

政府總部  
運輸及房屋局  
運輸科  
香港中環交易廣場  
第二座三十八樓



CB(1)2631/08-09(02)  
Transport and  
Housing Bureau  
Government Secretariat  
Transport Branch  
38th Floor, Two Exchanges Square,  
Connaught Place, Central  
Hong Kong

本局檔號 Our Ref. THB(T) MA CR L/M 4/2008

電話 Tel : (852)2537 2839

來函檔號 Your Ref.

傳真 Fax : (852)2523 0030

21 September 2009

Ms. Debbie YAU  
Clerk to Bills Committee  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

By Fax Only (No. 2869 6794)  
(Total 4 pages)

Dear Ms. YAU,

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

Further to the second meeting of the Bills Committee on the Bunker Oil Pollution (Liability and Compensation) Bill held on 9 September 2009, the response of the Administration to the follow-up actions raised by Members is set out in the Annex.

Yours sincerely,

(Miss Sian LI)

for Secretary for Transport and Housing

c.c.

DoJ (Attn : Ms. Frances HUI)  
(Attn : Miss Shirley WONG)  
(Attn : Ms. Angie LI)  
(Attn : Miss Karen LEE)  
MD (Attn.: Mr. Jimmy LEUNG)

**Question 1**

The Administration was requested to consider specifying in the long title that, inter alia, the Bill was to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Oil Convention) with reference to other bills or ordinances.

2. The long title of the Bill defines the scope as to provide for: compensation in respect of damage arising from contamination caused by the discharge or escape of bunker oil from ships or in respect of a threat of such damage; the liability of shipowners and compulsory insurance in respect of the liability; and consequential, incidental or related matters.

3. The formulation serves the policy objective to cover provisions necessary to give effect to the Bunker Oil Convention and to allow some flexibility for accommodating requirements arising from other international conventions and resolutions as well as local requirements on the subject. By way of illustration, clause 9 of the Bill implements the Resolution on Protection for Persons Taking Measures to Prevent or Minimize the Effects of Oil Resolution, and clause 22 provides for the limitation on the amount of judgment given by the court of a state which is not a contracting state to the Bunker Oil Convention when it is enforceable in Hong Kong.

4. The Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) which implements the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) which implements the Convention on Limitation of Liability for Maritime Claims, 1976, also make no reference to the said conventions in their respective long titles.

**Question 2(a)(i)**

5. Regarding “Liability for Pollution Damage” under Part 2 of the Bill, the Administration was requested to clarify whether there would be an apportionment of liability among shipowners if two or more ships were involved in the incident causing pollution damage, where only one shipowner was at fault (proposed section 6).

6. Article 3.1 of the Bunker Oil Convention provides, inter alia, that the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship. This is strict liability, i.e., liability without the proof of fault. Pursuant to Article 3.1 of the Bunker Oil

Convention, clause 5(1) of the Bill provides that if, as a result of an incident, any pollution damage is caused in Hong Kong, the shipowner of the ship concerned is liable for the damage caused (the term “pollution damage” is defined in Clause 2(1)). Put simply, the shipowner of the ship from which pollution damage was caused by bunker oil on board or originating from the ship shall be liable for the pollution damage.

7. Article 5 of the Bunker Oil Convention provides that where an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships concerned (unless exonerated) shall be jointly and severally liable for all such damage which is not reasonably separable. It follows that for all such damage which is reasonably separable, the liability of the shipowners should be reasonably separated. Clause 6 of the Bill seeks to implement Article 5 of the Bunker Oil Convention.

8. By virtue of clause 6(3), section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) on “Apportionment of liability in case of contributory negligence” applies to a shipowner who is liable under clause 5 of the Bill notwithstanding that the relevant pollution damage is not due to the fault of that shipowner. Specifically, in accordance with section 21(3) of Cap. 23, the Civil Liability (Contribution) Ordinance (Cap. 377), which provides for contribution between persons for the same damages, shall apply in any case where 2 or more persons are liable in respect of the same damage suffered by any person.

9. Ultimately, whether there would be an apportionment of liability among shipowners involved in an incident would depend on the facts of the case concerned. A shipowner liable in respect of the damage resulting from an incident may recover contribution under section 3 of Cap. 377 from other shipowners who were involved in the incident and were found liable in respect of the same damage.

#### **Question 2(a)(ii) and 2(c)**

10. Regarding “Liability for Pollution Damage” under Part 2 of the Bill, the Administration was requested:

- (a) to clarify whether there would be an apportionment of liability if the pollution damage was due partly to a shipowner’s fault and partly to conditions beyond his control such as irresistible natural phenomenon (proposed section 7); and
- (b) to clarify whether the exemption from liability under proposed section 5 was absolute or partial (proposed section 7).

11. Whether the pollution damage was due to a shipowner's fault is not a matter for considering the liability of the shipowner under the Bill.

12. Article 3.3(a) of the Bunker Oil Convention provides, inter alia, that no liability for pollution damage shall attach to a shipowner if the shipowner proves that the damage resulted from a natural phenomenon of an exceptional, inevitable and irresistible character. Pursuant to Article 3.3(a) of the Bunker Oil Convention, clause 7(a) of the Bill provides that the shipowner of a ship is not liable under section 5 in respect of any damage resulting from an incident if the shipowner proves that the incident resulted from an exceptional, inevitable and irresistible natural phenomenon. Thus, if a shipowner of a ship is able to prove that the damage was resulting from an incident resulted from an exceptional, inevitable and irresistible natural phenomenon, by virtue of clause 7(a), the shipowner would not be liable for such damage. It should be noted the mere fact that a ship grounds when there is a typhoon does not necessarily mean the relevant damage being a result thereof. It is a matter of facts as to whether the exemption would apply in the case concerned.

#### **Question 2(b)**

13. Regarding "Liability for Pollution Damage" under Part 2 of the Bill, the Administration was requested to clarify the reference of "a/the person" under proposed section 6(3).

14. The objective of clause 6(3) of the Bill is to extend the application of section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) to any person who is liable under clause 5 of the Bill notwithstanding that the liability incurred is not due to the person's fault. The reference in that clause to a person liable under clause 5 must be construed in the context as a shipowner of a ship who is liable under clause 5 of the Bill. The drafting approach is also similar to the one adopted in section 6(4) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414).