

立法會
Legislative Council

LC Paper No. LS93/08-09

**Paper for the House Committee Meeting
on 26 June 2009**

**Legal Service Division Report on
Bunker Oil Pollution (Liability and Compensation) Bill**

I. SUMMARY

1. **Objects of the Bill** To establish a legal framework to extend the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 done at London on 23 March 2001 (the Bunker Oil Convention) by providing for -
 - (a) compensation for damage arising from pollution caused by the discharge or escape of bunker oil from ships or for threat of such damage; and
 - (b) the liability of shipowners for bunker oil pollution damage and compulsory insurance in respect of such liability.

2. **Comments** The Bill raises some important legal as well as policy issues, for example, the liability of the Government and public officers for bunker oil pollution damage, the limitation of shipowners' liability under the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434), and the exemption from the requirement for compulsory insurance provided to local vessels that operate exclusively within the river trade limits.

3. **Public Consultation** The Administration consulted the shipping industry through the Shipping Consultative Committee, the Port Operations Committee and the Local Vessel Advisory Committee and they did not object to the legislative proposal.

4. **Consultation with LegCo Panel** The Administration briefed the Panel on Economic Development on the Bill at its meeting on 27 April 2009. Members expressed the following concerns -
 - (a) how the question of priority of claims should be addressed if shipowners are permitted to limit their liability for bunker oil pollution damage; and
 - (b) whether the exemption given to local vessels from the compulsory insurance requirement for bunker oil pollution damage was justified.

5. **Conclusion** In view of the concerns of the members raised at the meeting of the Panel on Economic Development, Members may wish to examine the Bill in detail.

II. REPORT

Objects of the Bill

To establish a legal framework to extend the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 done at London on 23 March 2001 (the Bunker Oil Convention) to Hong Kong by providing for -

- (a) compensation for damage arising from pollution caused by the discharge or escape of bunker oil from ships or for threat of such damage; and
- (b) the liability of shipowners for bunker oil pollution damage and compulsory insurance in respect of the liability.

LegCo Brief Reference

2. MA CR L/M 4/2008 issued by the Transport and Housing Bureau on 10 June 2009.

Date of First Reading

3. 24 June 2009.

Comments

4. The International Convention on Civil Liability for Oil Pollution Damage, 1992, which provides for compensation to persons who suffer damage caused by pollution resulting from escape or discharge of persistent hydrocarbon mineral oil from tankers, was implemented in Hong Kong by the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414). In 2001, the International Maritime Organisation adopted the Bunker Oil Convention to ensure the payment of compensation for damage caused by bunker oil pollution from non-tankers and adopt uniform international rules and procedures for determining the relevant liability. The Convention cannot be extended to Hong Kong unless appropriate legislative measures for the provisions of the Convention are put in place. The Bill seeks to establish a legal framework to extend the Bunker Oil Convention to Hong Kong by providing for a similar compensation regime for bunker oil pollution caused by non-tankers.

5. The Bill seeks to impose liability on shipowners 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. Liability is imposed on the shipowner of a ship for bunker oil pollution damage caused in Hong Kong and in any other place where the Bunker Oil Convention is in force (clause 5).

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

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

8. Part 3 of the Bill provides for compulsory insurance against liability for bunker oil pollution damage. The main provisions are summarized below -

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

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

10. The Bill (if enacted) shall come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

Public Consultation

11. The Administration consulted the shipping industry through the Shipping Consultative Committee, the Port Operations Committee and the Local Vessel Advisory Committee and they did not object to the legislative proposal (para. 9 of the LegCo Brief).

Consultation with LegCo Panel

12. The Administration briefed the Panel on Economic Development on the Bill at its meeting on 27 April 2009. Members expressed the following concerns -

- (a) how the question of priority of claims should be addressed if shipowners are permitted to limit their liability for bunker oil pollution damage; and
- (b) whether the exemption given to local vessels from the requirement of compulsory insurance for bunker oil pollution damage was justified.

13. In response to members' request, the Administration has provided the full version of the Bunker Oil Convention and the justification for exempting local vessels from the compulsory insurance requirement (LC Paper No. CB(1)1599/08-09(01)), which was circulated to Panel members on 15 May 2009.

Conclusion

14. The Bill raises some important legal as well as policy issues, for example, the liability of the Government and public officer for bunker oil pollution damage, the limitation of shipowners' liability under Cap. 434, and the exemption from the compulsory insurance requirement provided to local vessels that operate exclusively within the river trade limits.

15. In view of the concerns of the members raised at the meeting of the Panel on Economic Development, Members may wish to examine the Bill in detail.

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