

LEGISLATIVE COUNCIL BRIEF

BUNKER OIL POLLUTION (LIABILITY AND COMPENSATION) (APPLICATION FEE FOR INSURANCE CERTIFICATE) REGULATION

INTRODUCTION

This paper briefs Members on the Bunker Oil Pollution (Liability and Compensation) (Application Fee for Insurance Certificate) Regulation (“the Regulation”) at Annex.

Annex

JUSTIFICATIONS

2. 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.

3. Under the regime, 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 the 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 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.

4. 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.

THE REGULATION

5. The Regulation prescribes the fee to be paid on an application to the Director for an Insurance Certificate to be issued by the Director at \$535. The proposed application fee of \$535 for an Insurance Certificate for non-tankers 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).

LEGISLATIVE TIMETABLE

6. There is a need to bring the compensation regime established pursuant to the Bunker Oil Convention into effect as soon as possible. As the fee paying mechanism is an integral part of the insurance certificate scheme under Part 3 (Compulsory Insurance of Liability) of the Ordinance, it is necessary to bring the Regulation into operation on the same day on which the Ordinance comes into operation. Thus we will synchronize the commencement of both the Ordinance and the Regulation.

7. The Regulation together with the Commencement Notices for the Ordinance will be published in the Gazette on 27 November 2009 and tabled at the Legislative Council on 2 December 2009.

IMPLICATIONS OF THE PROPOSAL

8. Ships engaged in international voyages are subject to the same international requirements in other parts of the world and the fee prescribed in the proposal is a minimal cost item for international shipping. Thus, the proposal will not have significant economic implications to international ship operators.

9. It is estimated that the proposal will generate additional revenue of about \$600,000 per annum.

10. The Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance. It has no productivity, civil service, environmental or sustainability implications.

PUBLIC CONSULTATION

11. We consulted the Legislative Council Panel on Economic Development on 16 November 2009. We have further reviewed the fee level after the meeting in the light of views expressed at the meeting, and concluded that there is no room for reduction in accordance with the full cost recovery principle. We shall regularly review the fee level and introduce fee reduction when circumstances permit.

12. We have also consulted the Shipping Consultative Committee, which comprises representatives from the Hong Kong Shipowners Association, shipping companies, the Hong Kong Seaman's Union, the Merchant Navy Officers' Guild - Hong Kong, and a maritime law firm. The Committee supported the proposal and two individual shipping companies suggested that the fee be set at a lower level.

PUBLICITY

13. A press release will be issued on 25 November 2009. A spokesman will be available to handle enquiries.

ENQUIRIES

14. Any enquiries on this brief can be addressed to Mr. Wilson Tsang, Assistant Secretary for Transport and Housing (Tel: 2121 2340) or Mr. Harlan Li, Senior Surveyor of Ships (Tel: 2852 4606).

Transport and Housing Bureau
25 November 2009

**BUNKER OIL POLLUTION (LIABILITY AND
COMPENSATION) (APPLICATION FEE FOR
INSURANCE CERTIFICATE) REGULATION**

(Made by the Secretary for Financial Services and the Treasury under
section 33 of the Bunker Oil Pollution (Liability and Compensation)
Ordinance (14 of 2009))

1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Bunker Oil Pollution (Liability and Compensation) Ordinance (14 of 2009).

2. Application fee for insurance certificate

The fee to be paid on an application to the Director for an insurance certificate to be issued by the Director is \$535.

Secretary for Financial Services and
the Treasury

2009

Explanatory Note

This Regulation prescribes the fee that must be paid on an application to the Director of Marine for an insurance certificate to be issued by the Director under the Bunker Oil Pollution (Liability and Compensation) Ordinance (14 of 2009).