

**MERCHANT SHIPPING (LIABILITY AND COMPENSATION FOR OIL POLLUTION)
ORDINANCE
- CHAPTER 414**

LONG TITLE

Long title VerDate:30/06/1997

An Ordinance to provide for compensation for pollution caused by the discharge or escape of oil from oil-carrying ships and for the liability of shipowners; for compulsory insurance in respect of such liability; for contributions by oil importers and others to the International Fund for Compensation for Oil Pollution Damage; for the liability of the Fund in certain circumstances for such pollution; for the indemnification of shipowners by the Fund; and for incidental or related matters.

(Enacted 1990)

[15 January 1991] L.N. 13 of 1991

(Originally 38 of 1990)

SECT 1

Short title VerDate:30/06/1997

PART I

PRELIMINARY

This Ordinance may be cited as the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance.

(Enacted 1990)

SECT 2

Interpretation VerDate:01/11/2003

(1) In this Ordinance, unless the context otherwise requires-

"cost" includes expenses;

"country" includes any territory;

"court" means the Court of First Instance or a judge thereof;
(Amended 25 of 1998 s. 2)

"damage" includes loss;

"Director" means the Director of Marine;

"Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, as modified by Resolution LEG. 2(82) adopted by the Legal Committee of the International Maritime Organization on 18 October 2000; (Amended 46 of 1997 s. 2; 19 of 2003 s. 2)

"Hong Kong ship" means a ship registered in Hong Kong;

"incident" means any occurrence, or series of occurrences having the same origin, that-

- (a) causes pollution damage; or
- (b) creates a relevant threat of contamination; (Added 46 of 1997 s. 2)

"Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as modified by Resolution LEG. 1(82) adopted by the Legal Committee of the International Maritime Organization on 18 October 2000; (Amended 46 of 1997 s. 2; 19 of 2003 s. 2)

"Monetary Authority" means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66); (Added 46 of 1997 s. 2)

"oil" (except in sections 23 and 24) means persistent hydrocarbon mineral oil; (Added 46 of 1997 s. 2)

"owner", in relation to a ship, means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that in relation to a ship owned by a State which is operated by a person registered as the ship's operator, it means the person registered as its operator; (Amended 74 of 1990 s. 104(3))

"pollution damage" means loss or damage caused outside a ship by contamination resulting from the discharge or escape of oil from the ship, wherever the discharge or escape may occur, and includes the cost of preventive measures and further loss or damage caused by preventive measures, but does not include any loss or damage attributable to any impairment of the environment except to the extent that such loss or damage consists of any loss of profits or the cost of any reasonable measures of reinstatement actually taken or to be taken; (Amended 46 of 1997 s. 2)

"preventive measures" means any reasonable measures taken by any person, after an incident has occurred, to prevent or reduce pollution damage; (Amended 46 of 1997 s. 2)

"relevant threat of contamination" means a grave and imminent threat of damage being caused by contamination resulting from a discharge or escape of oil from a ship; (Added 46 of 1997 s. 2)

"ship" means any sea-going vessel or seaborne craft of any type whatsoever; (Amended 46 of 1997 s. 2)

"special drawing rights" means units of account used by the International Monetary Fund and known as special drawing rights;

"terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site. (Amended 19 of 2003 s. 2)

(2) For the purposes of this Ordinance, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but

any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.

(3) Reference in this Ordinance to the area of a country includes its territorial sea and any exclusive economic zone of that country established in accordance with international law or, if a country has not established such a zone, it includes an area beyond and adjacent to the territorial sea of that country determined by that country in accordance with international law and extending not more than 200 nautical miles from the baseline from which the breadth of its territorial sea is measured.
(Replaced 46 of 1997 s. 2)

(4) For the purposes of this Ordinance-

(a) references to a discharge or escape of oil from a ship are references to such a discharge or escape regardless of-

(i) where it occurs, provided it results in pollution damage within the area of Hong Kong or within the area of a country that is a signatory to the Liability Convention; and

(ii) whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and

(b) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence. (Added 46 of 1997 s. 2)
(Enacted 1990)

SECT 3

Certificate as to parties to Conventions VerDate:01/07/1997

Adaptation amendments retroactively made - see 64 of 1999 s. 3

A certificate signed by the Chief Executive and certifying that a State specified in the certificate-
(Amended 64 of 1999 s. 3)

(a) is a party to the Liability Convention in respect of a country specified in the certificate; or

