

## **LEGISLATIVE COUNCIL BRIEF**

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

#### **INTRODUCTION**

A At the meeting of the Executive Council on 9 June 2009, the Council ADVISED and the Chief Executive ORDERED that the Bunker Oil Pollution (Liability and Compensation) Bill (the “Bill”), at Annex A, should be introduced into the Legislative Council.

#### **JUSTIFICATIONS**

B 2. The main purpose of the Bill is to implement the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, at Annex B (the “Bunker Oil Convention”) in Hong Kong. The extension of the Bunker Oil Convention to Hong Kong can reinforce our status as an international maritime centre. Through the implementation of the Bunker Oil Convention, Hong Kong will have a compensation regime for pollution damage caused by discharge or escape of bunker oil from non-tankers on par with that of most overseas jurisdictions. Specifically, the Bill, if enacted, will ensure the payment of adequate, prompt and effective compensation for pollution damage. Moreover, the liability of the shipowners of non-tankers will be determined under a set of uniform international rules and procedures and be subject to a specified limit, thereby providing them with greater certainty.

## THE BILL

3. The main provisions of the Bill are set out below –

### Liability of “Shipowners”

- (a) clause 5 imposes a liability on the owner, the bareboat charterer, the manager and the operator of a non-tanker (Shipowners) for certain damage resulting from discharge or escape of bunker oil from the ship or from a grave and imminent threat of damage caused outside the ship by contamination that might result if there were a discharge or escape of bunker oil pollution from the ship<sup>1</sup>;

### Limitation of Liability

- (b) clause 8 enables a Shipowner to bring an action to limit the Shipowner’s liability described in paragraph (a) above under Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance. The limit of liability for claims is to be calculated as follows: (i) for a ship with a tonnage less than 300 tons, 83,333 Special Drawing Rights (SDRs<sup>2</sup>); (ii) for a ship with a tonnage not exceeding 500 tons, 167,000 SDRs; (iii) for a ship with a tonnage in excess of 500 tons, 167,000 SDRs plus (A) 167 SDRs for each ton from 501 to 30,000 tons; (B) 125 SDRs for each ton from 30,001 to 70,000 tons; and (C) 83 SDRs for each ton in excess of 70,000 tons;
- (c) clause 9 provides for the liability of certain persons, including a servant or agent of the Shipowner of a ship and a person who performs salvage operations;
- (d) clause 10 confers on a person who suffers pollution damage the right to bring a direct action against the relevant insurer. The insurer may then bring an action to limit their liability under Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance;

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<sup>1</sup> Exclusions are also provided for as appropriate under clause 7. By way of example, Shipowners will not be held liable if the pollution damage resulted from exceptional, inevitable and irresistible natural phenomenon or was due wholly to the negligence of the person who suffered the damage.

<sup>2</sup> One SDR is equivalent to around HK\$11.7.

## Compulsory Insurance or Other Security for Ships with a Gross Tonnage Greater than 1,000

- (e) clause 12 has the effect of exempting a local vessel<sup>3</sup> operating exclusively within the river trade limits<sup>4</sup> from the requirements mentioned in clauses 13 and 14 so as to reduce their compliance burden. In proposing the exemption, we have taken into account the very few bunker oil pollution incidents relating to local vessels and the relatively minor extent of damage involved. However, such a ship will still be liable for pollution damage caused by the ship;
- (f) clause 13 prohibits a ship having a gross tonnage of more than 1,000 from entering or leaving the waters of Hong Kong without a certificate issued by the competent authority attesting that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements in Article 7 of the Bunker Oil Convention (insurance certificate);
- (g) clause 14 requires the keeping of an insurance certificate in respect of a ship on board the ship;

## Issue of Insurance Certificates

- (h) clause 16 empowers the Director of Marine or an institution authorized by the Director to issue insurance certificates for certain ships;

## Jurisdiction of the Court of First Instance of the High Court of the HKSAR (the Court of First Instance)

- (i) clause 18 provides for an action to be brought in the Court of First Instance to enforce a claim for compensation made under the Bill if enacted;
- (j) clause 21 provides for the recognition and enforcement of certain judgments made by a court in a Bunker Oil Convention place<sup>5</sup> other

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<sup>3</sup> The expression “local vessel” means a local vessel as defined in section 2 of the Merchant Shipping (Local Vessels) Ordinance.

<sup>4</sup> The expression “river trade limits” has the same meaning as in section 2 of the Shipping and Port Control Ordinance.

<sup>5</sup> The expression “Bunker Oil Convention place” means a place in respect of which the Bunker Oil Convention is in force.

than a place in the People's Republic of China;

- (k) clause 22 sets a limit up to which certain judgments given by a court in a place that is not a Bunker Oil Convention place may be recognized or enforced in Hong Kong. The purpose of this provision is to protect Shipowners from excessive compensation for oil pollution damage, and the requirement in clause 22 is in addition to the requirements under the Bunker Oil Convention;

#### Others

- (l) clause 25 confers on the Director of Marine or other enforcement officers certain powers that are necessary for the implementation of certain provisions of the Bill, including the power to board a ship and the power to request the master of the ship to produce for inspection the insurance certificate; and
- (m) clause 33 empowers the Financial Secretary to prescribe by regulation the fee to be paid for applying for an insurance certificate issued by the Director of Marine.

