 of Article 2 were omitted.”.

#### **5. Limit of liability for personal injury**

Section 6 is amended—

- (a) by renumbering it as section 6(1);
- (b) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
- (c) by adding—
  - “(2) In its application to regional carriage, the Convention is to be read as if paragraph 2 of Article 7 were omitted.”.

#### **6. Section added**

The following is added—

##### **“6A. Unit of account and conversion**

In its application to regional carriage, Article 9 of the Convention is to be read as if the words “currency of Hong Kong” were substituted for the words “national currency of the State of the court seized of the case”.

**7. Competent jurisdiction**

Section 9 is amended by adding—

“(3) In its application to regional carriage, Article 17 of the Convention is to be read as if—

- (a) paragraph 1 were omitted; and
- (b) in paragraph 2, the words “the court” were substituted for the words “any jurisdiction”.”.

**8. Section added**

The following is added—

**“9A. Invalidity of contractual provisions**

In its application to regional carriage, Article 18 of the Convention is to be read as if the words “or having the effect of restricting the option specified in paragraph 1 of Article 17,” were omitted.”.

**9. Notice by carrier to passenger**

Section 10 is amended by repealing “Governor” and substituting “Chief Executive”.

**10. Convention to have force of law**

Section 12 is amended—

- (a) by adding “the provisions of” before “the Convention on Limitation”;
- (b) by repealing “as” where it first appears;
- (c) by repealing “has” and substituting “have”.

**11. Interpretation**

Section 13 is amended—

- (a) in paragraph (b), by repealing the full stop and substituting a semicolon;
- (b) by adding—
  - “(c) in the Chinese text of the Convention—
    - (i) “索償” has the same meaning as “索賠”; and
    - (ii) “責任限額” has the same meaning as “責任限制”.”.

## **12. Right to limit liability**

Section 14 is amended by adding “、船舶所有人” after “(船東)”。

## **13. Claims subject to limitation**

Section 15(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.

## **14. Calculation of ship’s tonnage**

Section 17 is amended—

- (a) by repealing subsection (1);
- (b) in subsection (2)—
  - (i) by repealing “and this section”;
  - (ii) by repealing “Governor” and substituting “Chief Executive”;
- (c) in subsection (3), by repealing “Governor” and substituting “Chief Executive”.

## **15. Application of Part**

Section 23(2) is repealed.

## **16. Meaning of “State Party”**

Section 24 is amended by repealing “Governor” and substituting “Chief Executive”.

## **17. Units of Account**

Section 25(1) is amended—

- (a) by repealing “to 9” and substituting “and 8”;
- (b) by repealing “Article 6” and substituting “Articles 6 and 7”.

## **18. Amendment of Schedules 1 and 2**

Section 28 is amended by repealing “Governor” and substituting “Chief Executive”.

## 19. Repeal and savings

Section 29(2) is amended—

- (a) in paragraph (a), by repealing “Governor under section 17(2);” and substituting “Chief Executive under section 17(2).”;
- (b) by repealing paragraphs (b) and (c).

## 20. Convention on Limitation of Liability for Maritime Claims, 1976

Schedule 2 is amended—

- (a) in Chapter I, in Article 1, in paragraph 2, by adding “、船舶所有人” after “(船東”;
- (b) in Chapter I, in Article 3, by repealing subparagraph (a) and substituting—
  - “(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;”;
- (c) in Chapter II, in Article 6, by repealing paragraph 1 and substituting—
  - “1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows—
    - (a) in respect of claims for loss of life or personal injury—
      - (i) 2 million Units of Account for a ship with a tonnage not exceeding 2 000 tons;
      - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i)—
        - for each ton from 2 001 to 30 000 tons, 800 Units of Account;
        - for each ton from 30 001 to 70 000 tons, 600 Units of Account; and
        - for each ton in excess of 70 000 tons, 400 Units of Account;
    - (b) in respect of any other claims—
      - (i) 1 million Units of Account for a ship with a tonnage not exceeding 2 000 tons;

- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i)—
    - for each ton from 2 001 to 30 000 tons, 400 Units of Account;
    - for each ton from 30 001 to 70 000 tons, 300 Units of Account; and
    - for each ton in excess of 70 000 tons, 200 Units of Account.”;
- (d) in Chapter II, in Article 7—
  - (i) by repealing paragraph 1 and substituting—
    - “1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175 000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship’s certificate.”;
  - (ii) in paragraph 2, by repealing “(有關船舶旅客人身傷亡的索償” and substituting “(船舶旅客喪生或人身傷害的索賠”。

### **Explanatory Memorandum**

The main objects of this Bill are to amend the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) (“the Ordinance”) to—

- (a) apply the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 also to carriage between Hong Kong and Macau and between Hong Kong and ports of the Mainland (clauses 2(a) and (c), 3, 4, 5(c), 6, 7 and 8);
- (b) update the provisions of the Convention on Limitation of Liability for Maritime Claims, 1976 (“LLMC Convention”) set out in Schedule 2 to the Ordinance in accordance with the revisions to the Convention by its protocol in 1996 (clause 20);
- (c) replace the current limit of liability applicable to a ship with a tonnage less than 300 tons in respect of claims arising under the LLMC Convention with the limit set out in the Convention (clause 14(a)); and
- (d) adapt certain provisions of the Ordinance to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People’s Republic of China (clauses 5(b), 9, 13, 14(b)(ii) and (c), 16, 18 and 19(a)).