

**PROVISIONAL LOCAL VESSEL ADVISORY COMMITTEE**

**Proposed Amendments to the Merchant Shipping  
(Limitation of Shipowners Liability) Ordinance, Cap.434. (The Ordinance)**

**Purpose**

The purpose of this paper is to seek members' views on the proposed amendments to the Ordinance as described in paragraphs 6 and 7 below. The proposed amendments are intended to give effect to the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) adopted by the International Maritime Organization (IMO) on 2 May 1996.

**Background**

2. The LLMC 1976 limits shipowners' liability for claims in respect of loss of life or personal injury and property loss such as damage to other ships, property or harbour facilities. Since the Convention came into force internationally in 1986, its application has been first extended to Hong Kong by the Merchant Shipping Act 1979 (Commencement) Order 1986 and subsequently, by the Ordinance, Cap. 434 in 1993. The relevant part of the Ordinance is enclosed as Annex I for easy reference by members.

3. In May 1996, the IMO adopted the Protocol of 1996, which increased the limits of liability set out in the LLMC 1976. The 1996 Protocol will enter into force 90 days after ratification by ten States. As at 30 June 2003, eight States have ratified it. We expect that the Protocol will soon receive sufficient subscription for entering into force internationally.

4. The LLMC 1976 applies to seagoing vessels only. However, section 14 of the Ordinance provides that the Convention applies **in Hong Kong to all vessels whether "seagoing or not"**.

5. At present, section 17(1) of the Ordinance provides for a lower level of liability limit for ships with gross tonnage less than 300. The limits of liability for a ship below 300 gross ton is half of that up to 500 gross ton. Such lower level of limit is permitted under the LLMC 1976.

## **The Proposed Amendments to the Ordinance**

6. The 1996 Protocol is likely to come into force in the second quarter of 2004. It is proposed that Ordinance should be amended accordingly to make our domestic legislation in line with the Protocol.

7. As ships of less than 300 gross ton could cause considerable damage to other ships, port facilities, terminals and fish farms, etc. it is proposed that section 17(1) of the Ordinance should be deleted to ensure proper compensation is made available to third parties who may suffer damage caused by such ships. By deleting this sub-section, ships of 2000 gross ton and below will have one level of liability in our domestic legislation.

8. The proposed amendments to the Ordinance to give effect to the 1996 Protocol to the LLMC 1976 are set out in detail at Annex II.

## **Consultation**

9. We consulted the Shipping Consultative Committee and the Port Operations Committee in 2000 and 2001 on the proposed amendments to implement the 1996 Protocol and obtained their support. In addition, the Port Operations Committee did endorse our proposal to delete section 17(1) of the Ordinance.

## **Advice Sought**

10. Members' advice is sought on the following :-

- (i) whether the 1996 Protocol to LLMC 76 should be extended to the HKSAR as proposed; and
- (ii) whether sub-section 17(1) of the Ordinance, which permits a lower limit of liability for maritime claims for ships of less than 300 gross ton, should be deleted.

## **Presentation**

11. The paper will be presented by Mr. P.F. Chun, Assistant Director/Multi-lateral Policy Division of Marine Department.

Multi-lateral Policy Division  
Marine Department  
21 August 2003

## 第 III 部

## 限制海事索償的責任

## 12. 公約具有法律效力

在符合本部的規定下，附表 2 列出的《1976 年海事索賠責任限制公約》(在本部及該附表內稱為“公約”(the Convention)) 在香港具有法律效力。

## 13. 釋義

就本條例而言——

- (a) 在公約中，“船”、“船舶”(ship) 包括——
- (i) 設計供在水中或水面上操作的氣墊船；及
  - (ii) 任何已下水並準備作為船舶或船舶一部分的供航行用的結構物(不論是已建成或在建造中的)；
- (b) 在公約中，凡提述法院均指原訟法庭。(由 1998 年第 25 號第 2 條修訂)