(b) is a party to the Fund Convention in respect of a country specified in the certificate,

shall be conclusive evidence of the matters contained therein and shall in any legal proceedings under this Ordinance to which it relates be admissible on its production and without further proof.
(Enacted 1990)

SECT 4

Calculation of tonnage VerDate:30/06/1997

For the purposes of this Ordinance, the tonnage of a ship shall be ascertained as follows-

(a) where the register tonnage of the ship has been or can be ascertained in accordance with the Merchant Shipping (Tonnage) Regulations (App. I, AB1), the ship's tonnage shall be the register tonnage

of the ship as so ascertained but without making any deduction required by those regulations of any tonnage allowance for propelling machinery space;

(b) where the ship is of a class or description with respect to which no provision is for the time being made by the Merchant Shipping (Tonnage) Regulations (App. I, AB1), the tonnage of the ship shall be taken to be 40% of the weight (expressed in tons of 2 240 lbs) of oil which the ship is capable of carrying;

(c) where the tonnage of the ship cannot be ascertained in accordance with either paragraph (a) or (b), the Director shall, if so directed by the court in any proceedings, certify what, on the evidence specified in the direction, would in his opinion be the tonnage of the ship as ascertained in accordance with paragraph (a) or (b), as the case may be, if the ship could be duly measured for the purpose; and the tonnage stated in his certificate shall be taken to be the tonnage of the ship.
(Enacted 1990)

SECT 5

Interpretation of Part II VerDate:05/01/2000

PART II

LIABILITY FOR OIL POLLUTION AND COMPULSORY INSURANCE

(1) In this Part-
"Liability Convention country" means a country in respect of which the Liability Convention is in force;
and
"Liability Convention State" means a State which is a party to the Liability Convention.

(2) In relation to any pollution damage resulting from the discharge or escape of any oil carried in a ship, or in relation to a relevant threat of contamination, references in this Part to the owner of the ship are references to the owner at the time of the occurrence resulting in the discharge or escape or (as the case may be) in the relevant threat of contamination, if there is more than one such occurrence, at the time of the first of such occurrences. (Amended 46 of 1997 s. 3)

(3) (Repealed 55 of 1993 s. 30)
(Enacted 1990)

SECT 6

Liability for oil pollution VerDate:05/01/2000

(1) Where, as a result of any incident any oil is discharged or escapes from a ship, the owner of the ship shall be liable, except as otherwise provided by this Ordinance, for any pollution damage caused in Hong Kong.

(1A) Where as a result of any incident a relevant threat of contamination occurs, the owner of the ship that caused such threat shall be liable, except as otherwise provided by this Ordinance, for-

(a) the cost of any reasonable measures taken for the purpose of preventing such contamination or minimizing any damage in Hong Kong arising from a discharge or escape of oil from the ship; and

(b) any damage caused outside the ship in Hong Kong by any measures so taken. (Added 46 of 1997 s. 4)

(2) Where-

(a) a liability arises under subsection (1) or (1A) (as the case may be); and

(b) the discharge or escape by reason of which the liability arose also results in pollution damage in the area of a Liability Convention country other than Hong Kong,

the owner of the ship concerned shall also be liable under subsection (1) or (1A) (as the case may be) for that damage as if the damage had occurred in Hong Kong.

(3) Where oil is discharged or escapes from 2 or more ships and-

(a) a liability is incurred under this section by the owner of each of them; but

(b) the pollution damage for which each of the owners would, apart from this subsection, be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of that damage for which the owners together would be liable under this section.

(3A) Subject to subsection (3B), this section applies to any ship constructed or adapted for carrying oil in bulk as cargo. (Added 46 of 1997 s. 4)

(3B) Where a ship referred to in subsection (3A) is capable of carrying other cargoes besides oil, this section shall apply to such a ship-

(a) while it is carrying oil in bulk as cargo; and

(b) subject to the owner proving that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil. (Added 46 of 1997 s. 4)

(4) Section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) shall apply in relation to any pollution damage for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.
(Enacted 1990. Amended 46 of 1997 s. 4)

SECT 7

Exceptions from liability under section 6 VerDate:05/01/2000

The owner of a ship is not liable for loss or damage resulting from an incident if he proves that the incident- (Amended 46 of 1997 s. 5)

(a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or

(b) was due wholly to anything done or left undone by another person, not being a servant or agent of the owner, with intent to do damage; or

(c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

(Enacted 1990)

SECT 8

Restriction of liability for oil pollution and threat of contamination VerDate:05/01/2000

(1) Where an incident takes place, whether or not the owner of the ship incurs a liability under section 6-

(a) the owner shall not be liable otherwise than under that section for any such pollution damage or cost as is mentioned therein; and

(b) no other person to whom this subsection applies shall be liable for any such damage or cost, unless it resulted from anything done or omitted to be done by him either with intent to cause such damage or cost or recklessly and with knowledge that such damage or cost would probably result.

