

**BUNKER OIL POLLUTION (LIABILITY
AND COMPENSATION) BILL**

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A BILL

To

Provide for—

- (a) 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;
- (b) the liability of shipowners and compulsory insurance in respect of the liability; and
- (c) consequential, incidental or related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Bunker Oil Pollution (Liability and Compensation) Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance—
“application fee” (申請費用) means—

- (a) in relation to an application for an insurance certificate to be issued by the Director, the fee prescribed in regulations made under section 33; and

(b) in relation to an application for an insurance certificate to be issued by an authorized person, the fee determined by the person under section 25(3);

“authorized person” (獲授權人) means a person authorized under section 25(1);

“bunker oil” (燃油), in relation to a ship, means—

(a) any hydrocarbon mineral oil used or intended to be used for the operation or propulsion of the ship; or

(b) any residue of the hydrocarbon mineral oil referred to in paragraph (a);

“Bunker Oil Convention” (《燃油公約》) means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 done at London on 23 March 2001;

“Bunker Oil Convention place” (《燃油公約》適用地) means a place in respect of which the Bunker Oil Convention is in force;

“competent authority” (主管當局) means a competent authority as defined in section 13(5);

“cost” (費用) includes expenses;

“Court” (法庭) means the Court of First Instance;

“damage” (損害) includes loss, but does not include loss of life or personal injury;

“Director” (處長) means the Director of Marine;

“enforcement officer” (執法人員) means the Director or any officer appointed under section 26;

“gross tonnage” (總噸位), in relation to a ship, means the gross tonnage of the ship determined in accordance with regulation 6 of the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C);

“incident” (事故) means any occurrence, or any series of occurrences having the same origin, that—

(a) causes any discharge or escape of bunker oil from a ship; or

(b) causes any relevant threat of contamination to occur;

“insurance certificate” (保險證書) means a certificate required under section 13(1);

“place” (地方) includes—

(a) the territorial sea of a place; and

(b) any exclusive economic zone of a place established in accordance with international law or, in the absence of such an exclusive economic zone, an area beyond and adjacent to the territorial sea of the place determined in accordance with international law and extending not more than 200 nautical miles from the baseline from which the breadth of its territorial sea is measured;

“pollution damage” (污染損害), in relation to an incident, means—

- (a) if the incident causes any discharge or escape of bunker oil from a ship—
 - (i) any damage caused outside the ship by contamination resulting from the discharge or escape;
 - (ii) the cost of any preventive measures taken after the discharge or escape; or
 - (iii) any damage caused outside the ship by any preventive measures taken after the discharge or escape; and
- (b) if the incident causes any relevant threat of contamination to occur—
 - (i) the cost of any preventive measures taken after the incident; or
 - (ii) any damage caused outside the ship by any preventive measures taken after the incident;

“preventive measures” (預防措施), in relation to an incident, means—

- (a) if the incident causes any discharge or escape of bunker oil from a ship, any reasonable measures taken by a person to prevent or minimize any damage referred to in paragraph (a)(i) of the definition of “pollution damage”; and
- (b) if the incident causes any relevant threat of contamination to occur, any reasonable measures taken by a person to prevent or minimize any damage caused outside a ship by contamination that might result if there were a discharge or escape of bunker oil from the ship;

“registered owner” (註冊擁有人), in relation to a ship, means—

- (a) if the ship is owned by a state and operated by a person registered in that state as the operator of the ship, that person; and
- (b) in any other case, the person registered as the owner of the ship or, if no person is registered as the owner of the ship, the person who owns the ship;

“relevant threat of contamination” (有關的污染威脅) means a grave and imminent threat of damage caused outside a ship by contamination that might result if there were a discharge or escape of bunker oil from the ship;

“ship” (船舶) means a sea-going vessel or seaborne craft of any type;

“shipowner” (船東), in relation to a ship, means—

- (a) the bareboat charterer of the ship;
- (b) the manager of the ship;
- (c) the registered owner of the ship; or
- (d) any other person who is the owner or the operator of the ship;

“specified certificate” (指明證書) means a specified certificate as defined in section 13(5).

(2) For the purposes of this Part, if more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin—

- (a) the discharges or escapes together are to be treated as a single discharge or escape; and
- (b) any measures taken after any of those discharges or escapes are to be treated as having been taken after the single discharge or escape.

(3) For the purposes of this Part, if any relevant threat of contamination results from an incident that consists of a series of occurrences having the same origin, any measures taken after any of those occurrences are to be treated as having been taken after the incident.