## 14. 限制責任的權利

儘管有公約第 1 條第 2 段的規定，不論有關船舶是否可在海域航行，根據公約限制責任的權利同樣適用，而該段中的“船東”(shipowner) 一詞則具相應意義。

## 15. 受責任限額規限的索償

- (1) 總督可藉命令就以下事宜訂定條文——
- (a) 設立及管理一個基金，用作支付款項予港口管理機構或潮汐水域航行管理機構，以補償該等機構在公約第 2 條第 1(d) 段所述類別的索償中所能追討的數額因該段而受到的削減；及
  - (b) 規定該等機構繳付分擔款項以維持該基金；而該等款項是由該等機構就船隻籌集及徵收的，其方式與他們就船隻籌集其他款項所採用的相同。

## PART III

## LIMITATION OF LIABILITY FOR MARITIME CLAIMS

## 12. Convention to have force of law

Subject to this Part, the Convention on Limitation of Liability for Maritime Claims, 1976 as set out in Schedule 2 (in this Part and in that Schedule referred to as “the Convention” (公約)) has the force of law in Hong Kong.

## 13. Interpretation

For the purposes of this Ordinance—

- (a) “ship” (船、船舶) in the Convention includes—
- (i) any air-cushion vehicle designed to operate in or over water while so operating; and
  - (ii) any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship;
- (b) references in the Convention to the court are references to the Court of First Instance. (Amended 25 of 1998 s. 2)

## 14. Right to limit liability

Notwithstanding paragraph 2 of Article 1 of the Convention, the right to limit liability under the Convention applies in relation to any ship whether seagoing or not, and “shipowner” (船東) in that paragraph has a corresponding meaning.

## 15. Claims subject to limitation

- (1) The Governor may by order provide for—
- (a) the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of paragraph 1(d) of Article 2 of the Convention, of amounts recoverable by them in claims of the kind there mentioned; and
  - (b) the maintaining of such a fund by contributions from such authorities raised and collected by them in respect of vessels in the same manner as other sums so raised by them.

- (2) 根據第 (1) 款作出的命令，可載有總督認為必需或適宜的附帶及補充條文。  
 (3) 除非已有根據第 (1) 款作出的命令，否則公約第 2 條第 1(d) 段不適用。

#### 16. 不受責任限額規限的索償

- (1) 就根據《商船 (油類污染的法律責任及補償) 條例》(第 414 章) 第 6 條須承擔的責任而提出的索償，即為根據公約第 3 條 (b) 段免受公約規限的索償。  
 (2) 憑藉《核材料 (關於運輸的法律責任) 條例》(第 479 章) 第 3 或 4 條提出的索償，即為根據公約第 3 條 (c) 段免受公約規限的索償。 (由 1995 年第 45 號第 17 條修訂)

#### 17. 一般限額

- (1) 當公約第 6 條適用於噸位在 300 噸以下的船舶時，其效力一如——  
 (a) 第 1(a)(i) 段所提述的是 166 667 個計算單位；及  
 (b) 第 1(b)(i) 段所提述的是 83 333 個計算單位。  
 (2) 就公約第 6 條及本條而言，船舶的噸位指以總督作出的命令所訂明的方式計算的總噸位。  
 (3) 根據本條作出的命令，須在總督認為是切實可行的範圍內，實施《1969 年國際船舶噸位丈量公約》附則 I 的規例。

#### 18. 旅客索償的限額

- (1) 就任何屬於《商船 (安全) 條例》(第 369 章) 第 II 部所指的客船來說，公約第 7 條第 1 段所述的該船舶的證書，是指根據該條例第 14 條發出的客船證書。  
 (2) 公約第 7 條第 2 段所提述的由他人代為提出的索償，包括根據《致命意外條例》(第 22 章) 就任何人的死亡而提出的索償。

#### 19. 基金的設立

- (1) 金融管理專員可不時作出命令，訂明公約第 11 條第 1 段適用的利率。

- (2) Any order under subsection (1) may contain such incidental and supplemental provisions as appear to the Governor to be necessary or expedient.

(3) Paragraph 1(d) of Article 2 of the Convention shall not apply unless an order has been made under subsection (1).