(2) Subsection (1) applies to-

(a) any servant or agent of the owner of the ship;

(b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any services for the ship;

(c) any charterer (howsoever described, including bareboat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a public authority who is vested with such powers;

(e) any person taking preventive measures; and

(f) any servant or agent of a person mentioned in paragraph (c),

(d) or (e).

(Replaced 46 of 1997 s. 6)

SECT 9

Limitation of liability under section 6 VerDate:01/11/2003

(1) Where, as a result of any incident, the owner of a ship incurs a liability under section 6, he may limit that liability in accordance with the provisions of this Ordinance and, if he does so, his liability shall not exceed the relevant amount.

- (2) In subsection (1) "the relevant amount" means-
- (a) for a ship not exceeding 5000 tons, 4510000 special drawing rights;
 - (b) for a ship exceeding 5000 tons, 4510000 special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of 5000 tons, but not exceeding an aggregate amount of 89770000 special drawing rights. (Amended 19 of 2003 s. 3)
- (3) Subsection (1) shall not apply where it is proved that the incident resulted from anything done or omitted to be done by the owner either with the intent to cause such damage or cost or recklessly and with knowledge that such damage or cost would probably result.
(Replaced 46 of 1997 s. 7)

SECT 10

Limitation actions VerDate:30/06/1997

(1) Where the owner of a ship has or is alleged to have incurred a liability under section 6 he may apply to the court in accordance with rules of court for the limitation of that liability to an amount determined in accordance with section 9.

(2) If on such an application the court finds that the applicant has incurred such a liability and is entitled to limit it, the court shall determine the limit of the liability and direct payment into court of the amount of that limit, and shall then-

(a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings under this section; and

(b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(3) A payment into court of the amount of a limit determined under this section shall be made in Hong Kong dollars and-

(a) for the purposes of converting such an amount from special drawing rights into Hong Kong dollars the Monetary Authority may certify, in Hong Kong dollars, the respective amounts which are to be taken as equivalent for a particular day to the sums expressed in special drawing rights in section 9;

(b) a certificate signed by or on behalf of the Monetary Authority under paragraph (a) shall be conclusive evidence of the matters contained therein and shall in legal proceedings under this Ordinance to which it relates be admissible on its production and without further proof.
(Amended 82 of 1992 s. 44)

(4) No claim shall be made in proceedings under this section except within such time as the court may direct or such further time as the court may allow.

(5) Where any sum has been paid in or towards satisfaction of any claim in respect of the pollution damage to which the liability referred to in subsection (1) extends-

(a) by the owner or the person referred to in section 17 as "the insurer"; or

(b) by a person who has or is alleged to have incurred a liability, otherwise than under section 6, for that damage and who is entitled to limit his liability in connection with the ship by virtue of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434),

(Amended 55 of 1993 s. 30)

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would, apart from this subsection, have been, and the distribution shall be made accordingly.

(6) Where the owner who incurred the liability referred to in subsection (1) has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce pollution damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had established a claim in respect of the liability for an amount equal to the cost of the sacrifice or other measures, and the distribution shall be made accordingly.

(7) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court outside Hong Kong.

(Enacted 1990)

SECT 11

Restriction on enforcement of claims after establishment of limitation fund VerDate:30/06/1997

Where the court has found that a person who has incurred a liability under section 6 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount-

(a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and

(b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs,

if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 10 had been taken.

(Enacted 1990)

SECT 12

Concurrent liabilities of owners and others VerDate:05/01/2000

Where, as a result of any incident, the owner of a ship incurs a liability under section 6 and any other person incurs a liability, otherwise than under that section, in respect of damages or costs mentioned in section 6(1) or (1A), then, if- (Amended 46 of 1997 s. 8)

(a) the owner has been found, in proceedings under section 10, to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and

(b) the other person is entitled to limit his liability in connection with the ship by virtue of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434), (Amended 55 of 1993 s.

