

立法會
Legislative Council

LC Paper No. LS23/09-10

**Paper for the House Committee Meeting
on 4 December 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 November 2009**

Date of tabling in LegCo : 2 December 2009

Amendment to be made by : 16 December 2009 (or 20 January 2010 if extended by resolution)

Bunker Oil Pollution (Liability and Compensation) Ordinance (14 of 2009)
Bunker Oil Pollution (Liability and Compensation) Ordinance (Commencement) Notice (L.N. 235)
Bunker Oil Pollution (Liability and Compensation) (Application Fee for Insurance Certificate) Regulation (L.N. 236)

The Bunker Oil Pollution (Liability and Compensation) Ordinance (14 of 2009) (the Ordinance), which was enacted on 11 November 2009 and published in the Gazette on 20 November 2009, seeks to implement the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Oil Convention) in Hong Kong. The Ordinance provides 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.

2. By L.N. 235, the Secretary for Transport and Housing appoints 22 January 2010 as the day on which the Ordinance comes into operation.

3. Under Part 3 of the Ordinance, owners of non-tankers with a gross tonnage of over 1 000 entering or leaving the waters of Hong Kong are required to take out prescribed insurance or other financial security to cover liability for pollution damage caused by oil spills. They are required to have a specified insurance certificate certifying that there is insurance cover or financial security to cover the relevant liability (Insurance Certificate). Owners of any Hong Kong-registered non-tankers or other non-tankers not registered in any State Party to the Bunker Oil Convention may apply for an Insurance Certificate either from the Director of Marine (Director) or from an authorized person as proof of their compliance with the requirement. Under section 33 of the Ordinance, the Financial Secretary¹ 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.

¹ Under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "Financial Secretary" means the Financial Secretary of the Hong Kong Special Administrative Region and the Secretary for Financial Services and the Treasury.

4. L.N. 236, made by the Secretary for Financial Services and the Treasury under section 33 of the Ordinance, prescribes the fee to be paid on an application to the Director for an Insurance Certificate for non-tankers to be issued by the Director at \$535. This application fee is the same as that prescribed for the issuance of a similar certificate for tankers under the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414).
5. According to paragraph 4 of the LegCo Brief, it is the Government's established policy that fees and charges should in general be set at levels adequate to recover the full cost of providing the services concerned.
6. Members may refer to the LegCo Brief (File Ref.: MA CR L/M 4/2008) issued by the Transport and Housing Bureau on 25 November 2009 for background information.
7. L.N. 236 will come into operation on the day appointed for the commencement of the Ordinance, i.e. 22 January 2010.
8. The Panel on Economic Development was consulted on the proposed fee regulation at the meeting on 16 November 2009. The Panel in general supported the fee proposal and noted that the Administration would regularly review the fee level and introduce fee reduction when circumstances permitted.
9. No difficulties have been observed in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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