(4) In this Part, a reference to a discharge or escape of any bunker oil from a ship is a reference to a discharge or escape of any bunker oil from the ship, regardless of whether the discharge or escape occurs in Hong Kong or any other place.

(5) In this Part and Part 2, a reference to the shipowner of a ship is a reference to—

- (a) in relation to any pollution damage resulting from a discharge or escape of bunker oil from the ship—
 - (i) the shipowner of the ship at the time of the occurrence resulting in the discharge or escape; or
 - (ii) if the discharge or escape resulted from a series of occurrences having the same origin, the shipowner of the ship at the time of the first of those occurrences; and
- (b) in relation to any pollution damage resulting from a relevant threat of contamination—
 - (i) the shipowner of the ship at the time of the occurrence resulting in the threat; or
 - (ii) if the threat occurs as a result of a series of occurrences having the same origin, the shipowner of the ship at the time of the first of those occurrences.

(6) For the purposes of Part 3, if the gross tonnage of a ship is not a whole number, decimals are to be rounded off downwards.

(7) In this Ordinance—

- (a) a reference to a ship owned or operated by a state includes—
 - (i) a ship owned or operated by the government of a state; and
 - (ii) a ship owned or operated by the government of a territory within a state (including the HKSAR);
- (b) a reference to a ship owned by a state includes—

- (i) a ship owned by the government of a state; and
- (ii) a ship owned by the government of a territory within a state (including the HKSAR); and
- (c) in relation to a ship owned by the government mentioned in paragraph (b)(i) or (ii), the reference to a certificate issued by the state in the definition of “specified certificate” in section 13(5) is a reference to a certificate issued by the government that owns the ship.

3. Application of Ordinance

(1) Subject to subsections (2) and (3), this Ordinance applies to any ship, whether or not within the waters of Hong Kong, including a ship owned or operated by the Government.

(2) This Ordinance does not apply to—

- (a) any warship;
- (b) any naval auxiliary; or
- (c) 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.

(3) This Ordinance does not apply in relation to any pollution damage to which the Liability Convention applies.

(4) Neither the Government, nor any public officer in the officer’s capacity as such, is liable to be prosecuted for an offence against this Ordinance.

(5) In subsection (3), “Liability Convention” (《法律責任公約》) means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as modified by Resolution LEG. 1(82) adopted by the Legal Committee of the International Maritime Organization on 18 October 2000.

PART 2

LIABILITY FOR POLLUTION DAMAGE

4. Application of this Part

This Part does not apply in relation to any occurrence that took place before the commencement of this Part or, if there is a series of occurrences having the same origin and the first of those occurrences took place before the commencement, any of those occurrences.

5. Liability of shipowners of ships for pollution damage

(1) 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.

(2) If—

(a) a liability arises under subsection (1); and

(b) the incident also causes any pollution damage in any other Bunker Oil Convention place,

the shipowner of the ship concerned is also liable for the damage caused, and a claim against the shipowner's liability under this subsection may be brought in the Court as if the damage were caused in Hong Kong.

(3) The shipowner of a ship is not liable under subsection (1) or (2) for any damage attributable to the impairment of the environment unless the damage is—

(a) loss of profits from the impairment of the environment; or

(b) cost of any reasonable measures of reinstatement of the environment actually taken or to be taken.

6. Liability of shipowners of ships—joint and several

(1) If a liability is incurred under section 5 and the ship concerned has more than one shipowner, the shipowners are liable jointly and severally with each other.

(2) If a liability is incurred under section 5 by the shipowner of each of 2 or more ships, and the pollution damage for which each of the shipowners of those ships would, apart from this subsection, be liable cannot reasonably be separated from that for which the other shipowner or shipowners would be liable, the shipowners of all those ships are liable jointly and severally with each other for the whole of the damage.

(3) If a person is liable under section 5 for any pollution damage that is not due to the person's fault, then despite the fact that the damage is not due to the person's fault, section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) applies in relation to the damage as if it were due to the person's fault.

7. Exemptions from liability under section 5

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—

(a) resulted from an act of war, hostility, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;

- (b) was due wholly to anything done or omitted to be done by any other person, not being a servant or agent of the shipowner, with intent to cause damage;
- (c) was due wholly to the negligence of the person who suffered the damage; or
- (d) was due wholly to the negligence or wrongful act of a government or any other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

8. Limitation of liability of shipowners of ships

If the shipowner of a ship has incurred or is alleged to have incurred a liability under section 5—

- (a) the shipowner may bring an action in the Court to limit the shipowner's liability under Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434); and
- (b) the liability of the shipowner is, for the purposes of paragraph (a), to be treated as a liability in respect of damage to property mentioned in paragraph 1(a) of Article 2 of the Convention on Limitation of Liability for Maritime Claims, 1976 set out in Schedule 2 to that Ordinance.