#### 16. Claims excluded from limitation

(1) The claims excluded from the Convention by paragraph (b) of Article 3 of the Convention are claims in respect of any liability incurred under section 6 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414).

(2) The claims excluded from the Convention by paragraph (c) of Article 3 of the Convention are claims made by virtue of section 3 or 4 of the Nuclear Material (Liability for Carriage) Ordinance (Cap. 479). (Amended 45 of 1995 s. 17)

#### 17. The general limits

(1) In the application of Article 6 of the Convention to a ship with a tonnage less than 300 tons that Article has effect as if—

- (a) paragraph 1(a)(i) referred to 166 667 Units of Account; and  
 (b) paragraph 1(b)(i) referred to 83 333 Units of Account.

(2) For the purposes of Article 6 of the Convention and this section a ship's tonnage is its gross tonnage calculated in such manner as may be prescribed by an order made by the Governor.

(3) Any order under this section shall, so far as appears to the Governor to be practicable, give effect to the regulations in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

#### 18. Limit for passenger claims

(1) In the case of a passenger ship within the meaning of Part II of the Merchant Shipping (Safety) Ordinance (Cap. 369) the ship's certificate mentioned in paragraph 1 of Article 7 of the Convention is the passenger ship's certificate issued under section 14 of that Ordinance.

(2) In paragraph 2 of Article 7 of the Convention the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents Ordinance (Cap. 22).

#### 19. Constitution of fund

(1) The Monetary Authority may from time to time by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article 11 of the Convention.

## 第 18 條

## 合約條文無效

任何合約條文，如是在導致旅客人身傷亡或行李滅失或損壞的事故發生前訂立的，而其意是免除承運人對該旅客所承擔的責任，或其意是訂明一個較本公約所定限額為低的責任限額（第 8 條第 4 段規定的除外），或其意是轉移承運人的舉證責任，或具有限制第 17 條第 1 段指明的選擇權的效力的作用，均屬無效；但該條文無效並不使該運輸合約無效，而該合約仍須受本公約的條文規限。

## 第 19 條

## 其他有關責任限額的公約

凡與限制可在海域航行船舶的船東責任有關的國際公約所規定的承運人，實際承運人，以及他們的僱員或代理人的權利或義務，均沒有被本公約修改。

## 第 20 條

## 核子損害

在以下情況下，核子事故導致的損害，並不引起本公約所訂的責任——

- (a) 如根據在 1960 年 7 月 29 日訂立並經 1964 年 1 月 28 日的額外議定書修訂的《核能第三者法律責任巴黎公約》，或根據在 1963 年 5 月 21 日訂立的《核子損害民事責任維也納公約》，核子裝置的經營人須對上述損害承擔責任；或
- (b) 如根據管限上述損害責任的國家法律，核子裝置的經營人須對該損害承擔責任；但只限於該法律在各方面對可能蒙受損害的人均如巴黎公約或維也納公約般有利的情況。

## 第 21 條

## 公共機構從事的商業運輸

本公約適用於由國家或公共機構根據第 1 條所指的運輸合約而從事的商業運輸。

## 附表 2

[第 12 及 28 條]

## 《1976 年海事索賠責任限制公約》

## 第 1 章 限制權

## 第 1 條

## 有權限制責任的人

1. 下文所界定的船東及救助人，對第 2 條所列索償，可以按照本公約的規定限制責任。
2. “船東”(shipowner)一詞指可在海域航行的船舶的船東、承租人、管理人或經營人。
3. “救助人”(salvor)指提供與救助作業直接相關的服務的人。救助作業亦包括第 2 條第 1(d)、(e) 及 (f) 段所提述的作業。

## ARTICLE 18

## Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

## ARTICLE 19

## Other conventions on limitation of liability

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

## ARTICLE 20

## Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident—

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions.

## ARTICLE 21

## Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

## SCHEDULE 2

[ss. 12 &amp; 28]

## CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

## CHAPTER I. THE RIGHT OF LIMITATION

## ARTICLE 1

## Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term “shipowner” (船東) shall mean the owner, charterer, manager or operator of a seagoing ship.
3. “Salvor” (救助人) shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in paragraph 1(d), (e) and (f) of Article 2.