30)no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.
(Enacted 1990)

SECT 13

Establishment of limitation fund outside Hong Kong VerDate:30/06/1997

Where the events resulting in the liability of any person under section 6 also result in a corresponding liability under the law of a Liability Convention country other than Hong Kong, sections 11 and 12 shall apply as if the references to sections 6 and 10 included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.
(Enacted 1990)

SECT 14

Extinguishment of claims under Part II VerDate:05/01/2000

No action to enforce a claim in respect of a liability incurred under section 6 shall be brought in any court in Hong Kong unless the action is commenced not later than 3 years after the claim arose and not later than 6 years after the occurrence or, if there is more than one such occurrence, the first of such occurrences resulting in the discharge or escape, or (as the case may be) the relevant threat of contamination, by reason of which the liability was incurred.
(Enacted 1990. Amended 46 of 1997 s. 9)

SECT 15

Compulsory insurance against liability for oil pollution VerDate:05/01/2000

(1) Subject to section 19, subsection (2) applies to any ship carrying in bulk a cargo of more than 2000 tons of oil. (Amended 46 of 1997 s. 10)

(2) A ship to which this subsection applies shall not enter or leave-

(a) the waters of Hong Kong; or

(b) if the ship is a Hong Kong ship, a port in any other country or a terminal installation in the territorial sea of any other country,

unless there is in force a certificate complying with subsection (4) and certifying that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention.

(3) (Repealed 46 of 1997 s. 10)

(4) A certificate referred to in subsection (2) must be-

(a) if the ship is a Hong Kong ship, issued by the Director under section 16;

- (b) if the ship is registered in a Liability Convention country other than Hong Kong, issued by or under the authority of the government of the other Liability Convention country; or
- (c) if the ship is registered in a country which is not a Liability Convention country, issued by the Director or by or under the authority of any other Liability Convention country. (Amended 46 of 1997 s. 0)
- (5) (Repealed 46 of 1997 s. 10)
- (6) A certificate required by this section shall at all times be carried in the ship to which it relates and shall, on demand, be produced by the master to the Director or any officer of the Marine Department authorized by him.
- (7) If a ship contravenes subsection (2), the master and the owner of the ship each commits an offence and is liable-
- (a) on conviction upon indictment, to a fine of \$500000; and
 - (b) on summary conviction to a fine of \$100000.
- (8) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (6) the master commits an offence and is liable to a fine of \$5000.
- (9) The Director may detain any ship which attempts to leave the waters of Hong Kong in contravention of this section.
(Enacted 1990)

SECT 16

Issue of certificate by Director VerDate:05/01/2000

- (1) Subject to subsection (2), the Director shall, if he is satisfied, on an application for a certificate referred to in section 15 in respect of a Hong Kong ship, or a ship registered in a country that is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, issue such a certificate to the owner. (Amended 46 of 1997 s. 11)
- (2) If the Director is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 6 in all circumstances, he may refuse to issue the certificate.
- (3) The Chief Executive in Council may by regulations- (Amended 64 of 1999 s. 3)
- (a) prescribe the fee to be paid on an application for a certificate under this section; and
 - (b) provide for the cancellation and delivery up of such a certificate in such circumstances as may be prescribed by the regulations.
- (4) A person required by regulations made under subsection (3) to deliver up a certificate who without reasonable excuse fails to do so commits an offence and is liable to a fine of \$5000.

(5) The Director shall retain a copy of any certificate issued by him under this section and shall make the copy available for public inspection. (Amended 46 of 1997 s. 11)
(Enacted 1990)

SECT 17

Rights of third parties against insurers VerDate:05/01/2000

(1) Where it is alleged that the owner of a ship has incurred a liability under section 6 as a result of an incident involving the ship occurring while there was in force a contract of insurance or other security to which a certificate referred to in section 15 related, legal proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in this section referred to as "the insurer").

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the incident was due to the wilful misconduct of the owner himself.

(3) The insurer may under section 10 limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the incident resulted from anything done or omitted to be done by the owner as mentioned in section 9(3).

(4) Where the owner and the insurer each apply to the court under section 10 for the limitation of his liability any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.