9. Liability of persons other than shipowners of ships

(1) If an incident occurs, whether or not the shipowner of the ship concerned incurs a liability under section 5, a specified person is not liable for any damage referred to in that section resulting from any act done or omitted to be done by the person, unless the person—

- (a) did the act or omitted to do the act with intent to cause the damage; or
 - (b) recklessly did the act or omitted to do the act knowing that the damage would probably be caused.
- (2) In subsection (1), “specified person” (指明人士) means—
- (a) any servant or agent of the shipowner of the ship;
 - (b) any person who does not fall within the description in paragraph (a) but is employed or engaged in any capacity on board the ship or to perform any services for the ship;
 - (c) any person who performs salvage operations with the consent of the shipowner of the ship or on the instructions of a public authority who is vested with the power to issue the instructions;

- (d) any person who takes preventive measures; or
- (e) any servant or agent of a person mentioned in paragraph (c) or (d).

10. Rights of third parties against insurers

- (1) If it is alleged that—
 - (a) as a result of an incident the shipowner of a ship has incurred a liability under section 5; and
 - (b) while the incident occurred, there was in force a contract of insurance or other security to which an insurance certificate in respect of the ship relates,

legal proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (an “insurer”).

- (2) If a claim is brought against an insurer under this section—
 - (a) the insurer may bring an action in the Court under section 8 to limit the insurer’s liability under Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) as if the insurer were the shipowner of the ship; and
 - (b) the fact that the shipowner of the ship may not be or is not entitled to limit the shipowner’s liability under Part III of that Ordinance does not affect the right of the insurer to limit the insurer’s liability under that Part.

(3) In any legal proceedings brought against an insurer under this section—

- (a) the insurer is entitled to invoke any defence that the shipowner of the ship would have been entitled to invoke in relation to a claim against the shipowner under section 5; and
- (b) it is a defence, in addition to any defence affecting the liability of the shipowner, for the insurer to prove that the incident was due to the wilful misconduct of the shipowner,

but the insurer is not entitled to invoke any other defence that the insurer might have been entitled to invoke in legal proceedings brought by the shipowner against the insurer.

(4) In any legal proceedings brought against an insurer under this section, the insurer may require the shipowner of the ship to join in the proceedings as a party.

(5) The Third Parties (Rights against Insurers) Ordinance (Cap. 273) does not apply in relation to any contract of insurance to which an insurance certificate relates.

11. Whether shipowners of ships would be liable for pollution damage etc. otherwise than under section 5

If an incident occurs, whether or not the shipowner of a ship is liable under section 5, the shipowner is not liable under any other law of Hong Kong for any pollution damage referred to in that section.

PART 3

COMPULSORY INSURANCE OF LIABILITY

12. Application of this Part

(1) This Part applies to a ship having a gross tonnage of more than 1 000, but does not apply to a local vessel that operates exclusively within the river trade limits.

(2) In subsection (1)—

“local vessel” (本地船隻) has the same meaning as in section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);

“river trade limits” (內河航限) has the same meaning as in section 2 of the Shipping and Port Control Ordinance (Cap. 313).

13. Compulsory insurance against liability for pollution damage

(1) Subject to subsection (3), a ship is not allowed to enter or leave the waters of Hong Kong unless there is in force a certificate—

(a) complying with the requirements in paragraphs 2 and 4 of Article 7 of the Bunker Oil Convention; and

(b) certifying that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article 7 of the Convention.

(2) A certificate required under subsection (1) must be issued by a competent authority.

(3) A ship that is owned by a state may enter or leave the waters of Hong Kong without a certificate required under subsection (1), if there is in force in respect of the ship a specified certificate.

(4) If subsection (1) is contravened, the master and the registered owner of the ship each commits an offence and is liable—

(a) on conviction on indictment to a fine of \$500,000; or

(b) on summary conviction to a fine at level 6.

