

For discussion
on 27 April 2009

**Legislative Council Panel on Economic Development
Bunker Oil Pollution (Liability and Compensation) Bill**

INTRODUCTION

This paper seeks Members' views on the proposals set out in the proposed 《Bunker Oil Pollution (Liability and Compensation) Bill》 (the “Bill”) to implement the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the “Bunker Oil Convention”).

BACKGROUND

2. In view of the success of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the “1992 Liability Convention”) in ensuring that compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of persistent hydrocarbon mineral oil from tankers, the International Maritime Organization adopted the Bunker Oil Convention in 2001 to –

- (a) ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil from non-tankers; and
- (b) adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases.

The Bunker Oil Convention entered into force on 21 November 2008. So far 38 Member States, including China, denoting about 76% of the world tonnage have participated in the Bunker Oil Convention.

3. Hong Kong introduced the 《Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance》(Cap. 414) to implement the 1992 Liability 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.

Major Proposals under the Bill

4. Through the implementation of the Bunker Oil Convention, Hong Kong will have an effective compensation regime for pollution damage caused by spills of bunker oil from non-tankers on par with that of most jurisdictions. It will further reinforce Hong Kong's status as an international maritime centre. Major proposals of the Bill include –

Liability of “Shipowners”

- (a) imposing a liability on the owner, the bareboat charterer, the manager and the operator of a non-tanker ship (collectively referred to as “Shipowners”) for certain damage resulting from discharge or escape of bunker oil from the ship or from a grave and imminent threat of such damage. Exclusions are provided for as appropriate. By way of example, Shipowners will not be held liable if the pollution damage resulted from exceptional, inevitable or irresistible natural phenomenon or was due wholly to the negligence of the person who suffered the damage;

Limitation of Liability

- (b) enabling Shipowners to limit the liability described in paragraph (a) above under Part III of the 《Merchant Shipping (Limitation of Shipowners Liability) Ordinance》 (Cap.434). The limit of liability for claims is to be calculated as follows: (i) 83,333 Special Drawing Rights (SDRs¹) for a ship with a tonnage less than 300 tons; (ii) 167,000 SDRs for a ship with a tonnage not exceeding 500 tons;

¹ One SDR is equivalent to around HK\$11.7.

- (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 tons to 70,000 tons and (C) 83 SDRs for each ton in excess of 70,000 tons;

Compulsory Insurance or Other Security for Ships with a Gross Tonnage (GT) Greater Than 1,000

- (c) requiring ships with a gross tonnage of more than 1,000 to carry a certificate attesting that there is in force in respect of the ship a contract of security satisfying the insurance requirements including the amount insured;
- (d) considering the minimal record of bunker oil pollution incident relating to local vessels and the relatively minor extent of damage involved, local vessels operating exclusively within the river trade limits are proposed to be exempted from the compulsory insurance requirement so as to reduce their compliance burden. However, they will still be liable for pollution damage caused by them;

Issue of Insurance Certificates

- (e) empowering the Director of Marine or an institution authorized by him to issue certificates to Shipowners attesting that there is in force a contract of insurance or other security satisfying the requirement on the insurance amount and other relevant requirements of the Bunker Oil Convention;

Jurisdiction of the Court of First Instance

- (f) conferring on the Court of First Instance the jurisdiction to (i) consider claims for compensation made under the Bill and limitation actions brought by Shipowners; (ii) recognize and enforce certain judgments made by a court in the jurisdiction of other parties to the Bunker Oil Convention;
- (g) to protect Shipowners from excessive compensation for oil pollution damage, in addition to the requirements under the Bunker Oil

Convention, setting a limit up to which judgments given by a court in a place that is not a party to the Convention may be recognized or enforced in our Court of First Instance;

Others

- (h) conferring the person who suffers pollution damage the right to bring an action against the relevant insurer direct. The insurer may then bring an action to limit his liability under Part III of the 《Merchant Shipping (Limitation of Shipowners Liability) Ordinance》 ;
- (i) defining the liability of the servant/agent of the Shipowner of a ship, a person who performs salvage operations and a person who takes preventive measures, etc, that they are to be held liable if, and only if, they did the relevant act or omitted to do the act with intent to cause the damage, or if they recklessly did the act or omitted to do the act knowing that the damage would probably be caused; and
- (j) empowering the Financial Secretary to prescribe by regulation the application fee for the issuance of a certificate referred to in paragraph 4(e) above by the Director of Marine, and entrusting the Marine Department with a number of necessary enforcement powers, such as the right to board a ship and the power to request the master of certain ships to produce for inspection the insurance certificates.

CONSULTATION

5. Owners of vessels engaged in international voyages are subject to similar liability and compensation regime as well as similar requirement relating to insurance. The requirement relating to insurance will have little additional impact on their operating cost. They were consulted through the Shipping Consultative Committee and the Port Operations Committee, and have raised no objection. We have also consulted the Local Vessel Advisory Committee. They do not object to the application of the Bunker Oil Convention to local vessels.

ADVICE SOUGHT

6. Members are invited to give their views on the above proposals.

**Transport and Housing Bureau
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