(5) The Third Parties (Rights against Insurers) Ordinance (Cap 273) shall not apply in relation to any contract of insurance to which a certificate referred to in section 15 relates.
(Enacted 1990. Amended 46 of 1997 s. 12)

SECT 18

Jurisdiction of Hong Kong courts and registration of foreign judgments VerDate:05/01/2000

(1) Where-

(a) any oil is discharged or escapes from a ship but does not cause any pollution damage in Hong Kong; or

(b) any relevant threat of contamination arises in Hong Kong but no preventive measures are taken to prevent or minimize such threat,

no action (whether in rem or in personam) shall be brought in any court in Hong Kong to enforce a claim arising from-

(i) pollution damage resulting from such discharge or escape; or

(ii) a relevant threat of contamination,

in the area of a Liability Convention country other than Hong Kong.
(Replaced 46 of 1997 s. 13)

(2) Sections 3 to 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) shall apply, whether or not they would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any law corresponding to section 6; and in the application of those sections of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) to such a judgment, the sections shall have effect as if subsections (2) and (3) of section 6 of that Ordinance were omitted.
(Enacted 1990)

SECT 18A

Limitation on amount of foreign judgment enforceable in Hong Kong VerDate:21/07/1997

Adaptation amendments retroactively made - see 23 of 1998 s. 2

Notwithstanding the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) and any rule of law relating to recognition and enforcement of judgments given in a place outside Hong Kong, any judgment given by a court in a country which is not a Liability Convention country in respect of any liability in that country for oil pollution incurred by- (Amended 23 of 1998 s. 2)

(a) the owner of a ship; or

(b) any person entitled to limit his liability in connection with a ship by virtue of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434),

shall be recognized and enforced by a court in Hong Kong only up to the limit of liability prescribed by section 9.

(Added 46 of 1997 s. 14)

SECT 19

Warships, etc. VerDate:05/01/2000

(1) Nothing in the preceding provisions of this Part applies in relation to any warship or any ship for the time being used by the government of any State for a purpose other than a commercial purpose.

(2) In relation to a ship owned by a State and for the time being used for a commercial purpose it shall be a sufficient compliance with section 15(2) if there is in force a certificate issued by the government of that State and certifying that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Liability Convention. (Amended 46 of 1997 s. 15)

(3) A Liability Convention State shall, for the purposes of any proceedings brought in a court in Hong Kong to enforce a claim in respect of a liability incurred under section 6, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorize the issue of execution against the property of any State.

(Enacted 1990)

SECT 20

Liability for cost of preventive measures where section 6 does not apply VerDate:05/01/2000

(1) Where-

(a) after a discharge or an escape of oil from a ship, reasonable measures are taken to prevent or reduce damage in Hong Kong which may be caused by contamination resulting from the discharge or escape; and

(b) any person incurs, or might but for the measures have incurred, a liability, otherwise than under section 6, for any such damage,

he shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty. (Amended 46 of 1997 s. 16)

(1A) Where-

(a) a relevant threat of contamination occurs and reasonable measures are taken for the purpose of removing or minimizing any such threat in Hong Kong; and

(b) section 6(1A) does not apply,

the owner of the ship shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty. (Added 46 of 1997 s. 16)

(1B) Where a person is, by virtue of subsection (1) or (1A), liable for the cost of any measures, he shall also be liable for any damage in Hong Kong resulting from taking those measures. (Added 46 of 1997 s. 16)

(2) For the purposes of section 12 of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434) any liability incurred under this section shall be deemed to be a liability in respect of such damage to property as is mentioned in paragraph 1(a) of Article 2 of the Convention in Schedule 2 to that Ordinance. (Amended 55 of 1993 s. 30)
(Enacted 1990)

SECT 21

Saving for recourse actions VerDate:30/06/1997

Nothing in this Part shall prejudice any claim, or the enforcement of any claim, which a person incurring any liability under this Part may have against another person in respect of that liability.

(Enacted 1990)

SECT 22

Interpretation of Part III VerDate:05/01/2000

PART III

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

(1) In this Part-

"Fund" means the International Fund established by the Fund Convention;

"Fund Convention country" means a country in respect of which the Fund Convention is in force;

"guarantor" means any person providing insurance or other security of the kind described in section 15(2).

(2) The Monetary Authority shall certify, in Hong Kong dollars, the respective amounts which are to be taken as equivalent for a particular day to the sum expressed in special drawing rights in Schedule 1. (Replaced 46 of 1997 s. 17)

(3) A certificate purporting to be signed by or on behalf of the Monetary Authority under subsection (2) shall be conclusive evidence of the matters contained therein and shall be admissible in legal proceedings under this Ordinance upon its production and without proof of the signature thereon. (Replaced 46 of 1997 s. 17)
(Enacted 1990. Amended 46 of 1997 s. 17)

SECT 23

Contributions to the Fund VerDate:05/01/2000

(1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Hong Kong.

