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**Paper for the House Committee Meeting
on 4 February 2005**

**Legal Service Division Report on
Merchant Shipping (Limitation of Shipowners Liability)
(Amendment) Bill 2005**

I. SUMMARY

- 1. Object of the Bill**

 - (a) To apply the liability regime applicable to international carriages to carriages between Hong Kong and Macau and between Hong Kong and ports of the Mainland (“regional carriages”); and
 - (b) to give effect to the amendments to the Convention on Limitation of Liability for Maritime Claims, 1976 (“the 1976 Convention”) adopted by the International Maritime Organization (“IMO”) in 1996 to enhance protection for ship passengers and cargo owners.
- 2. Comments**

 - (a) A regional carriage carrier will become liable for damage or loss suffered by passengers in the course of the carriage due to the fault or neglect of the carrier.
 - (b) The liability limits for claims for loss of life or personal injury and for other claims arising under the 1976 Convention are proposed to be increased to bring them in line with the new limits adopted by IMO in 1996.
- 3. Public Consultation**

Relevant organizations were consulted, including the Shipping Consultative Committee, Port Operations Committee, Hong Kong Shipowners’ Association, Consumer Council, marine authorities in Guangdong and Macau.
- 4. Consultation with LegCo Panel**

The Panel on Economic Services was consulted in July 2003. Members were concerned about the economic implications of the proposal to increase the shipowners’ liability limits on shipowners.
- 5. Conclusion**

Members may consider whether to form a Bills Committee to study the policy aspects of the Bill.

II. REPORT

Object of the Bill

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

- (a) apply the liability regime applicable to international carriages to carriages between Hong Kong and Macau and between Hong Kong and ports of the Mainland; and
- (b) give effect to the amendments to the Convention on Limitation of Liability for Maritime Claims, 1976 adopted by the International Maritime Organization (“IMO”) in 1996 with a view to enhancing protection for ship passengers and cargo owners.

LegCo Brief Reference

2. File Ref.: MA 30/22 issued by the Economic Development and Labour Bureau on 7 January 2005.

Date of First Reading

3. 26 January 2005.

Background

4. The Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) (“the Ordinance”) gives effect to two international conventions, namely, the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (“the Athens Convention”) and the Convention on Limitation of Liability for Maritime Claims, 1976 (“the 1976 Convention”). These two Conventions are set out in Schedules 1 and 2 to the Ordinance respectively. Under the Ordinance, claims made under the Athens Convention would not affect the right of a passenger to bring a claim under the 1976 Convention, and vice versa.

5. The Athens Convention establishes a regime of limited liability for damage suffered by passengers on a seagoing vessel in the course of an international carriage. An international carriage is defined in the Athens Convention to mean any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State. The Athens Convention has been applied to Hong Kong since 1980. Following the reunification of Hong Kong and Macau with China in 1997 and 1999 respectively, carriages between Hong Kong and Macau and between Hong Kong and, the Mainland ports (“regional carriages”) have ceased to qualify as international carriages within the scope of the Athens Convention.

6. The 1976 Convention limits shipowners' liability for claims in respect of loss of life or personal injury and property claims such as claims relating damage to other ships, property or harbour works. In May 1996, IMO adopted the 1996 Protocol which increases the limits of liability set out in the 1976 Convention. Ratification by a minimum of 10 Contracting Parties is required for the Protocol to take effect. As at October 2004, 14 Contracting Parties have ratified and implemented the Protocol. Although ratification of the Protocol is voluntary, the Administration considers it necessary to implement it in Hong Kong so that the liability limits applied by Hong Kong will be in line with the highest international standards adopted by IMO.

Comments

7. The Bill proposes to extend the liability regime applicable to international carriages to regional carriages and to give effect to the 1996 Protocol.

Amendments relating to liability in respect of regional carriages

8. Under the liability regime provided in the Athens Convention, 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. The Athens Convention provides for various matters relating to claims for damage or loss against the carrier. These matters include limits of liability for personal injury and for loss of or damage to luggage, time-bar for actions and the procedure for bringing a claim for damages. If the Bill is passed, these provisions will apply, with necessary modifications, to regional carriages as they apply to international carriages. Carriers running regional carriages will then be subject to the same liability limits as stipulated in the Athens Convention.