### **LEGISLATIVE TIMETABLE**

- 4. The Bill will be published in the Gazette on 12 June 2009 and introduced into the Legislative Council on 24 June 2009.

### **IMPLICATIONS OF THE PROPOSAL**

- 5. The proposal poses no additional compliance cost to Shipowners as ships engaged in international voyages are subject to the same international requirements in other parts of the world. On the other hand, the Bill will enable Shipowners to limit their liability according to international standards and thus provide non-tankers registered with the Hong Kong Shipping Register with a more certain business environment. All in all, the Bill should help reinforce Hong Kong's status as the world's leading maritime centre.

- 6. Marine Department will implement the new requirements through redeployment of its existing staff and resources. The Bill has no productivity or significant sustainability implications. As regards

environmental implications, the implementation of the Bunker Oil Convention would help uphold Government's commitment to protecting the marine environment by introducing a compensation regime for pollution damage caused by discharge or escape of bunker oil in accordance with international practice. The Bill is in conformity with the Basic Law, including the provisions concerning human rights.

7. As for the binding effect of the Bill, the Bill expressly applies to ships owned or operated by the HKSAR Government unless the ship concerned is for the time being used by the HKSAR Government only on government non-commercial service. The Bill expressly provides that neither the Government nor a public officer in the officer's capacity as such is liable to be prosecuted for an offence against the Bill.

## **PUBLIC CONSULTATION**

8. We consulted the Legislative Council Panel on Economic Development on 27 April 2009. Members generally agree that the Bill should be introduced into the Legislative Council so as to implement the Bunker Oil Convention. Some Members expressed the view that consideration should be given to not exempting local vessels operating exclusively within the river trade limits from the compulsory insurance requirement.

9. We also consulted the shipping industry through the Shipping Consultative Committee, the Port Operations Committee and the Local Vessel Advisory Committee. They do not object to the proposal.

## **PUBLICITY**

10. A press release will be issued on 10 June 2009. A spokesman will be available to handle enquires.

## **BACKGROUND**

11. In view of the success of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the 1992 Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund

Convention) in ensuring that compensation is available to persons who suffer damage caused by pollution resulting from escape or discharge of persistent hydrocarbon mineral oil from tankers, the Bunker Oil Convention was adopted in 2001. The Bunker Oil Convention entered into force on 21 November 2008. So far 39 Member States, including China, denoting about 76% of the world tonnage have participated in the Bunker Oil Convention.

12. Hong Kong introduced the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance to implement the 1992 Liability Convention and the 1992 Fund Convention to provide for a compensation regime for oil pollution caused by tankers. The Bill is to implement the Bunker Oil Convention and seeks to provide for a similar regime for bunker oil pollution caused by non-tankers.

## **ENQUIRIES**

13. Any enquiries on this brief can be addressed to Miss Emmy WONG, Principal Assistant Secretary for Transport and Housing (Tel: 2537 2839) or Mr. Y.K. LI, Senior Surveyor of Ships (Tel: 2852 4606).

**Transport and Housing Bureau**  
**10 June 2009**

**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



- (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).



IMO

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

LEG/CONF.12/19  
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**

**INTERNATIONAL CONVENTION ON CIVIL LIABILITY  
FOR BUNKER OIL POLLUTION DAMAGE, 2001**

**Text approved by the Conference**

**The States Parties to this Convention,**

**RECALLING** article 194 of the United Nations Convention on the Law of the Sea, 1982, which provides that States shall take all measures necessary to prevent, reduce and control pollution of the marine environment,

**RECALLING ALSO** article 235 of that Convention, which provides that, with the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the further development of relevant rules of international law,

**NOTING** the success of 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 in ensuring that compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil carried in bulk at sea by ships,

**NOTING ALSO** the adoption of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 in order to provide adequate, prompt and effective compensation for damage caused by incidents in connection with the carriage by sea of hazardous and noxious substances,

**RECOGNIZING** the importance of establishing strict liability for all forms of oil pollution which is linked to an appropriate limitation of the level of that liability,

**CONSIDERING** that complementary measures are necessary to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil from ships,

**DESIRING** to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

**HAVE AGREED** as follows:

## **Article 1**

### **Definitions**

For the purposes of this Convention:

- 1 "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
- 2 "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
- 3 "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
- 4 "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "registered owner" shall mean such company.
- 5 "Bunker oil" means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.
- 6 "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended.
- 7 "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
- 8 "Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
- 9 "Pollution damage" means:
  - (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
  - (b) the costs of preventive measures and further loss or damage caused by preventive measures.
- 10 "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

11 "Gross tonnage" means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

12 "Organization" means the International Maritime Organization.

13 "Secretary-General" means the Secretary-General of the Organization.

