STATUTORY INSTRUMENTS

1980 No. 1514

MERCHANT SHIPPING

The Merchant Shipping Act 1979 (Hong Kong) Order 1980

Made - - - -	13*th October* 1980
Laid before Parliament	21*st October* 1980
Coming into Operation	1*st December* 1980

At the Court at Buckingham Palace, the 13th day of October 1980

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 15(1), 19(2) and 47(1) of the Merchant Shipping Act 1979(a) and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Merchant Shipping Act 1979 (Hong Kong) Order 1980 and shall come into operation on 1st December 1980.

2. The provisions of sections 14, 17, 18, 19(1), 50, 51 and 52 of, and Schedules 3, 4 and 5 and Part I of Schedule 7 to, the Merchant Shipping Act 1979, modified as in the Schedule hereto, shall extend to Hong Kong.

3. Save as is expressly provided otherwise therein, any reference in the Schedule to this Order to any enactment of the United Kingdom shall be construed as a reference to that enactment as applying or extended to Hong Kong.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1979 c. 39.

Article 2 SCHEDULE TO THE ORDER

THE MERCHANT SHIPPING ACT 1979

Carriage of passengers and luggage by sea

Scheduled convention to have force of law.

14.—(1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea as set out in Part I of Schedule 3 to this Act (hereafter in this section and in Parts II and III of that Schedule referred to as "the Convention") shall have the force of law in Hong Kong.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention and the preceding subsection shall have effect subject to the provisions of that Part.

(3) On and after the date when this subsection and Part III of Schedule 3 to this Act come into force Parts I and II of that Schedule shall have effect with the modifications specified in the said Part III.

(6) Nothing in subsection (1), (2) or (3) of this section shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the said subsection (1), (2) or (3) comes into force.

(7) This section shall bind the Crown.

Liability of shipowners and salvors

Limitation of liability.

17.—(1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of Schedule 4 to this Act (hereafter in this section and in Part II of that Schedule referred to as "the Convention") shall have the force of law in Hong Kong.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention, and the preceding subsection shall have effect subject to the provisions of that Part.

Exclusion of liability.

18.—(1) Subject to subsection (3) of this section, the owner of a British ship shall not be liable for any loss or damage in the following cases, namely—

(*a*) where any property on board the ship is lost or damaged by reason of fire on board the ship; or

(*b*) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3) of this section, where the loss or damage arises from anything done or omitted by any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, the preceding subsection shall also exclude the liability of—

(*a*) the master, member of the crew or servant; and

(*b*) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in article 4 of the Convention in Part I of Schedule 4 to this Act.

(4) In this section "owner", in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

Provisions supplementary to ss. 17 and 18.

19.—(1) The enactments mentioned in Schedule 5 to this Act shall have effect with the amendments there specified (which are consequential on sections 17 and 18 of this Act).

Supplemental

Interpretation and repeals.

50.—(1) This Act shall be construed as one with the Merchant Shipping Acts 1894 to 1977.

(1A) Nothing in sections 17 and 18 of, or Schedule 4 to, this Act shall apply in relation to any liability arising out of an occurence which took place before the coming into force of those sections, and section 19(1) of, and Schedule 5 to, this Act shall not affect the operation of any enactment in relation to such an occurrence.

(4) The enactments mentioned in the first and second columns of Part 1 of Schedule 7 to this Act are hereby repealed to the extent specified in the third column of that Part of that Schedule; but nothing in that Part of that Schedule shall affect the operation of any enactment in relation to such an occurrence as mentioned in subsection 1(A) of this section.

Fees.

51.—(2) The Secretary for Monetary Affairs shall be entitled to charge a reasonable fee for any certificate given by or on behalf of the Secretary for Monetary Affairs in pursuance of any provision contained in paragraph 4 of Part III of Schedule 3 or paragraph 7 of Part II of Schedule 4 to this Act.

Citation and commencement.

52.—(1) This Act may be cited as the Merchant Shipping Act 1979 and this Act and the Merchant Shipping Acts 1894 to 1977 may be cited together as the Merchant Shipping Acts 1894 to 1979.

(2) This Act shall come into force on such day as the Governor may appoint by order, and different days may be appointed in pursuance of this subsection for different provisions of this Act or for different purposes of the same provision.

SCHEDULE 3 TO THE ACT *Section 14, 51(2)*

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA

PART I

TEXT OF CONVENTION

ARTICLE 1

Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

1. (*a*) "carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

(*b*) "performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;

2. "contract of carriage" means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;

3. "ship" means only a seagoing vessel, excluding an air-cushion vehicle;

4. "passenger" means any person carried in a ship,

(*a*) under a contract of 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 not governed by this Convention;

5. "luggage" means any article or vehicle carried by the carrier under a contract of carriage, excluding:

(*a*) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and

(*b*) live animals;

6. "cabin luggage" means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;

7. "loss of or damage to luggage" includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

8. "carriage" covers the following periods:

(*a*) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;

(*b*) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;

(*c*) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its re-delivery by the carrier or his servant or agent;

9. "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;

ARTICLE 2

Application

1. This Convention shall apply to any international carriage if:

(*a*) the ship is flying the flag of or is registered in a State Party to this Convention, or

(*b*) the contract of carriage has been made in a State Party to this Convention, or

(*c*) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.

