

For discussion on

26 June 2017

Legislative Council Panel on Economic Development

**Incorporating in Local Legislation the Latest Standards of the
International Maritime Organization**

Merchant Shipping

(Prevention and Control of Pollution) Ordinance (Cap. 413)

Merchant Shipping

(Limitation of Shipowners Liability) Ordinance (Cap. 434)

Purpose

This paper seeks Members' comments on proposed legislative amendments to incorporate in local legislation the latest requirements set out in the International Convention for the Prevention of Pollution from Ships ("MARPOL") and the Convention on Limitation of Liability for Maritime Claims ("LLMC") adopted by the International Maritime Organization ("IMO").

MARPOL

Transport of noxious liquid in bulk

2. To protect the marine environment and minimise pollution from ship operation, IMO adopted MARPOL in 1973. MARPOL came into force in 1983 and has six annexes regulating the discharge of different pollutants¹. This legislative exercise focuses on MARPOL Annex II, which regulates ships carrying noxious liquid substances (“NLS”) in bulk, covering specific requirements on design and construction, ship certification, the record of cargo operations, and the control of operational discharges. It also sets out inspection requirements for port authorities and requirements in relation to the provision of reception facilities for cargo residues from emptying and cleaning of cargo tanks.

3. The requirements of MARPOL Annex II are implemented in Hong Kong through the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) and its subsidiary legislation², which apply to all Hong Kong ships. IMO made substantial revisions to MARPOL Annex II in 2004 to take into account the latest knowledge about the impact of NLS chemicals on marine environment and give clearer guidelines and procedures on the

¹ Annexes to MARPOL govern various substances as follows:

- i. Annex I: Regulations for the prevention of pollution by oil.
- ii. Annex II: Regulations for the control of pollution by noxious liquid substances in bulk.
- iii. Annex III: Regulations for the prevention of pollution by harmful substances carried by sea in packaged form.
- iv. Annex IV: Regulations for the prevention of pollution by sewage from ships.
- v. Annex V: Regulations for the prevention of pollution by garbage from ships.
- vi. Annex VI: Regulations for the prevention of air pollution from ships.

² There are three pieces of subsidiary legislation for MARPOL Annex II, IBC Code and BCH Code:

- i. Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413B);
- ii. Merchant Shipping (BCH Code) Regulations (Cap. 413D); and
- iii. Merchant Shipping (IBC Code) Regulations (Cap. 413E).

transport of NLS in bulk. These revisions came into force in 2007. Marine Department implemented the new requirements through a Hong Kong Merchant Shipping Information Note to Hong Kong-registered vessels carrying NLS in bulk. As of 6 June 2017, all 116 Hong Kong-registered vessels concerned are in compliance. We now propose to incorporate the latest requirements into our local legislation.

Proposed amendments

4. We propose to incorporate the requirements adopted by IMO after 2004. The major changes cover mainly the re-categorisation of chemicals based on the latest knowledge about their interactions with the marine environment, as well as requirements relating to their discharge. Key amendments are highlighted below —

- (a) ***Revising the categorisation of NLS*** — When MARPOL Annex II was first adopted, it contained four categories of NLS (Categories A, B, C and D, with A being the most hazardous and would pose serious threat to human health and marine environment³). Each category had its corresponding loading, carriage and discharge restrictions. With better scientific understanding of the impact of NLS on the marine environment, IMO reclassified NLS products into Categories X, Y, Z and Other Substances. Products in Category X are the most hazardous. Other Substances include coal slurry, clay slurry,

³ NLS are assigned to different pollution categories based on the following factors:

- i. Bio-accumulation;
- ii. Bio-degradation;
- iii. Acute toxicity;
- iv. Chronic toxicity;
- v. Long-term health effects; and
- vi. Effects on marine wildlife and on benthic habitats.

molasses and water, which are harmless to the marine environment and human health. Some new products, such as vegetable oils (Category Y), lard (Category Y) and urea solution (Category Z), have been added to the list as their carriage in bulk has become common due to their increased consumption worldwide.

- (b) ***Tightening the maximum residual quantity of NLS allowed on ships*** — Improvements in the unloading system of ships has made it possible to impose stricter control on the amount of residues that can be discharged into the sea after cargo unloading. For ships constructed on or after 1 January 2007, the maximum permitted residue in the tank and its piping system after cargo unloading (and which will be discharged into the sea) will be substantially reduced to a maximum of 75 litres for all products in Categories X, Y and Z (compared with previous limits which set a maximum of 100 to 900 litres, depending on the product category and age of the ship).
- (c) ***Discharge restrictions*** — NLS, if discharged into the sea from tank cleaning or deballasting operations, will present certain hazard to marine environment and human health. As such, NLS in Categories X, Y and Z can only be discharged into the sea subject to limits on quantity and after dilution. Ships constructed on or after 1 January 2007 and certified to carry products in Categories X, Y and Z must have an underwater discharge outlet (or outlets). For ships constructed before 1 January 2007 and certified to carry substances in Category Z, an underwater discharge outlet is not mandatory. There is no discharge restriction for products categorised as Other Substances.

LLMC

Shipowners' financial liability for maritime incidents

5. LLMC was adopted by IMO in 1976 to limit shipowners' financial liability for maritime incidents involving primarily personal claims (such as injury or loss of life) and property damage claims (such as damage to other ships, property or harbour works). The unit of measurement for monetary liability is Special Drawing Right ("SDR"), which is an interest-bearing international reserve asset created by the International Monetary Fund in 1969. SDR is based on a basket of international currencies comprising US dollar, Japanese yen, Euro, British pound sterling and Chinese renminbi⁴.

6. IMO adopted a set of limits under the 1996 Protocol to reflect the inflation between 1976 and 1996. In Hong Kong, these limits have been incorporated into Schedule 2 to the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434), which applies to all Hong Kong ships. As monetary values have changed since 1996 due to inflation, IMO announced in 2012 to increase the liability limits by 51%. The new limits came into force in 2015 and we propose to update Schedule 2 to incorporate the new limits into our local legislation.

Proposed new limits of liability

7. The maximum financial liability under LLMC is linked to the size of a ship. We will incorporate the latest liability limits into our local legislation. The table below shows the current and proposed limits by ship size —

⁴ IMF publishes the daily conversion rates for SDR. For example, as of 14 June 2017, SDR 1 is approximately equivalent to US\$ 1.38.

Liability limit for claims for loss of life or personal injury (in SDR)		Liability limit for claims for property damage claims (in SDR)	
Current	Proposed	Current	Proposed
<i>For ships not exceeding 2 000 tonnes</i>			
2 million	3.02 million	1 million	1.51 million
<i>For each tonne from 2 001 to 30 000 tonnes</i>			
800	1 208	400	604
<i>For each tonne from 30 001 to 70 000 tonnes</i>			
600	906	300	453
<i>For each tonne in excess of 70 000 tonnes</i>			
400	604	200	302

8. Given that the insurance premium for ships is mainly determined by their quality, track record and likely risks, the proposed increase in liability limit should not have significant impact on the insurance and operating costs borne by ships.

Consultation

9. The Shipping Consultative Committee, the Port Operations Committee and the Local Vessels Consultative Committee of the Marine Department have been consulted on the relevant legislative proposals. Members supported them.

Advice Sought

10. Members are invited to endorse the proposals outlined above. Subject to Members' views, we will introduce the legislative amendments into the Legislative Council by mid-2018.

Transport and Housing Bureau

Marine Department

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