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運輸及房屋局
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香港中環交易廣場
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Transport and
Housing Bureau
Government Secretariat
Transport Branch
38th Floor, Two Exchanges Square,
Connaught Place, Central
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本局檔號 Our Ref. THB(T) MA CR L/M 4/2008
來函檔號 Your Ref. LS/B/21/08-09

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8 July 2009

Ms. Kitty Cheng
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central, Hong Kong

By Fax Only (No. 2877 5029)

Dear Ms. Cheng,

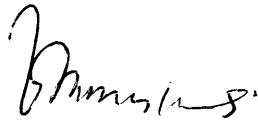
Bunker Oil Pollution (Liability and Compensation) Bill (“the Bill”)

I refer to your letter of 2 July 2009 which seeks information on (a) how the Bill implements the “International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001” (“Bunker Oil Convention”); and (b) the legal mechanism under which the Bunker Oil Convention may extend to Hong Kong.

2. The table enclosed sets out the information requested under (a) above. As for (b), according to Article 153 of the Basic Law of the Hong Kong Special Administrative Region (“HKSAR”), the application to the HKSAR of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government (CPG), in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region. The CPG has sought the views of the Government of the HKSAR on whether the Bunker Oil Convention should be applicable to the HKSAR. We in principle support the

extension of the Bunker Oil Convention to the HKSAR. Subject to the passage of the Bill by the Legislative Council and upon completion of other necessary preparatory work, we will invite the CPG to notify the International Maritime Organization on the extension of the Bunker Oil Convention to Hong Kong in accordance with Article 13 of the Convention.

Yours sincerely,



(Miss Emmy Wong)

for Secretary for Transport and Housing

Encl.

c.c.

DoJ	(Attn.: Ms. Frances HUI)	Fax: 2869 1302
	(Attn : Ms. Shirley WONG)	Fax: 2877 2130
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Bunker Oil Pollution (Liability and Compensation) Bill

Clause	Relevant Article(s) in the Bunker Oil Convention /IMO Conference Resolution
PART 1	
Preliminary	
1. Short title and commencement	-
2. Interpretation	Article 1, Article 2 and Article 3(1)
3. Application of Ordinance	Article 4(1) and Article 4(2)
PART 2	
Liability for Pollution Damage	
4. Application of this Part	-
5. Liability of shipowners of ships for pollution damage	Article 3(1) and Article 1(9)
6. Liability of shipowners of ships – joint and several	Article 3(2), Article 3(4) and Article 5
7. Exemptions from liability under section 5	Article 3(3) and Article 3(4)
8. Limitation of liability of shipowners of ships	Article 6
9. Liability of persons other than shipowners of ships	Resolution on Protection for Persons Taking Measures to Prevent or Minimize the Effects of Oil Pollution (LEG/CONF.12/18) (at Appendix)

Clause	Relevant Article(s) in the Bunker Oil Convention /IMO Conference Resolution
10. Rights of third parties against insurers	Article 7(10)
11. Whether shipowners of ships would be liable for pollution damage etc. otherwise than under section 5	Article 3(5)

PART 3

Compulsory Insurance of Liability

12. Application of this Part	Article 7(1) and Article 7(15)
13. Compulsory insurance against liability for pollution damage	Article 7(1), Article 7(9), Article 7(11), Article 7(12) and Article 7(14)
14. Duty of masters of ships to keep insurance certificates or specified certificates on ships	Article 7(5), Article 7(11), Article 7(12), Article 7(13) and Article 7(14)
15. Application for insurance certificates etc.	-
16. Power of Director or authorized persons to issue insurance certificates etc.	Article 7(2), Article 7(3), Article 7(4), Article 7(6) and Article 7(7)
17. Cancellation and delivery up of insurance certificates issued by Director or authorized persons	Article 7(7)

PART 4

Jurisdiction of Hong Kong Courts to Enforce Claims and Enforcement in Hong Kong of Judgments Given by Courts of other Places, etc.

18. Jurisdiction of Hong Kong courts to enforce claims arising from pollution damage in Hong Kong and in any other Bunker Oil Convention places	Article 9
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Clause	Relevant Article(s) in the Bunker Oil Convention /IMO Conference Resolution
19. Submission of Bunker Oil Convention States to jurisdiction of Court	Article 4(4)
20. Time limit for legal proceedings etc.	Article 8
21. Enforcement of foreign judgments	Article 10
22. Limitation on amount of judgment (other than Hong Kong court judgment) enforceable in Hong Kong	-

PART 5

Miscellaneous

23. Director may grant exemptions	-
24. Notification of decisions of Director etc.	-
25. Power of Director to authorize certain persons as authorized persons	Article 7(3)
26. Power of Director to appoint persons to be enforcement officers	-
27. Powers of enforcement officers	-
28. Provision of false information etc.	-
29. Appeals	-
30. Service of notice etc.	-
31. Saving for recourse actions	Article 3(6)
32. Offences by bodies corporate	-
33. Power to make regulations	-

Clause	Relevant Article(s) in the Bunker Oil Convention /IMO Conference Resolution
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PART 6

Consequential and Related Amendments

High Court Ordinance

- | | | |
|-----|---|---|
| 34. | Admiralty jurisdiction of Court of First Instance | - |
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Rules of the High Court

- | | | |
|-----|-------------------------------------|---|
| 35. | Application and interpretation | - |
| 36. | Service of writ out of jurisdiction | - |
| 37. | Warrant of arrest | - |

Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance

- | | | |
|-----|--|---|
| 38. | Overseas judgments given in breach of agreement for settlement of disputes | - |
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Oil Pollution (Land Use and Requisition) Ordinance

- | | | |
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| 39. | Section substituted | - |
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Administrative Appeals Board Ordinance

- | | | |
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| 40. | Schedule amended | - |
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INTERNATIONAL MARITIME ORGANIZATION



IMO

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INTERNATIONAL CONFERENCE ON
LIABILITY AND COMPENSATION FOR
BUNKER OIL POLLUTION DAMAGE, 2001

LEG/CONF.12/18
27 March 2001
Original: ENGLISH

Agenda item 8

**ADOPTION OF THE FINAL ACT AND ANY INSTRUMENTS, RECOMMENDATIONS
AND RESOLUTIONS RESULTING FROM THE WORK OF THE CONFERENCE**

CONFERENCE RESOLUTIONS

Texts approved by the Conference

RESOLUTION ON LIMITATION OF LIABILITY

THE CONFERENCE,

HAVING ADOPTED the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter "the Convention"),

NOTING THAT article 6 of the Convention preserves the right of the shipowner to limit its liability under any applicable national or international regime,

REAFFIRMING that clear rights to limitation of liability are desirable, to enable the shipowner to take out effective insurance cover at reasonable cost,

BELIEVING that limitation amounts must be sufficiently high to permit the payment of full compensation for eligible claims in normal circumstances,

1. URGES all States that have not yet done so, to ratify, or accede to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976;
2. ENCOURAGES States Parties to the Convention on Limitation of Liability for Maritime Claims, 1976 to denounce that Convention with effect from the entry into force of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 for those States Parties, or after a limited period of time;
3. ALSO ENCOURAGES States Parties to the International Convention for Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-Going Vessels, 1924 and the International Convention relating to Limitation of Liability of Owners of Sea-Going Ships, 1957 to denounce those Conventions with effect from the entry into force of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 for those States Parties;
4. RECOMMENDS that States, when implementing the Convention in their national law, make clear which limitation of liability regime is applicable according to article 6 of the Convention.

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RESOLUTION ON PROMOTION OF TECHNICAL CO-OPERATION

THE CONFERENCE,

HAVING ADOPTED the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter "the Convention"),

BEING AWARE that the comprehensive protection of the marine environment requires, *inter alia*, broad international co-operation to prevent, reduce and control marine pollution damage caused by ships, as well as the adoption of global measures to provide adequate, prompt and effective compensation for such damage,

RECOGNIZING that the provision and use of bunker oil is important for the operation or propulsion of ships, as the principal means of transportation of international trade, and is therefore widespread throughout the world,

RECOGNIZING ALSO that pollution damage caused by bunker oil may produce significant economic and environmental impact in all States, but especially in developing States that do not yet have adequate expertise, facilities and resources to prevent, reduce and control such pollution, and that such impact may, as a consequence, adversely affect the process of sustainable development in those States,

RECOGNIZING FURTHER that States Parties to the Convention will be called upon to make arrangements for the provision of adequate, prompt and effective compensation for pollution damage caused by bunker oil and to assume full responsibility for such arrangements,

BEING CONVINCED that the promotion of technical co-operation will expedite the implementation of the Convention by States, especially developing States,

NOTING WITH APPRECIATION that, through the adoption of resolution A.901(21), the Assembly of the International Maritime Organization (IMO):

- (a) affirmed that IMO's work in developing global maritime standards and in providing technical co-operation for their effective implementation and enforcement, can and does, contribute to sustainable development; and
- (b) decided that IMO's mission statement, in relation to technical co-operation, is to help developing countries improve their ability to comply with international rules and standards relating to maritime safety and the prevention and control of marine pollution, giving priority to technical assistance programmes that focus on human resource development, particularly through training and institutional capacity-building.

1. URGES all IMO Member States, in co-operation with IMO, other interested States, competent international or regional organizations and industry programmes, to promote and provide directly, or through IMO, support to States that request technical assistance for:

- (a) the assessment of the implications of ratifying, accepting, approving, or acceding to and complying with the Convention;
- (b) the development of national legislation to give effect to the Convention; and

- (c) the introduction of other measures for, and the training of personnel charged with, the effective implementation and enforcement of the Convention.
2. ALSO URGES all States to initiate action in connection with the above-mentioned technical measures without awaiting the entry into force of the Convention.

**RESOLUTION ON PROTECTION FOR PERSONS TAKING MEASURES TO
PREVENT OR MINIMIZE THE EFFECTS OF OIL POLLUTION**

THE CONFERENCE,

HAVING ADOPTED the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter “the Convention”),

NOTING that the Convention provides for the shipowner to be strictly liable for bunker oil pollution damage,

NOTING FURTHER that the Convention does not require States Parties to make provision in their implementing legislation excluding any person from liability;

RECOGNIZING that the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, contain provisions on protection for persons taking measures to prevent or minimize the effects of oil pollution,

BELIEVING that it is desirable to avoid any disincentive that could prevent prompt and effective action to minimize the effects of oil pollution,

1. URGES States, when implementing the Convention, to consider the need to introduce legal provision for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution;
2. RECOMMENDS that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result;
3. RECOMMENDS FURTHER that States consider the provisions of article 7, paragraphs 5(a), (b), (d), (e) and (f) of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as a model for their legislation.