(5) In this section—

“competent authority” (主管當局) means—

- (a) in relation to a ship registered in Hong Kong—
 - (i) the Director; or
 - (ii) an authorized person;
- (b) in relation to a ship registered in any other Bunker Oil Convention place—
 - (i) the government of that other place; or
 - (ii) a person authorized by the government of that other place; and
- (c) in relation to any other ship—
 - (i) the Director;
 - (ii) an authorized person;
 - (iii) the government of a Bunker Oil Convention place other than Hong Kong; or
 - (iv) a person authorized by the government of a Bunker Oil Convention place other than Hong Kong;

“specified certificate” (指明證書), in relation to a ship owned by a state, means a certificate issued by the state and certifying that—

- (a) the ship is owned by the state; and
- (b) the liability for pollution damage as defined in Article 1 of the Bunker Oil Convention will be met up to the limit determined under paragraph 1 of Article 7 of the Convention.

14. Duty of masters of ships to keep insurance certificates or specified certificates on ships

(1) The master of a ship, other than a ship registered in Hong Kong, must ensure that an insurance certificate or a specified certificate (as the case requires) that is in force in respect of the ship is kept at all times on the ship when the ship is within the waters of Hong Kong.

(2) The master of a ship registered in Hong Kong must ensure that an insurance certificate or a specified certificate (as the case requires) that is in force in respect of the ship is kept at all times on the ship, whether or not the ship is within the waters of Hong Kong.

(3) The master of a ship within the waters of Hong Kong must produce for inspection, on request by an enforcement officer in the performance of their functions under this Ordinance, the insurance certificate or the specified certificate referred to in subsection (1).

(4) If a ship registered in Hong Kong is within the waters of any other Bunker Oil Convention place, the master of the ship must produce for inspection, on request by a person duly authorized for that purpose by the government of that other place, the insurance certificate or the specified certificate referred to in subsection (2).

(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 3.

(6) This section does not apply in relation to a ship if—

(a) there is in force in respect of the ship an insurance certificate or a specified certificate;

(b) the Secretary-General of the International Maritime Organization has been notified under paragraph 13 of Article 7 of the Bunker Oil Convention of the maintenance of a record in electronic form that attests to the existence of the certificate; and

(c) the record is accessible to the Director.

15. Application for insurance certificates etc.

(1) The shipowner of a ship registered in Hong Kong or of any other ship, other than a ship registered in any other Bunker Oil Convention place, may apply to the Director or an authorized person for an insurance certificate for the ship.

(2) The application must—

(a) be made in writing;

(b) be in a form specified by the Director; and

(c) be accompanied by—

(i) a contract of insurance or other security relating to the ship; and

(ii) any document or information that the Director or the authorized person may reasonably require for the purpose of considering the application.

16. Power of Director or authorized persons to issue insurance certificates etc.

(1) If, on an application made under section 15 and on payment of the application fee, the Director or the authorized person is satisfied that the condition in subsection (2) is fulfilled, the Director or the authorized person may issue an insurance certificate for the ship.

(2) The condition is that there will be in force in respect of the ship, throughout the period for which the insurance certificate is to be issued, a contract of insurance or other security satisfying the requirements in paragraphs 1 and 6 of Article 7 of the Bunker Oil Convention.

(3) The Director or the authorized person may refuse to issue an insurance certificate for a ship if the Director or the authorized person is of the opinion that there is doubt as to—

- (a) whether the person providing the insurance or other security will be able to meet the person's obligations under the insurance or other security; or
- (b) whether the insurance or other security will satisfy the requirements in paragraphs 1 and 6 of Article 7 of the Bunker Oil Convention.

(4) An insurance certificate issued under subsection (1) may be subject to any condition that the Director or the authorized person may impose.

(5) The Director must keep a copy of each certificate issued by the Director or an authorized person under this section and make it available for public inspection.

17. Cancellation and delivery up of insurance certificates issued by Director or authorized persons

(1) If, at any time while a certificate issued under section 16 is in force in respect of a ship, a person ceases to be the registered owner of the ship, the certificate is to be treated as cancelled once the person ceases to be the registered owner.

(2) If, at any time while a certificate issued under section 16 is in force in respect of a ship, it is established in any legal proceedings that the contract of insurance or other security to which the certificate relates is invalid or may be treated as invalid, the issuing authority may cancel the certificate.

(3) If, at any time after a certificate is issued under section 16 in respect of a ship, any circumstances arise in relation to an insurer or guarantor named in the certificate such that the issuing authority is of the opinion that there is doubt as to—

- (a) whether the person providing the insurance or other security will be able to meet the person's obligations under the insurance or other security; or
- (b) whether the insurance or other security will cover the liability of the shipowner of the ship under this Ordinance in all circumstances,

the issuing authority may cancel the certificate.

(4) If a certificate issued under section 16 is cancelled under this section, the person to whom the certificate is issued must as soon as reasonably practicable deliver up the certificate to the issuing authority.