4. 凡向任何人提出第 2 條所列的索償，而該人的作為、疏忽或過失，是由船東或救助人員負責的，則該人有權利用本公約規定的責任限制。
5. 在本公約中，船東的責任包括在對船隻本身提起的訴訟中的責任。
6. 對於按照本公約的規定受責任限額規限的索償，承擔責任的承保人有權按照本公約的規定享用與受保人相同的利益。
7. 援用責任限制之行動，並不構成對責任的承認。

### 第 2 條

#### 受責任限額規限的索償

1. 除第 3 及 4 條另有規定外，下列索償，無論責任的基礎有何不同，須受責任限額規限——
  - (a) 關於在船上發生的或與船舶營運或救助作業直接相關的人身傷亡或財產滅失或損壞(包括對港口工程、港池、航道和助航設施造成的損壞)，以及由此引起的相應損失的索償；
  - (b) 關於海上貨物、旅客或其行李運輸上的延誤造成損失的索償；
  - (c) 關於與船舶營運或救助作業直接相關的、由侵犯非合約權利的行為造成其他損失的索償；
  - (d) 關於打撈、清除或銷毀任何沉沒、失事、擱淺或被棄船(包括在該船上或曾在該船上的任何物件)，或使之無害等作業的索償；
  - (e) 關於清除或銷毀船上貨物，或使之無害等作業的索償；
  - (f) 責任人以外的其他人，為避免或減少責任人按照本公約可予限制責任的損失採取某些措施，而就該等措施提出的索償，以及就因此項措施造成進一步損失而提出的索償。
2. 第 1 段所列的索償，即使是藉追索補償、為根據合約索取彌償或以其他方式提出的，均受責任限額規限。但第 1(d)、(e) 及 (f) 段所列的索償，如涉及責任人以合約約定支付的報酬，則在該範圍內不受責任限額規限。

### 第 3 條

#### 不受責任限額規限的索償

本公約的規定不適用於下列各項——

- (a) 關於救助或共同海損分攤的索償；
- (b) 關於油污損害的索償，而油污損害是 1969 年 11 月 29 日的《國際油污損害民事責任公約》或該公約已生效的修訂或議定書所指的油污損害；
- (c) 受任何國際公約或國家法例所規限的索償，而該等國際公約或國家法例是管限或禁止限制對核子損害所承擔的責任的；
- (d) 就核動力船舶造成的核子損害向有關船東提出的索償；
- (e) 身為船東或救助人的僱員而其職責與船舶或救助作業有關的人所提出的索償，包括由該等僱員的繼承人、受養人或其他有權提出該等索償的人所提出的索償，而且根據管限船東或救助人員與該等僱員之間的僱傭合約的法律，該船東或救助人員無權就該等索償限制其責任，或根據該法律他只能將其責任限制於一個較第 6 條規定的限額為高的數額。

4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

7. The act of invoking limitation of liability shall not constitute an admission of liability.

### ARTICLE 2

#### Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability—
  - (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
  - (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
  - (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
  - (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
  - (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
  - (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.
2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

### ARTICLE 3

#### Claims excepted from limitation

The rules of this Convention shall not apply to—

- (a) claims for salvage or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29 November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

## 第 4 條

## 導致喪失限制權利的行為

如證明引起索償的損失，是由於責任人的故意或明知可能造成損失而罔顧後果地作為或不作為造成的，責任人無權限制其責任。

## 第 5 條

## 反索償

根據本公約的規定有權限制其責任的人，如就同一事故向索償人提出索償，則其各自提出的索償須相互抵銷，在有差額時，本公約條文僅適用於此種差額。

## 第 II 章 責任限額

## 第 6 條

## 一般限額

1. 除第 7 條所述的索償外，對由任何個別事件所引起的索償，均須依照下列規定計算責任限額——

## (a) 關於人身傷亡的索償——

- (i) 噸位不超過 500 噸的船舶，限額為 333 000 個計算單位；
- (ii) 噸位超過 500 噸的船舶，除第 (i) 分節所述的數額外，另加下列數額——
  - (A) 501 至 3 000 噸的部分，每噸增加 500 個計算單位；
  - (B) 3 001 至 30 000 噸的部分，每噸增加 333 個計算單位；
  - (C) 30 001 至 70 000 噸的部分，每噸增加 250 個計算單位；及
  - (D) 超過 70 000 噸的部分，每噸增加 167 個計算單位；