(2) Subsection (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any terminal installation in Hong Kong after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

(4) The person liable to pay contributions is-

- (a) in the case of oil which is being imported, the importer; and
- (b) in any other case, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in that year does not exceed 150 000 tonnes.

(6) For the purpose of subsection (5)-

- (a) all the companies in a group of companies shall be treated as a single person; and
- (b) any 2 or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

(7) The contributions payable by a person for any year shall-

(a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to him by the Fund; (Amended 46 of 1997 s. 18)

(b) be payable in such instalments, becoming due at such times, as may be so notified to him, and if any amount due from him remains unpaid after the date on which it became due, such amount-

(i) shall from that date bear interest, at a rate determined from time to time by the Assembly of the Fund, until it is paid; and

(ii) shall, together with such interest, be recoverable as a civil debt due to the Fund.

(8) The Chief Executive in Council may by regulations require persons who are or may be liable to pay contributions under this section to give security for payment to the Chief Executive or to the Fund; and such regulations may-

(a) contain such supplemental or incidental provisions as appear to the Chief Executive in Council expedient; and

(b) provide that a contravention of specified provisions of the regulations shall be an offence and may provide penalties therefor not exceeding a fine of \$5000. (Amended 64 of 1999 s. 3)

(9) In this section and section 24, unless the context otherwise requires-

"company" means a body incorporated under the law of Hong Kong, or of any other country;

"crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes-

(a) crude oils from which distillate fractions have been removed;
and

(b) crude oils to which distillate fractions have been added;

"fuel oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69), or heavier;

"group of companies" has the same meaning as in section 2(1) of the Companies Ordinance (Cap 32), and in the case of a company incorporated outside Hong Kong, has a corresponding meaning subject to any necessary modifications;

"import" means import into Hong Kong;

"importer" means the person by whom or on whose behalf the oil in question is entered for customs purposes on importation;

"oil" means crude oil and fuel oil.

(10) In this section, "sea" does not include any of the waters of Hong Kong within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1). (Replaced 26 of 1998 s. 44)

(Enacted 1990)

SECT 24

Power to obtain information VerDate:01/07/1997

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) The Chief Executive may, for the purpose of transmitting to the Fund a list of the names and addresses of the persons who, under section 23, are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, by notice in writing require any person engaged in producing, treating, distributing or transporting oil to furnish to a person specified in the notice such information as may be specified in the notice. (Amended 64 of 1999 s. 3)

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 23(6).

(3) A notice under this section may specify the manner in which, and the time within which, it is to be complied with.

(4) In legal proceedings by the Fund against any person to recover any amount due under section 23, any particulars contained in any list transmitted by the Chief Executive to the Fund shall, in so far as those particulars are based on information obtained under this section, be admissible as evidence of any relevant fact stated in the list; and in so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved. (Amended 64 of 1999 s. 3)

(5) A person who discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, unless the disclosure is made-

(a) with the consent of the person from whom the information was obtained; or

(b) in connection with the execution of this section; or

(c) for the purposes of any legal proceedings arising out of this section, or of any report of such proceedings,

commits an offence and is liable to a fine of \$5000.

(6) A person who-

(a) refuses or wilfully neglects to comply with a requirement of a notice under this section; or

(b) in purporting to comply with a requirement of a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

commits an offence and is liable-

(i) on conviction upon indictment, to imprisonment for 1 year and to a fine of \$50000; or

(ii) on summary conviction, to a fine of \$5000.
(Enacted 1990)

SECT 25

Liability of the Fund for pollution damage VerDate:05/01/2000

(1) The Fund shall be liable for pollution damage in Hong Kong if the person suffering the damage has been unable to obtain full compensation under section 6-

(a) because the incident causing the damage- (Amended 46 of 1997 s. 19)

(i) resulted from an exceptional, inevitable and irresistible natural phenomenon; or

(ii) was due wholly to anything done or left undone by another person, not being a servant or agent of the owner, with intent to do damage; or

(iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,

(and because liability is accordingly wholly displaced by section 7); or

(b) because the owner or guarantor who is liable for the damage is not able to meet his obligations in full in respect of that liability; or

(c) because the damage exceeds the liability under section 6 as limited by section 9.

(2) Where-

(a) an incident has caused pollution damage both in Hong Kong and in the area of another Fund Convention country; and (Amended 46 of 1997 s. 19)

(b) proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in Hong Kong,

subsection (1) shall be construed and have effect as regards that pollution damage as if for "Hong Kong" there were substituted "the area of a Fund Convention country".