(5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 2.

(6) In this section, "issuing authority" (發證當局), in relation to a certificate issued under section 16, means—

- (a) if the certificate is issued by the Director, the Director; and
- (b) if the certificate is issued by an authorized person, the authorized person.

(7) This section does not operate so as to affect section 46 of the Interpretation and General Clauses Ordinance (Cap. 1).

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

(1) For the purposes of Part 2, if as a result of an incident, any pollution damage is caused in Hong Kong, an action may be brought in the Court to enforce a claim arising from the pollution damage.

(2) For the purposes of Part 2, if as a result of an incident, any pollution damage is caused in a Bunker Oil Convention place other than Hong Kong, no action may be brought in any court of Hong Kong to enforce a claim arising from the pollution damage.

(3) Despite subsection (2), a claim arising from the pollution damage may be enforced in the Court if the incident also results in any pollution damage in Hong Kong.

19. Submission of Bunker Oil Convention States to jurisdiction of Court

(1) For the purposes of any legal proceedings brought in the Court to enforce a claim under Part 2—

- (a) a Bunker Oil Convention State is to be treated as having submitted to the jurisdiction of the Court; and
- (b) rules of court may provide for the manner in which those proceedings are to be commenced and carried on.

(2) Subsection (1) is not to be construed as authorizing the issue of execution against the property of a state.

(3) In this section, “Bunker Oil Convention State” (《燃油公約》國) means a state that is a party to the Bunker Oil Convention.

20. Time limit for legal proceedings etc.

No legal proceedings to enforce a claim under Part 2 may be instituted unless the proceedings are commenced—

- (a) not later than 3 years after the claim arises; and
- (b) not later than 6 years after—
 - (i) the incident that causes the pollution damage; or
 - (ii) if the incident consists of a series of occurrences having the same origin, the first of those occurrences.

21. Enforcement of foreign judgments

(1) The Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319), except sections 3, 5(2), 6(2) and (3), 9, 10, 11, 12 and 13, applies to a judgment given on or after the commencement of Part 2 by a court of a Bunker Oil Convention place, other than a place in the People's Republic of China, to enforce a claim in respect of a liability incurred under any law corresponding to section 5.

(2) For the purposes of subsection (1), a reference to “a judgment to which the provisions of this Ordinance apply” in sections 4(1), 6(1) and 8 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) includes a judgment to which that subsection applies.

(3) Subsection (1) applies only if—

- (a) the judgment is final and conclusive between the parties to it; and
- (b) the judgment orders the payment of a sum of money, other than a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

(4) A judgment is final and conclusive between the parties to it, despite the fact that an appeal is pending against it, or that it may still be subject to appeal, in any court of the place in which the court that gives the judgment is situated.

22. Limitation on amount of judgment (other than Hong Kong court judgment) enforceable in Hong Kong

(1) If, on or after the commencement of Part 2—

- (a) a court of a place, other than a Bunker Oil Convention place, gives a judgment in respect of any liability in that place for any pollution damage in relation to which the Bunker Oil Convention applies; and

(b) the judgment may be recognized or enforced in Hong Kong under any law of Hong Kong relating to recognition and enforcement of judgments given in a place outside Hong Kong, then despite the fact that that law may provide otherwise, the judgment may be recognized or enforced by a court of Hong Kong only up to the limit of liability prescribed in Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434).

(2) Subsection (1) applies only if the liability is incurred by—

(a) the shipowner of a ship; or

(b) a person, other than the shipowner of a ship, who is entitled to limit their liability under Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434).

PART 5

MISCELLANEOUS

23. Director may grant exemptions

(1) The Director may, in a particular case, exempt in writing any person or ship from the application of any provision of section 13 or 14.

(2) An exemption under this section may be granted subject to any condition that the Director may impose.

24. Notification of decisions of Director etc.

(1) If the Director or an authorized person decides to refuse to issue an insurance certificate under section 16, the Director or the authorized person must, by notice in writing served on the applicant, inform the applicant of the decision and the reasons for the decision.

(2) If the Director or an authorized person decides to cancel an insurance certificate under section 17, the Director or the authorized person must, by notice in writing served on the holder of the certificate, inform the holder of the decision and the reasons for the decision.

(3) If the Director decides to refuse to grant an exemption under section 23, the Director must, by notice in writing served on the person by whom the exemption is sought, inform the person of the decision and the reasons for the decision.

25. Power of Director to authorize certain persons as authorized persons

(1) The Director may authorize any person, other than a public officer, as an authorized person.