## (b) 關於任何其他索償——

- (i) 噸位不超過 500 噸的船舶，限額為 167 000 個計算單位；
- (ii) 噸位超過 500 噸的船舶，除第 (i) 分節所述的數額外，另加下列數額——
  - (A) 501 至 30 000 噸的部分，每噸增加 167 個計算單位；
  - (B) 30 001 至 70 000 噸的部分，每噸增加 125 個計算單位；及
  - (C) 超過 70 000 噸的部分，每噸增加 83 個計算單位。

2. 按照第 1(a) 段計算的限額，不足以全數支付該段所述的索償的，其差額須與第 1(b) 段所述的索償並列，從第 1(b) 段數額中按比例獲償。

3. 並非從船舶進行救助作業的救助人，或僅在他對其或就其提供救助服務的船上進行救助作業的救助人，其責任限額按照噸位為 1 500 噸的船舶計算。

## 第 7 條

## 旅客索償的限額

1. 對於任何個別事件所引起的有關船舶的旅客人身傷亡的索償，船東的責任限額為 46 666 個計算單位乘以該船舶證書規定的載客數目，但是最高不超過 2 500 萬個計算單位。

2. 就本條而言，“有關船舶的旅客人身傷亡的索償”(claims for loss of life or personal injury to passengers of a ship) 指由該船舶運送的下列任何人提出或由他人代其提出的該等索償——

## ARTICLE 4

## Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

## ARTICLE 5

## Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

## CHAPTER II. LIMITS OF LIABILITY

## ARTICLE 6

## The general limits

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows—

## (a) in respect of claims for loss of life or personal injury—

- (i) 333 000 Units of Account for a ship with a tonnage not exceeding 500 tons;
- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in sub-subparagraph (i)—
  - (A) for each ton from 501 to 3 000 tons, 500 Units of Account;
  - (B) for each ton from 3 001 to 30 000 tons, 333 Units of Account;
  - (C) for each ton from 30 001 to 70 000 tons, 250 Units of Account; and
  - (D) for each ton in excess of 70 000 tons, 167 Units of Account;

## (b) in respect of any other claims—

- (i) 167 000 Units of Account for a ship with a tonnage not exceeding 500 tons;
- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in sub-subparagraph (i)—
  - (A) for each ton from 501 to 30 000 tons, 167 Units of Account;
  - (B) for each ton from 30 001 to 70 000 tons, 125 Units of Account; and
  - (C) for each ton in excess of 70 000 tons, 83 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1 500 tons.

## ARTICLE 7

## The limit for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46 666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

2. For the purpose of this Article “claims for loss of life or personal injury to passengers of a ship” (有關船舶旅客人身傷亡的索償) shall mean any such claims brought by or on behalf of any person carried in that ship—

- (a) 根據旅客運輸合約由該船舶運送的人；或  
 (b) 在承運人同意下，隨同貨物運輸合約所涵蓋的車輛或活的動物而由該船舶運送的人。

#### 第 8 條

##### 計算單位

1. 第 6 及 7 條所提述的計算單位，指國際貨幣基金組織所界定的特別提款權。第 6 及 7 條所提及的數額，須折算為提出限制責任申請的所在國家的國家貨幣，並須按在限制基金設立之日、付款之日或提供根據該國法律相當於該付款額的擔保之日該貨幣的價值折算。