(3) Where the incident has caused pollution damage both in Hong Kong and in the area of another country in respect of which the Liability Convention is in force, references in this section to any of the provisions of Part II shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) For the purposes of this section an owner or guarantor is not able to meet his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(5) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or reduce pollution damage shall be treated as pollution damage for the purposes of this section,

and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had established a claim in respect of liability under section 6.

(6) The Fund shall incur no liability under this section if-

(a) it proves that the pollution damage-

(i) resulted from an act of war, hostilities, civil war or insurrection; or

(ii) was caused by oil which escaped or was discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on government non-commercial service; or

(b) a claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving 2 or more ships one of which is identified by him.

(7) Subject to subsection (8A), if the Fund proves that the pollution damage resulted wholly or partly-

(a) from anything done or left undone with intent to cause damage by the person who suffered the damage; or

(b) from the negligence of that person,

the Fund may be exonerated wholly or partly from its liability to pay compensation to that person. (Amended 46 of 1997 s. 19)

(8) Subject to subsection (8A), where the liability under section 6 in respect of the pollution damage is limited to any extent by subsection

(4) of that section, the Fund shall be exonerated to the same extent.

(Replaced 46 of 1997 s. 19)

(8A) Subsections (7) and (8) shall not apply where the pollution damage only consists of the cost of preventive measures or any damage caused by such measures. (Added 46 of 1997 s. 19)

(9) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention which impose an overall liability on the liabilities of the owner and of the Fund, and the texts of which are set out in Schedule 1. (Amended 46 of 1997 s. 19)

(10) A certificate purporting to be signed by the Director of the Fund stating that subparagraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under this section shall be conclusive evidence for the purposes of this Part that it is so applicable, and such a certificate shall be admissible in evidence without proof of the signature thereon. (Replaced 46 of 1997 s. 19)

(11) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention a court giving judgment against the Fund in legal proceedings under this section shall notify the Fund to that effect, and-

(a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it;

(b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention, or that it is to be reduced to a specified amount; and

(c) in the latter case the judgment shall be enforceable only for the reduced amount.

(12) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (11) shall be steps to obtain payment in Hong Kong dollars, and-

(a) for the purposes of converting such an amount from special drawing rights into Hong Kong dollars, shall be treated as equal to such a sum in Hong Kong dollars as the International Monetary Fund has fixed as being the equivalent of one special drawing right for-

(i) the relevant day, namely the day on which the Assembly of the Fund decides the date for the first payment of compensation in respect of the incident; or

(ii) if no sum has been so fixed for the relevant day, the last day before that day for which the sum has been so fixed; and

(b) a certificate given by the Monetary Authority under section 22(2), shall be conclusive evidence of those equivalent amounts for the purposes of this Part. (Added 46 of 1997 s. 19)
(Enacted 1990)

SECT 26

(Repealed 46 of 1997 s. 20) VerDate:05/01/2000

SECT 27

Effect of judgments VerDate:05/01/2000

(1) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 6, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

(2) Where a person incurs a liability under the law of a Fund Convention country corresponding to the provisions of Part II for damage which is partly in Hong Kong, subsection (1) shall, for the purpose of proceedings under this Part, apply with any necessary modifications to a judgment in proceedings under that law of the country concerned.

(3) Subject to subsection (4), sections 3 to 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) shall apply, whether or not they would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any law corresponding to section 25; and in the application of those sections of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) to such a judgment, the sections shall have effect as if subsections (2) and (3) of section 6 of that Ordinance were omitted. (Amended 46 of 1997 s. 21)

(4) No steps shall be taken to enforce judgment referred to in subsection (3) unless and until the court in which it is registered under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) gives leave to enforce it; and-

(a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention, or that it is to be reduced to a specified amount; and

(b) in the latter case, the judgment shall be enforceable only for the reduced amount.
(Enacted 1990)

SECT 28

Extinguishment of claims under Part III VerDate:05/01/2000

(1) No action to enforce a claim against the Fund under this Part shall be brought in any court in Hong Kong unless-

(a) the action is commenced; or

(b) a third-party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,

not later than 3 years after the claim against the Fund arose.

(2) In subsection (1) "third-party notice" means a notice of the kind described in section 27(1) and (2).