## **Article 2**

### **Scope of application**

This Convention shall apply exclusively:

- (a) to pollution damage caused:
  - (i) in the territory, including the territorial sea, of a State Party, and
  - (ii) in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

## **Article 3**

### **Liability of the shipowner**

1 Except as provided in paragraphs 3 and 4, 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, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.

2 Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.

3 No liability for pollution damage shall attach to the shipowner if the shipowner proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

4 If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

5 No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Convention.

6 Nothing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention.

#### **Article 4**

##### **Exclusions**

1 This Convention shall not apply to pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.

2 Except as provided in paragraph 3, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

3 A State Party may decide to apply this Convention to its warships or other ships described in paragraph 2, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

4 With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 9 and shall waive all defences based on its status as a sovereign State.

#### **Article 5**

##### **Incidents involving two or more ships**

When an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships concerned, unless exonerated under article 3, shall be jointly and severally liable for all such damage which is not reasonably separable.

#### **Article 6**

##### **Limitation of liability**

Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

## Article 7

### Compulsory insurance or financial security

1 The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the registered owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

3 (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

- (b) A State Party shall notify the Secretary-General of :
  - (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;

- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.

5 The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6 An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

7 The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.

8 Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organisations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9 Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10 Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case the defendant may invoke the defences (other than bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the shipowner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

11 A State Party shall not permit a ship under its flag to which this article applies to operate at any time, unless a certificate has been issued under paragraphs 2 or 14.

12 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security, to the extent specified in paragraph 1, is in force in respect of any ship having a gross tonnage greater than 1000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

13 Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving ports or arriving at or leaving from offshore facilities in its territory, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

15 A State may, at the time of ratification, acceptance, approval of, or accession to this Convention, or at any time thereafter, declare that this article does not apply to ships operating exclusively within the area of that State referred to in article 2(a)(i).

## **Article 8**

### **Time limits**

Rights to compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six-years' period shall run from the date of the first such occurrence.

## **Article 9**

### **Jurisdiction**

1 Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in article 2(a)(ii) of one or more States Parties, or preventive measures have been taken to prevent or minimise pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of any such States Parties.

2 Reasonable notice of any action taken under paragraph 1 shall be given to each defendant.

3 Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

## **Article 10**

### **Recognition and enforcement**

1 Any judgement given by a Court with jurisdiction in accordance with article 9 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

2 A judgement recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

## **Article 11**

### **Supersession Clause**

This Convention shall supersede any Convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such Convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such Convention.

## **Article 12**

### **Signature, ratification, acceptance, approval and accession**

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.

- 2 States may express their consent to be bound by this Convention by:
- (a) signature without reservation as to ratification, acceptance or approval;
  - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

### **Article 13**

#### **States with more than one system of law**

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Convention applies.

- 3 In relation to a State Party which has made such a declaration:
- (a) in the definition of “registered owner” in article 1(4), references to a State shall be construed as references to such a territorial unit;
  - (b) references to the State of a ship’s registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;
  - (c) references in this Convention to the requirements of national law shall be construed as references to the requirements of the law of the relevant territorial unit; and
  - (d) references in articles 9 and 10 to courts, and to judgements which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgements which must be recognized in, the relevant territorial unit.

## **Article 14**

### **Entry into Force**

1. This Convention shall enter into force one year following the date on which eighteen States, including five States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months after the date of deposit by such State of the appropriate instrument.

## **Article 15**

### **Denunciation**

1 This Convention may be denounced by any State Party at any time after the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

## **Article 16**

### **Revision or amendment**

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Organization shall convene a conference of the States Parties for revising or amending this Convention at the request of not less than one-third of the States Parties.

## **Article 17**

### **Depositary**

1 This Convention shall be deposited with the Secretary-General.

2 The Secretary-General shall:

- (a) inform all States which have signed or acceded to this Convention of:
  - (i) each new signature or deposit of instrument together with the date thereof;
  - (ii) the date of entry into force of this Convention;

- (iii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit and the date on which the denunciation takes effect; and
  - (iv) other declarations and notifications made under this Convention.
- (b) transmit certified true copies of this Convention to all Signatory States and to all States which accede to this Convention.

### **Article 18**

#### **Transmission to United Nations**

As soon as this Convention comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### **Article 19**

#### **Languages**

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-third day of March, two thousand and one.

IN WITNESS WHEREOF the undersigned being duly authorised by their respective Governments for that purpose have signed this Convention.

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**ANNEX**

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY  
IN RESPECT OF CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE**

Issued in accordance with the provisions of article 7 of the  
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

Name of Ship	Distinctive Number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the registered owner.

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

Type of Security .....

Duration of Security .....

Name and address of the insurer(s)and/or guarantor(s)

Name .....

Address .....

.....

This certificate is valid until .....

Issued or certified by the Government of .....

.....

(Full designation of the State)

**OR**

*The following text should be used when a State Party avails itself of article 7(3)*

The present certificate is issued under the authority of the Government of .....(full designation of the State)  
by.....(name of institution or organization)

At .....  
(Place)

On .....  
(Date)

.....  
(Signature and Title of issuing or certifying official)

**Explanatory Notes:**

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of Security" must stipulate the date on which such security takes effect.
5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

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