#### 第 9 條

##### 索償合計

1. 按照第 6 條釐定的責任限額，適用於任何個別事件所引起的下列所有索償的合計總額——
- (a) 向第 1 條第 2 段所述的人，以及該等人對其行為、疏忽或過失負責的人提出的索償；或
  - (b) 向從其船舶提供救助服務的船舶船東、從該等船舶進行救助作業的救助人、該等人對其行為、疏忽或過失負責的人提出的索償；或
  - (c) 向並非從任何船舶進行救助作業的救助人、僅在他對其或就其提供救助服務的船上進行救助作業的救助人、該等人對其行為、疏忽或過失負責的人提出的索償。
2. 按照第 7 條釐定的責任限額，適用於受該條規限的所有索償的合計總額，而該等索償是因個別事件所引起，並就第 7 條所提述的船舶而向第 1 條第 2 段所提及的人提出的、以及向該等人對其行為、疏忽或過失負責的人提出的。

#### 第 10 條

##### 沒有設立限制基金的責任限制

1. 儘管第 11 條所提及的限制基金尚未設立，仍可援用責任限制。
2. 如在未設立限制基金的情況下援用責任限制，則第 12 條條文相應地適用。
3. 根據本條的規定所引起的程序問題，須按照提起訴訟所在的締約國的國家法律決定。

### 第 III 章 限制基金

#### 第 11 條

##### 基金的設立

1. 凡在任何締約國內就受責任限額規限的索償而提起的訴訟中被指稱為須承擔責任的人，可在該國的法院或其他主管當局設立限制基金。該基金由在第 6 及 7 條列出並適用於可能須由該人承擔責任的索償的數額，加上該數額自引起責任的事故發生之日起至基金設立之日止所衍生的利息組成。如此設立的基金僅可用於支付可對其援用責任限制的索償。
2. 基金可藉繳存上述數額的方式而設立，或可藉提交擔保的方式而設立，而該擔保須是基金設立所在的締約國的法例可以接受，並且是有關法院或其他主管當局認為足夠的。

- (a) under a contract of passenger carriage; or  
 (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

#### ARTICLE 8

##### Unit of Account

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

#### ARTICLE 9

##### Aggregation of claims

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion—
- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
  - (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
  - (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.
2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

#### ARTICLE 10

##### Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.
3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

### CHAPTER III. THE LIMITATION FUND

#### ARTICLE 11

##### Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the court or other competent authority.



**Proposed Amendments to the Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap 434.**

1. The Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) will be amended to reflect the changes made by the 1996 Protocol to LLMC1976 as follows :

	<b>Existing limits under the Ordinance</b>	<b>Proposed new limits as stipulated under the 1996 Protocol to LLMC 76</b>
<b>I. Claims for loss of life or personal injury</b>		
Ships of less than 300 tons	166,667 SDR <sup>1</sup>	2,000,000 SDR
Ships of 300 - 500 tons	333,000 SDR	2,000,000 SDR
Ships of 501 – 2,000 tons	333,500 SDR – 1,083,000 SDR	2,000,000 SDR
For each additional ton in excess of 2,000 tons	varies from 167 SDR – 500 SDR	varies from 400 SDR – 800 SDR
<b>II. Other claims</b>		
Ships of less than 300 tons	83,333 SDR	1,000,000 SDR
Ships of 300 - 500 tons	167,000 SDR	1,000,000 SDR
Ships of 501 – 2,000 tons	167,167 SDR – 417,500 SDR	1,000,000 SDR
For each additional ton in excess of 2,000 tons	varies from 83 SDR – 167 SDR	varies from 200 SDR – 400 SDR
<b>III. Passenger claims</b>		
All ships	46,666 SDR times the number of passengers which the ship is authorized to carry, but not exceeding 25 million SDR	175,000 SDR times the number of passengers which the ship is authorized to carry

2. Section 17(1) of the Ordinance will be deleted to ensure proper compensation to third parties who suffer damages caused by ships of less than 300 gross ton.

<sup>1</sup>Special Drawing Rights (SDR) means “units of account” and is defined by the International Monetary Fund. As at 15 August 2003, one SDR is about HKD10.85. This amount varies daily.