

Shipping Consultative Committee

Implementation of the International Convention on Liability and Compensation for Bunker Oil Pollution Damage in the HKSAR

Introduction

1. The International Convention on Liability and Compensation for Bunker Oil Pollution Damage, 2001 (Bunkers Convention), was adopted on 23 March 2001 by a Diplomatic Conference of the International Maritime Organization (IMO). The Bunkers Convention will provide an adequate, prompt and effective compensation regime for pollution damage caused by spills of bunker oil from ships other than tankers.

2. The Diplomatic Conference also adopted resolution LEG/CONF.12/18 recommending that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question results from their personal act, omission or recklessness committed with intent to cause damage.

The Bunkers Convention

3. The salient features of the Convention are as follows:-

- Strict liability of the shipowner for all types of bunker oil pollution damage, but subject to the limits of applicable national or international regime not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.
- Requirement for the registered owners of a ship with a gross tonnage greater than 1,000 to maintain insurance or other financial security to cover their liability and to carry a State certificate on board attesting such insurance coverage.
- Providing claimants the right of direct action against the provider of the insurance or other financial security.

4. On 4 December 2007, IMO issued a circular BUNKERS.1/Circ.9 announcing that the Bunkers Convention had met the entry-into-force criteria and would enter into force on 21 November 2008. A copy of the IMO circular, the approved text of the Convention and the Conference resolutions approved by the Conference are attached for ready reference.

5. The objectives of the proposed ratification of the Bunker Convention are:

- to ensure, to the maximum extent available under international law, the payment of adequate, prompt and effective compensation for damage caused by pollution

resulting from the escape or discharge of bunker oil from ships; and

- to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases.

Impact of the Bunkers Convention

6. From 21 November 2008, ships trading in the 18 Countries that have so far ratified the Convention will need to hold a certificate certifying that they have insurance to cover the liability due to pollution damage by bunker oil under the Convention.

7. Before HKSAR formally accepts the Bunkers Convention, operators of Hong Kong registered vessels would need to approach the relevant authority of a State Party of the Convention for the issue of the required certificate under the Convention if they intend to trade to countries which are State Parties to the Convention.

8. If the Convention is extended to Hong Kong SAR,

- it would facilitate significantly the cost recovery or compensation arrangements following a bunker oil pollution incident from non-tankers; and
- it would enable HKSAR to issue the required certificate under the Convention to shipowners of Hong Kong registered ships.

Proposal

9. If agreeable, MD will start to prepare the necessary legislation to extend the Bunkers Convention to HKSAR.

Consultation

10. Members are requested to give comments/views on the proposed acceptance of the Bunkers Convention in HKSAR.