(3) No action to enforce a claim against the Fund under this Part shall be brought in any court in Hong Kong unless the action is commenced not later than 6 years after the occurrence or, if there is more than one such occurrence, the first of such occurrences, resulting in the discharge or escape or (as the case may be) the relevant threat of contamination by reason of which the claim against the Fund arose.

(Amended 46 of 1997 s.

22)

(4) (Repealed 46 of 1997 s. 22)

(Enacted 1990)

SECT 29

Subrogation and rights of recourse VerDate:05/01/2000

(1) In respect of any sum paid under section 25(1)(b) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.

(2) (Repealed 46 of 1997 s. 23)

(3) In respect of any sum paid-

(a) under section 25(1)(a) or (c); or

(b) (Repealed 46 of 1997 s. 23)

the Fund shall acquire by subrogation any rights of recourse belonging to the recipient of the payment against any person, other than the owner or guarantor, in respect of the damage for which the payment was made. (Amended 46 of 1997 s. 23)

(4) In respect of any sum paid by the Government as compensation for pollution damage, the Government shall acquire by subrogation any rights which the recipient has against the Fund under this Part.
(Enacted 1990)

SECT 29A
Legal proceedings VerDate:05/01/2000

(1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or by or against the Director of the Fund as the Fund's representative.

(2) Evidence of any instrument issued by any organ of the Fund or of any other document may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(3) In this section "organ of the Fund" means any subsidiary body established under paragraph 9 of Article 18 of the Fund Convention.
(Added 46 of 1997 s. 24)

SECT 30
Offences by bodies corporate VerDate:30/06/1997

PART IV

MISCELLANEOUS

Where an offence under this Ordinance, which has been committed by a body corporate is proved to have been-

- (a) committed with the consent or connivance of; or
- (b) due to any neglect on the part of,

a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and shall be liable to be proceeded against and punished accordingly.
(Enacted 1990)

SECT 31
Fees VerDate:01/07/1997

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) The Chief Executive in Council may by regulations made under this section or under the Merchant Shipping Ordinance (Cap 281) prescribe the fees payable in respect of any certificate, service or facility issued or provided under this Ordinance, not being fees prescribed under any other section of this Ordinance. (Amended 64 of 1999 s. 3)

(2) Any fees prescribed under this Ordinance-

(a) may be fixed at levels which provide for the recovery of expenditure incurred or likely to be incurred by the Government or other authority in relation generally to the administration, regulation and control of Hong Kong ships and of ports, ships and navigation in the waters of Hong Kong, and shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the provision of any particular certificate, service, facility or matter; and

(b) may, without prejudice to the generality of paragraph (a), be fixed at different amounts in relation to different sizes of ship, whether measured by tonnage, length or otherwise, or in relation to different classes, types or descriptions of certificate, service, facility or ship.
(Enacted 1990)

SECT 32

Amendments, Savings and Repeals VerDate:01/07/1997

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) The Oil Pollution (Compulsory Insurance) Regulations (App. I, p. AV1*) as amended in the provisions set out in column 1 of Part I of Schedule 2 to the extent and in the manner set out in column 2 of that Part-

(a) shall, notwithstanding the repeals specified in subsection (3), continue in force; and

(b) shall be deemed for all purposes to have been made by the Chief Executive in Council under sections 15 and 16. (Amended 64 of 1999 s. 3)

(2)-(3) (Omitted)

(4) Notwithstanding the repeals effected by subsection (3), any certificate or notice-

(a) issued in Hong Kong;

(b) corresponding to a certificate or notice for which provision is made by section 10(3), 16(1) or 24(1); and

(c) in force immediately before the commencement of this Ordinance,

shall continue in force and have effect as if it were a certificate or notice issued under section 10(3), 16(1) or 24(1), as the case may be.

(Enacted 1990)

Note:

* See Cap 414 sub. leg. A

SCHEDULE 1
OVERALL LIMIT ON LIABILITY OF FUND VerDate:01/11/2003

[sections 22(2) & 25(9)]

Fund Convention, Article 4-paragraphs 4 and 5

4. (a) Except as otherwise provided in subparagraphs (b) and

(c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 203000000 units of account.

(b) Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 203000000 units of account.

(c) The maximum amount of compensation referred to in subparagraphs

(a) and (b) shall be 300740000 units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.
(Amended 19 of 2003 s. 5)

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.(Replaced 46 of 1997 s. 25)

SCHEDULE 2

(Omitted) VerDate:30/06/1997

(Omitted)(Enacted 1990)