(2) An authorized person is not an agent or servant of the Government.

(3) An authorized person may determine the fee to be paid on an application to the person for an insurance certificate to be issued by the person.

26. Power of Director to appoint persons to be enforcement officers

The Director may, for the purposes of sections 13 and 14, appoint any officer of the Marine Department to be an enforcement officer.

27. Powers of enforcement officers

(1) For the purposes of ascertaining whether section 13 or 14 is complied with, an enforcement officer may exercise one or more of the following powers—

(a) board a ship;

(b) request the master of a ship to which Part 3 applies to produce for the officer's inspection the insurance certificate or the specified certificate relating to the ship;

(c) request the master of a ship to produce for the officer's inspection any other document relating to the ship and to provide any information relating to the ship;

(d) make or take any copy of any document produced to the officer under paragraph (b) or (c).

(2) A person who wilfully obstructs an enforcement officer in the exercise of the officer's power under subsection (1)(a) or (d) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(3) A person who fails to comply with a request made by an enforcement officer under subsection (1)(c) commits an offence and is liable on conviction to a fine at level 3.

28. Provision of false information etc.

(1) A person commits an offence if the person, in purported compliance with a requirement imposed under section 15 or a request made under section 27—

- (a) produces any document or provides any information that the person knows to be false or misleading in a material respect; or
- (b) produces any document or provides any information that the person ought reasonably to have known to be false or misleading in a material respect.

(2) A person who commits an offence under subsection (1)(a) or (b) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

29. Appeals

(1) A person who is aggrieved by any of the following decisions may appeal to the Administrative Appeals Board against the decision—

- (a) a decision of the Director or an authorized person to refuse to issue an insurance certificate under section 16;
- (b) a decision of the Director or an authorized person to impose any condition under section 16;
- (c) a decision of the Director or an authorized person to cancel an insurance certificate under section 17;
- (d) a decision of the Director to refuse to grant an exemption under section 23;
- (e) a decision of the Director to impose any condition under section 23.

(2) An appeal under subsection (1) does not suspend the decision appealed against.

30. Service of notice etc.

A notice or other document (however described) required or permitted to be served or sent (however described) under this Ordinance is to be regarded as having been duly served or sent if—

- (a) for the Director—
 - (i) it is addressed to the Director and delivered to the Director's principal office; or
 - (ii) it is sent to the Director by registered post addressed to the Director at the Director's principal office;
- (b) for an individual—
 - (i) it is addressed to the individual and delivered to the individual by personal service; or
 - (ii) it is sent to the individual by registered post addressed to the individual at the individual's last known address;
- (c) for a company as defined in section 2(1) of the Companies Ordinance (Cap. 32)—

- (i) it is addressed to the company and delivered to any officer of the company by hand; or
- (ii) it is left at, or sent by post to, the registered office of the company within the meaning of that Ordinance;
- (d) for a body corporate (other than a company described in paragraph (c))—
 - (i) it is addressed to the body and delivered to any place in Hong Kong at which the body carries on business and given to a person apparently concerned in the management of, or apparently employed by, the body; or
 - (ii) it is sent to the body by registered post addressed to the body at the body's last known address; or
- (e) for a partnership—
 - (i) it is addressed to the partnership and delivered to any place in Hong Kong at which the partnership carries on business and given to a person apparently concerned in the management of, or apparently employed by, the partnership; or
 - (ii) it is sent to the partnership by registered post addressed to the partnership at the partnership's last known address.

31. Saving for recourse actions

This Ordinance does not affect any claim, or the enforcement of any claim, that a person who incurs a liability under this Ordinance may have against another person in respect of the liability.

32. Offences by bodies corporate

If a person by whom an offence under this Ordinance is committed is a body corporate, and it is proved that the offence—

- (a) was committed with the consent or connivance of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any of those capacities; or
 - (b) was due to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any of those capacities,
- the director, manager, secretary, officer or the person, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

33. Power to make regulations

The Financial Secretary may by regulations prescribe the fee to be paid on an application to the Director for an insurance certificate to be issued by the Director.

