

Hong Kong Fleet Operation Advisory Committee
Proposed Legislation Amendments to the
Merchant Shipping (Limitation of Shipowners Liability) Ordinance
(Cap. 434)

Purpose

The purpose of this paper is to seek members' views and endorsement on the subject proposal of amending the titled local legislation for the implementation of the 2002 Protocol to the "Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974" (the Convention).

Background

2. In 1974, the International Maritime Organization (IMO) adopted the Convention to impose the liability of a carrier for damage or loss suffered by passengers if an incident is due to the fault or the neglect of the carrier. The Convention entered into force internationally on 28 April 1987. Since then, the Convention has been amended through the 1976 Protocol¹, the 1990 Protocol and the 2002 Protocol. While the 1990 Protocol² did not enter into force, the 1976 Protocol and the 2002 Protocol were entered into force on 30 April 1989 and 23 April 2014 respectively.

3. The Convention and the 1976 Protocol are implemented in Hong Kong through Part II of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap. 434 (the Ordinance) which has been enforced since 1 October 1993. Although the Convention is applicable to any international carriage³, the Ordinance has extended the application to regional carriage⁴ as well as cruise ships including those not registered in Hong Kong but

¹ The 1976 Protocol made the Special Drawing Right (SDR) as the unit of account.

² The 1990 Protocol intended to raise the limits set out in the Convention but was superseded by the 2002 Protocol.

³ "international carriage" means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

⁴ "regional carriage" means the place of departure and the place of destination are situated in Hong Kong, Macau and any port in the Mainland, or vice versa.

plying on non-international voyage⁵ and using Hong Kong as the home port.

4. China acceded to the Convention and the 1976 Protocol in 1994 and extended the ratification to HK in 1997. China is not yet a Party to the 2002 Protocol but to the Marine Department's (MD) understanding, mainland China has started the public consultation to propose legislation amendment in order to align with the provisions as set out in the 2002 Protocol.

Proposed Legislation Amendments

5. The 2002 Protocol (Appendix 1) has adopted much increased levels of liability and revised the basis of liability as well as introduced compulsory insurance. In order to keep pace with the international requirements, MD proposes to amend the Ordinance in order to implement the 2002 Protocol and the salient points of amendments are as follows:

5.1 To revise the levels of liability

The limit of liability for the death of, or personal injury to, a passenger will be increased from 46,666 SDR per carriage in the 1976 Protocol to 250,000 SDR per passenger and the maximum liability can be up to 400,000 SDR on each distinct occasion in the 2002 Protocol⁶. A comparison table of the levels of liability of the Convention and the relevant Protocols is at Annex A for reference.

5.2 The introduction of compulsory insurance

Ships carry more than 12 passengers registered in a State Party to the 2002 Protocol shall maintain insurance or other financial security to cover the liability in respect of the death of and personal injury to passengers with limit not less than 250,000 SDR. A certificate for this compulsory insurance is to be issued to ships upon the 2002 Protocol is extended to Hong Kong. The flag Administration of a State Party may authorize an institution or an organization recognized by it to issue the certificate.

5.3 To denounce the Convention and the 1976 Protocol

Upon the 2002 Protocol is extended to Hong Kong, Hong Kong is required to

⁵ "non-international voyage" means a voyage which begins and ends within the waters of Hong Kong, during the course of which the concerned ship does not call at any port outside Hong Kong.

⁶ 46,666 SDR and 250,000 SDR are appropriately equivalent to HKD 510,000 and HKD 2,700,000 respectively as in December 2018.

denounce the Convention and the 1976 Protocol through the Central People's Government of China in accordance with Article 17 of the 2002 Protocol.

Consultation

6. Members' comments, if any, and endorsement are sought on our proposal to amend the Ordinance as stated in this paper.

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Multi-lateral Policy Division

Enclosures:

Annex A

Appendix 1: 2002 Protocol to the Convention

ANNEX A

	The Convention	1976 Protocol	2002 Protocol
Article 7			
1. The liability of the carrier for the death of or personal injury to a passenger.	Not exceed 700,000 francs* per carriage.	Not exceed 46,666 units of account** per carriage.	Not exceed 250,000 units of account, unless the carrier proves that the incident was under Article 3 [#] and shall in no case exceed 400,000 units of account per passenger on each distinct occasion.
Article 8			
1. The liability of the carrier for the loss of or damage to cabin luggage.	Not exceed 12,500 francs per passenger, per carriage.	Not exceed 833 units of account per passenger, per carriage.	Not exceed 2,250 units of account per passenger, per carriage.
2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle.	Not exceed 50,000 francs per vehicle, per carriage.	Not exceed 3,333 units of account per vehicle, per carriage.	Not exceed 12,700 units of account per vehicle, per carriage.
3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in 1. and 2.	Not exceed 18,000 francs per passenger, per carriage.	Not exceed 1,200 units of account per passenger, per carriage.	Not exceed 3,375 units of account per passenger, per carriage.
4. The carrier and the passenger may agree that the liability of the carrier shall be subject to deductible. Such sum to be deducted from the loss or damage.	Not exceeding 1,750 francs in the case of damage to a vehicle and not exceeding 200 francs per passenger in the case of or damage to other luggage.	Not exceeding 117 units of account in the case of damage to a vehicle and not exceeding 13 units of account per passenger in the case of or damage to other luggage.	Not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of or damage to other luggage.

* “franc” refer to a unit consisting of 65.5 milligrams of gold of millesimal fineness 900.

** “units of account” is the Special Drawing Right (SDR) as defined by the International Monetary Fund.

(i) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
(ii) was wholly caused by an act or omission done with the intent to cause the incident by a third party.