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**Bills Committee on
Bunker Oil Pollution (Liability and Compensation) Bill**

Background Brief

Purpose

This paper sets out the background of the Bunker Oil Pollution (Liability and Compensation) Bill (the Bill) and summarizes the views and concerns of members of the Panel on Economic Development on the Bill.

Background

2. In 2001, the International Maritime Organization adopted the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Oil Convention, attached at Annex B to the Legislative Council Brief (Ref.: MA CR L/M 4/2008)) to ensure the payment of compensation for damage caused by bunker oil pollution from non-tankers¹ and adopt uniform international rules and procedures for determining the relevant liability. The Bunker Oil Convention entered into force in November 2008. Up to April 2009, 38 Member States, including the Mainland, denoting about 76% of the world tonnage have participated in the Bunker Oil Convention.

The Bill

3. The Bill seeks to establish a legal framework to extend the Bunker Oil Convention to Hong Kong by providing for a similar compensation regime for bunker oil pollution caused by non-tankers.

¹ For tankers, compensation to persons who suffer damage caused by pollution resulting from escape or discharge of persistent hydrocarbon mineral oil from them was provided in the International Convention on Civil Liability for Oil Pollution Damage, 1992, which was implemented in Hong Kong by the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414).

4. The Bill applies to any ship, including a ship owned or operated by the Government. However, the Bill does not apply to any warship, naval auxiliary, or any other ship that is owned or operated by a state and for the time being used by it only on government non-commercial service. Neither the Government, nor any public officer in the officer's capacity as such, is liable to be prosecuted for an offence against the Bill (clause 3).

5. Clause 7 of the Bill provides for exemption from liability for bunker oil pollution damage resulting from an incident if the shipowner proves certain specified matters, e.g. the incident was resulted from an act of war or irresistible natural phenomenon, or was due wholly to the negligence of the person who suffered the damage. Under clause 8, the shipowner who has incurred a liability for pollution damage may also seek to limit his liability by bringing an action under the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434). Clause 10 provides that legal proceedings to enforce a claim in respect of the liability may be brought directly against the insurer.

6. As regards compulsory insurance against bunker oil pollution damage, the main provisions are summarized below:

- (a) The compulsory insurance scheme applies to ships having a gross tonnage of more than 1,000 but does not apply to local vessels which operate exclusively within the river trade limits (clause 12);
- (b) A ship to which the requirement for compulsory insurance applies is prohibited from entering or leaving the waters of Hong Kong unless there is in force a relevant insurance certificate (clause 13);
- (c) The master of a ship is required to keep on the ship an insurance certificate that is in force in respect of the ship and to produce the insurance certificate for inspection on request by the relevant authority (clause 14); and
- (d) For enforcement purposes, enforcement officers are entrusted with the powers to board a ship, request the master of a ship to produce the insurance certificate for inspection and to provide any other document or information relating to the ship (clause 27).

7. New offences are proposed under the Bill to deal with contravention of the requirements relating to compulsory insurance and the keeping of insurance certificates. In case of any contravention of the compulsory insurance requirement, the master and the registered owner of the ship each commits an offence and is liable on conviction on indictment to a fine of \$500,000, or on summary conviction to a fine at level 6 (i.e. \$100,000). A person who contravenes the requirements relating to the keeping of insurance certificates commits an offence and is liable to a fine at level 3 (i.e. \$10,000).

Major views and concerns expressed by the Panel on Economic Development

8. The Panel on Economic Development was briefed on the legislative proposals in the Bill on 27 April 2009. Panel members expressed the following views and concerns —

- (a) how the question of priority claims should be addressed if a shipowner may bring an action in the Court to limit his liability for bunker oil pollution damage;
- (b) whether limitation of liability would be applicable to damages due to wilful misconduct or neglect on the part of the shipowners; and
- (c) whether the exemption given to local vessels, which operated exclusively within the river trade limits, from the compulsory insurance for bunker oil pollution damage was justified.

Relevant papers

Relevant papers are available at the following links:

The Administration's paper for the Panel meeting on 27 April 2009

<http://www.legco.gov.hk/yr08-09/english/panels/eDEV/papers/eDEV0427cb1-1344-3-e.pdf>

Minutes of the Panel meeting on 27 April 2009 (paragraphs 5 to 22)

<http://www.legco.gov.hk/yr08-09/english/panels/eDEV/minutes/eDEV20090427.pdf>

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