PART 6

CONSEQUENTIAL AND RELATED AMENDMENTS

High Court Ordinance

34. Admiralty jurisdiction of Court of First Instance

- (1) Section 12A(3) of the High Court Ordinance (Cap. 4) is amended—
 - (a) in paragraph (a)(vi), by repealing “or”;
 - (b) in paragraph (a)(vii), by adding “or” at the end;
 - (c) in paragraph (a), by adding—

“(viii) the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009);”;
 - (d) in paragraph (c)(v), by repealing “or”;
 - (e) in paragraph (c)(vi), by repealing the comma and substituting “; or”;
 - (f) in paragraph (c), by adding—

“(vii) the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009).”.
- (2) Section 12A(5) is amended—
 - (a) in paragraph (a), by repealing “and” at the end;
 - (b) in paragraph (b), by repealing the full stop and substituting “; and”;
 - (c) by adding—

“(c) any claim in respect of a liability incurred under section 5 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009).”.
- (3) Section 12A(8) is amended—
 - (a) in paragraph (f), by repealing “or”;
 - (b) in paragraph (g), by repealing the full stop and substituting “; or”;
 - (c) by adding—

“(h) the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009).”.

Rules of the High Court

35. Application and interpretation

Order 75, rule 1(2) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended, in the definition of “limitation action”—

- (a) by repealing “or the” and substituting “, the”;
- (b) by adding “, the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) or the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009)” before “for the limitation”.

36. Service of writ out of jurisdiction

Order 75, rule 4(1) is amended by adding “or section 5 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009)” after “(Cap. 414)”.

37. Warrant of arrest

Order 75, rule 5(8) is amended—

- (a) in subparagraph (c), by repealing “and” at the end;
- (b) in subparagraph (e), by repealing the full stop and substituting “; and”;
- (c) by adding—
 - “(f) in the case of a claim in respect of a liability incurred under section 5 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009), the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of section 18(2) of that Ordinance.”.

Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance

38. Overseas judgments given in breach of agreement for settlement of disputes

Section 3(4) of the Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance (Cap. 46) is amended—

- (a) in paragraph (a), by repealing “or”;

- (b) in paragraph (b), by repealing the full stop and substituting “; or”;
- (c) by adding—
 - “(c) by virtue of section 21 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009).”.

Oil Pollution (Land Use and Requisition) Ordinance

39. Section substituted

Section 10 of the Oil Pollution (Land Use and Requisition) Ordinance (Cap. 247) is repealed and the following substituted—

“10. Liability for costs of cleaning-up operations

(1) The owner of a vessel from which any oil is discharged or escapes into the waters of Hong Kong is liable to the Government for the costs of all measures taken under this Ordinance or otherwise reasonably taken by the Government for a specified purpose in relation to the discharge or escape of oil, including the amount of any compensation reasonably paid under Part III.

(2) The owner of any installation or container, whether on land or in or on water, from which any oil is discharged or escapes into the waters of Hong Kong is liable to the Government for the costs of all measures taken under this Ordinance or otherwise reasonably taken by the Government for a specified purpose in relation to the discharge or escape of oil, including the amount of any compensation reasonably paid under Part III.

(3) In any proceedings by the Government to recover any costs referred to in subsection (1) or (2), unless the contrary is proved, a certificate purporting to be signed by the Director of Accounting Services is proof of the amount of the costs incurred.

(4) Subsection (1) does not apply to—

- (a) any discharge or escape of oil in relation to which section 6 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) applies; or
- (b) any discharge or escape of oil in relation to which section 5 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009) applies.

(5) Subsection (2) does not apply to any installation or container that is a vessel or part of a vessel.

- (6) In this section, “owner” (擁有人), in relation to a vessel, means—
- (a) if the vessel is owned by a state and operated by a person registered in that state as the operator of the vessel, that person; and
 - (b) in any other case, the person registered as the owner of the vessel or, if no person is registered as the owner of the vessel, the person who owns the vessel.
- (7) In this section, a reference to a vessel owned by a state includes—
- (a) a vessel owned by the government of a state; and
 - (b) a vessel owned by the government of a territory within a state.”.

Administrative Appeals Board Ordinance

40. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding—

- “68. Bunker Oil Pollution (Liability and Compensation) Ordinance (of 2009)
- (a) A decision of the Director of Marine or a person authorized under section 25(1) to refuse to issue an insurance certificate under section 16.
 - (b) A decision of the Director of Marine or a person authorized under section 25(1) to impose any condition under section 16.
 - (c) A decision of the Director of Marine or a person authorized under section 25(1) to cancel an insurance certificate under section 17.
 - (d) A decision of the Director of Marine to refuse to grant an exemption under section 23.
 - (e) A decision of the Director of Marine to impose any condition under section 23.”.

Explanatory Memorandum

The main purpose of this Bill is to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 done at London on 23 March 2001 (“the Convention”).

