

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping
(Limitation of Shipowners Liability) Ordinance
(Chapter 434)

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

INTRODUCTION

A At the meeting of the Executive Council on 14 December 2004, the Council ADVISED and the Chief Executive ORDERED that the Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005 at **Annex A** should be introduced into the Legislative Council to reflect the latest changes to the International Convention on Limitation of Liability for Maritime Claims (LLMC) and extend the liability regime applicable to international carriages to carriages between Hong Kong and Macau as well as Hong Kong and Mainland ports (regional carriages).

JUSTIFICATIONS

Liability Limits in LLMC

2. LLMC limits global 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.

3. In May 1996, the International Maritime Organisation (IMO) adopted the 1996 Protocol to increase the limits of liability in LLMC. Ratification by a minimum of ten Contracting Parties was required for the Protocol to take effect. As at October 2004, 14 Contracting Parties to LLMC have ratified and implemented the Protocol. Whilst ratification of the Protocol is voluntary, we propose to implement it in the Hong Kong Special Administrative Region (HKSAR) so that the liability limits we apply will be in line with the highest international standards adopted by IMO. This will be consistent with our policy objective to maintain Hong Kong's status as an international maritime centre. Accordingly, we plan to revise the liability limits in Schedule 2

to Cap. 434 according to the new limits stipulated in the Protocol. We have registered our plan to apply the Protocol in HKSAR with the Central People's Government and secured its agreement to notify IMO on our behalf when we have enacted the present Bill and are ready to implement the Protocol.

4. In addition, carriers' liability limits prescribed in Cap. 434 for ships of less than 300 gross tons are lower than the amounts stipulated in LLMC. Although such flexibility is permissible under LLMC, we propose to align the liability limits for such ships with those stipulated in the Protocol. Ships of less than 300 gross tons could cause considerable damage to other ships or maritime properties. Increasing their liability limits could ensure proper protection to third parties which may be affected by them.

Liability in respect of regional carriages

5. Part II of Cap. 434 gives effect to the Athens Convention, which establishes a regime of limited liability for damage suffered by passengers on a seagoing vessel in the course of an international carriage. It stipulates 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 Athens Convention has been applied to Hong Kong since 1980. Following Hong Kong and Macau's reunification with China in 1997 and 1999 respectively, Hong Kong / Macau and Hong Kong / Mainland carriages have ceased to qualify, by definition, as international carriages within the scope of the Athens Convention. We propose to expand the coverage of Part II of Cap. 434, so that the liability regime prescribed therein will be equally applicable to international and regional carriages.

THE BILL

7. The main provisions are-

- (a) **Clause 3** extends the liability regime applicable to international carriages to regional carriages by amending section 3;
- (b) **Clauses 5(b), 9, 13, 14(b)(ii), 14(c), 16, 18 and 19(a)** replace the references to "Governor" by "Chief Executive";
- (c) **Clause 14(a)** repeals section 17(1), which specifies liability limits for ships less than 300 gross tons; and

- B
- (d) **Clause 20** amends Schedule 2 to give effect to the Protocol. A comparison of existing and new liability limits is set out at **Annex B**.

LEGISLATIVE TIMETABLE

8. The Bill will be gazetted on 7 January 2005 and introduced into the Legislative Council on 19 January 2005.

IMPLICATIONS OF THE PROPOSAL

- C
9. The proposal has economic implications as set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, civil service, environmental and sustainability implications. It will not affect the current binding effect of Cap. 434. The proposal to increase the liability limits will have negligible financial implications for the Government.

PUBLIC CONSULTATION

10. The Economic Services Panel of the Legislative Council was consulted in July 2003, in anticipation of sufficient ratification of the Protocol by LLMC Contracting Parties. Members supported the proposal.

11. We have consulted the Shipping Consultative Committee, Port Operations Committee and Provisional Local Vessels Advisory Committee. They raised no objection to our proposal.

12. We also consulted the Hong Kong Shipowners' Association, Hong Kong Maritime Law Association and Consumer Council on the proposed extension of the liability regime applicable to international carriages to regional carriages. They are supportive of the proposed amendments. In addition, we also informed the Guangdong Maritime Safety Administration and the Macau Marine Department and they did not raise any objection.

PUBLICITY

13. A press release will be issued on 7 January 2005. A spokesman will be available to handle enquires.

ENQUIRIES

14. Any enquiries on this brief can be addressed to Mr. S H Tse, Senior Surveyor of the Marine Department (2852 4606) or Miss Florence Chan, Assistant Secretary of the Economic Development and Labour (2537 2842).

Economic Development and Labour Bureau

7 January 2005

**Merchant Shipping (Limitation of Shipowners
Liability)(Amendment) Bill 2005**

CONTENTS

Clause		Page
1.	Short title and commencement	1
2.	Interpretation	1
3.	Convention to have force of law	3
4.	Application	4
5.	Limit of liability for personal injury	4
6.	Section added	
	6A. Unit of account and conversion	5
7.	Competent jurisdiction	5
8.	Section added	
	9A. Invalidity of contractual provisions	5
9.	Notice by carrier to passenger	5
10.	Convention to have force of law	6
11.	Interpretation	6
12.	Right to limit liability	6
13.	Claims subject to limitation	6
14.	Calculation of ship's tonnage	6
15.	Application of Part	7
16.	Meaning of "State Party"	7
17.	Units of Account	7
18.	Amendment of Schedules 1 and 2	7
19.	Repeal and savings	7
20.	Convention on Limitation of Liability for Maritime Claims, 1976	8

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;

(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";
- (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)).

Comparison of existing limits under LLMC and new limits under the 1996 Protocol

	Existing limits under LLMC	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 million SDR
<i>Ships of 501-2,000 tons</i>	333,500 SDR - 1,083,000 SDR	2 million 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 million SDR
<i>Ships of 501-2,000 tons</i>	167,167 SDR - 417,500 SDR	1 million 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

¹ Special Drawing Rights (SDR) means “units of account” and is defined by the International Monetary Fund. As at 5 November 2004, one SDR is about HKD 11.7. This amount varies daily.

IMPLICATIONS OF THE PROPOSAL

Although the Bill will increase shipowners' liability limits for property claims as well as claims relating to loss of life and personal injury, it will have an insignificant impact on the operating costs of a ship as insurance premium is mainly determined by a ship's quality and track record as well as risk incurred. The liability limit is not the main factor in determining the level of premium.

2. The extension of the liability regime applicable to international carriages to regional carriages will improve the business environment as it will enable regional carriers to limit their liabilities for certain maritime claims to a reasonable level. At the same time, passengers will still be able to settle their claims in accordance with an internationally accepted liability regime.