Amendments implementing the 1996 Protocol

9. The 1996 Protocol increases the limits of liability for claims for loss of life or personal injury (other than loss of life or personal injury to ship passengers) and for other claims, which are calculated according to the tonnage of ships. It also increases the liability limits for claims for loss of life or personal injury to passengers of ships. To implement the 1996 Protocol with a view to enhancing protection for ship passengers and cargo owners, the Bill proposes to revise the liability limits in Schedule 2 to the Ordinance. Members may refer to Annex B to the LegCo Brief for a comparison of the existing and new liability limits.

Other amendments

10. Section 17(1) of the Ordinance provides for lower liability limits for ships of less than 300 gross tons in respect of claims arising under the 1976 Convention. The Bill seeks to align these limits with those stipulated in the 1976 Convention and the 1996 Protocol. According to the Administration, increasing the liability limits for ships of less than 300 gross tons could ensure proper protection to third parties who may be affected by damage caused by such ships.

11. Other amendments relate to the repeal of certain provisions of the Ordinance and adaptation of the references to “Governor” in various provisions of the Ordinance to “Chief Executive”.

Commencement

12. The proposed amendments relating to the implementation of the 1996 Protocol will come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette. The proposed adaptation amendments are deemed to have come into operation on 1 July 1997.

13. The Legal Service Division has asked the Administration to explain why the Chinese renditions for the terms “claims” and “limit of liability” in the proposed amendments to the 1976 Convention (“索賠” and “責任限制” respectively) are different from those used in the existing provisions of the 1976 Convention (“索償” and “責任限額”). In its reply, the Administration explained that the proposed Chinese renditions follow the authentic Chinese text for the 1996 Protocol produced by IMO. However, no authentic Chinese text was produced for the 1976 Convention when the Ordinance was enacted in 1993. The Chinese text for the Convention, as set out in Schedule 2 to the Ordinance, is a translated text prepared by the then Attorney General’s Chambers when the Ordinance was enacted. To make the Chinese renditions for the above terms used in existing provisions of the Convention consistent with those used in the proposed amendments, the Administration considers it more appropriate to add a general interpretation provision in the Ordinance providing that in the Chinese text of the 1976 Convention, “索償” and “責任限額” have the same meaning as “索賠” and “責任限制” respectively instead of making extensive textual amendments to the existing provisions of the Convention. Although it may be more desirable to make textual amendments to the existing provisions of the Convention to resolve the difference in the Chinese renditions concerned, we consider that the Administration’s proposal is acceptable from the technical legal point of view.

14. In response to our enquiry on why certain provisions of the Ordinance are proposed to be repealed, the Administration explained that the proposed repealed provisions relate to saving of certain orders made under the Merchant Shipping Act 1979 as modified and extended to Hong Kong by the Merchant Shipping Act 1979 (Hong Kong) Order 1980. These orders have become redundant and should accordingly be repealed.

Public Consultation

15. According to the LegCo Brief, the Shipping Consultative Committee, Port Operations Committee and Provisional Local Vessels Advisory Committee have been consulted on the proposed amendments. They raised no objection.

16. On the proposed extension of the liability regime applicable to international carriages to regional carriages, the Administration has consulted the Hong Kong Shipowners' Association, Hong Kong Maritime Law Association and Consumer Council. They are supportive of the proposed amendments. The Guangdong Maritime Safety Administration and the Macau Marine Department have also been informed of the proposal and they did not raise any objection.

Consultation with LegCo Panel

17. The Panel on Economic Services was consulted on the legislative proposals at its meeting on 18 July 2003. At the meeting, members were concerned that the proposal to increase shipowners' liability limits for property claims as well as claims relating to loss of life and personal injury under the 1976 Convention might lead to an increase in insurance premium, and hence, operating costs of a ship. They were worried that this might affect the competitiveness of Hong Kong in attracting foreign-owned ships to join the Hong Kong Shipping Register. Regarding the proposal to extend the liability regime applicable to international carriages to regional carriages, questions were raised on whether the related trades had been consulted.

18. The Administration explained in Annex C to the LegCo Brief that increasing shipowners' liability limits according to the limits set out in the 1996 Protocol will not have a significant 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 the risks incurred. The liability limit is not the main factor in determining the level of premium.

Conclusion

19. The legal and drafting aspects of the Bill present no problem. Members may consider whether it is necessary to form a Bills Committee to study the policy aspects of the Bill in the light of the concerns of members of the Economic Services Panel and the Administration's response set out in paragraphs 17 and 18 respectively.

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