2. Part 1 (clauses 1 to 3) is preliminary.

3. Clause 1 provides for the short title and the commencement of the Bill when enacted. Clause 2(1) defines certain terms such as “bunker oil”, “enforcement officer”, “insurance certificate”, “pollution damage”, “ship” and “shipowner” used in the Bill. Clause 3 provides for the application of the Bill when enacted.

4. Part 2 (clauses 4 to 11) deals with the liability of the shipowner of a ship for damage resulting from a discharge or escape of bunker oil from the ship and for damage resulting from a grave and imminent threat of damage caused by contamination that might result if there were a discharge or escape of bunker oil from the ship.

5. Clause 4 provides for the application of Part 2. Clause 5 imposes a liability on the shipowner of a ship for pollution damage caused in Hong Kong and in any other place in respect of which the Convention is in force. Clause 6 provides for the liability of each shipowner of a ship if there is more than one shipowner of the ship. It also provides for the liability of the shipowners of 2 or more ships if more than one ship is involved.

6. Clause 7 provides for exemption from liability of the shipowner of a ship. Clause 8 provides for the rights of the shipowner of a ship to limit their liability for pollution damage under Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434). Clause 9 deals with the liability of a person other than the shipowner of a ship. Clause 10 deals with the rights of a third party to bring any legal proceedings against a person who provides insurance or other security in respect of the ship.

7. Part 3 (clauses 12 to 17) provides for compulsory insurance against liability for pollution damage.

8. Clause 12 provides that Part 3 applies to a ship having a gross tonnage of more than 1 000 but does not apply to any local vessel that operates exclusively within the river trade limits. The term “local vessel” is defined to have the same meaning as in section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), whereas the term “river trade limits” is defined to have the same meaning as in section 2 of the Shipping and Port Control Ordinance (Cap. 313).

9. Clause 13(1) prohibits a ship to which Part 3 applies from entering or leaving the waters of Hong Kong without an insurance certificate or a specified certificate as defined in that clause.

10. Clause 14(1) imposes a duty on the master of a ship to which Part 3 applies (other than a ship registered in Hong Kong) to keep at all times on the ship an insurance certificate or a specified certificate that is in force in respect of the ship when the ship is within the waters of Hong Kong. Clause 14(2) imposes a duty on the master of a ship registered in Hong Kong to keep at all times on the ship an insurance certificate or a specified certificate that is in force in respect of the ship. Clause 14(3) imposes a duty on the master of a ship to which Part 3 applies to produce the insurance certificate or the specified certificate for an enforcement officer's inspection, when the ship is within the waters of Hong Kong. Clause 14(4) imposes a duty on the master of a ship registered in Hong Kong to produce the insurance certificate or the specified certificate for inspection by a person duly authorized by another Bunker Oil Convention place for that purpose, when the ship is within the waters of that place.

11. Clause 15 provides for the application for an insurance certificate. Clause 16 empowers the Director of Marine and a person authorized by the Director to issue insurance certificates. Clause 17 provides for the cancellation and delivery up of an insurance certificate issued by the Director of Marine or any person authorized by the Director.

12. Part 4 (clauses 18 to 22) relates to the jurisdiction of Hong Kong courts to enforce claims and the enforcement in Hong Kong of judgments given by courts of other places.

13. Part 5 (clauses 23 to 33) provides for miscellaneous matters. For example, clause 23 empowers the Director of Marine to grant exemptions from clause 13 or 14. Clause 25 empowers the Director of Marine to authorize any person, other than a public officer, as an authorized person for the purposes of the Bill. Clause 26 empowers the Director of Marine to appoint any officer of the Marine Department to be an enforcement officer. Clause 27 provides for the powers of an enforcement officer. Clause 28 provides for the offence of providing false information. Clause 29 provides for the appeal against a decision of the Director of Marine or any person authorized by the Director. Clause 30 provides for the service of a notice or other document required or permitted to be served or sent under the Bill. Clause 33 confers on the Financial Secretary the power to make any regulation prescribing the fee to be paid on an application to the Director of Marine for an insurance certificate to be issued by the Director.

14. Part 6 (clauses 34 to 40) deals with consequential and related amendments to the following domestic legislation—

- (a) the High Court Ordinance (Cap. 4) (clause 34);
- (b) the Rules of the High Court (Cap. 4 sub. leg. A) (clauses 35 to 37);
- (c) the Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance (Cap. 46) (clause 38);
- (d) the Oil Pollution (Land Use and Requisition) Ordinance (Cap. 247) (clause 39); and
- (e) the Administrative Appeals Board Ordinance (Cap. 442) (clause 40).