2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

ARTICLE 3

Liability of the carrier

1. The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

2. The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

3. Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

ARTICLE 4

Performing carrier

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

ARTICLE 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

ARTICLE 6

Contributory fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

ARTICLE 7

Limit of liability for personal injury

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 700,000 francs per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

ARTICLE 8

Limit of liability for loss of or damage to luggage

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 12,500 francs 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 shall in no case exceed 50,000 francs per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 18,000 francs per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 1,750 francs in the case of damage to a vehicle and not exceeding 200 francs per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9

Monetary unit and conversion

1. The franc mentioned in this Convention shall be deemed to refer to a unit consisting of 65·5 milligrams of gold of millesimal fineness 900.

2. The amounts referred to in Articles 7 and 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the official value of that currency, by reference to the unit defined in paragraph 1 of this Article, on the date of the judgment or the date agreed upon by the parties.

ARTICLE 10

Supplementary provisions on limits of liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.

2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12

Aggregation of claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or a gent,shall not exceed those limits.

ARTICLE 13

Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ARTICLE 14

Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

ARTICLE 15

Notice of loss or damage to luggage

1. The passenger shall give written notice to the carrier or his agent:

(*a*) in the case of apparent damage to luggage:

(i) for cabin luggage, before or at the time of disembarkation of the passenger;

(ii) for all öther luggage, before or at the time of its re-delivery;

(*b*) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16

Time-bar for actions

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

2. The limitation period shall be calculated as follows:

(*a*) in the case of personal injury, from the date of disembarkation of the passenger;

(*b*) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;

(*c*) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

ARTICLE 17

Competent jurisdiction

1. An action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention:

(*a*) the court of the place of permanent residence or principal place of business of the defendant, or

(*b*) the court of the place of departure or that of the destination according to the contract of carriage, or

(c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or

(*d*) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

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.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered and any expression to which a meaning is assigned by article 1 of the Convention has that meaning.

Provisions adapting or supplementing specified articles of the Convention

2. For the purposes of paragraph 2 of article 2, provisions of such an international convention as is mentioned in that paragraph which apart from this paragraph do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

3. The reference to the law of the court in article 6 shall be construed as a reference to section 21 of the Law Amendment and Reform (Consolidation Ordinance(a).

(a) Laws of Hong Kong Revised Ed. 1971, Cap. 23.

4. The Governor may by order provide that, in relation to a carrier whose principal place of business is in Hong Kong, paragraph 1 of article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which shall not be lower than the limit specified in that paragraph at the passing of this Act or, if paragraph 1 of Part III of this Schedule has come into force, specified in paragraph 1 of article 7 as amended by paragraph 1 of that Part).

5. The values which in pursuance of article 9 shall be considered as the official values in Hong Kong of the amounts in francs for the time being specified in articles 7 and 8 shall be such amounts in dollars as the Governor may from time to time by order specify.

6. It is hereby declared that by virtue of article 12 the limitations on liability there mentioned in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in Hong Kong or elsewhere.

7. Article 16 shall apply to an arbitration as it applies to an action under section 34(3) and (4) of the Limitation Ordinance(a).

8. The court before which proceedings are brought in pursuance of article 17 to enforce a liability which is limited by virtue of article 12 may at any stage of the proceedings make such orders as appear to the court to be just and equitable in view of the provisions of article 12 and of any other proceedings which have been or are likely to be begun in Hong Kong or elsewhere to enforce the liability in whole or in part; and without prejudice to the generality of the preceding provisions of this paragraph such a court shall, where the liability is or may be partly enforceable in other proceedings in Hong Kong or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court or to make any part of its award conditional on the results of any other proceedings.

Other provisions adapting or supplementing the Convention

9. Any reference in the Convention to a contract of carriage excludes a contract of carriage which is not for reward.

10. If Her Majesty by Order in Council made by virtue of this paragraph as it applies in the United Kingdom declares that any State specified in the Order is a party to the Convention in respect of a particular country the Order shall, subject to the provisions of any subsequent Order made by virtue of this paragraph as it applies in the United Kingdom be conclusive evidence that the State is a party to the Convention in respect of that country.

11. The Governor may by order make provision—

(*a*) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the order, notice of such of the provisions of Part I of this Schedule as are so specified;

(*b*) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding 5,500 Hong Kong dollars.

Application of ss. 502 *and* 503 *of Merchant Shipping Act* 1894(b) *and sections* 17 *and* 18 *of this Act*

12. Nothing in section 502 of the Merchant Shipping Act 1894 or section 18 of this Act (which among other things limit a ship-owner's liability for the loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.

(a) Laws of Hong Kong Revised Ed. 1976, Cap. 347.

(b) 1894 c. 60.

13. It is hereby declared that nothing in the Convention affects the operation of section 503 of the Merchant Shipping Act 1894 or section 17 of this Act (which limit a shipowner's liability in certain cases of loss of life, injury or damage).

PART III

MODIFICATIONS OF PARTS I AND II IN CONSEQUENCE OF PROTOCOL OF 19TH NOVEMBER 1976

1. In Part I of this Schedule, in article 7 of the Convention, for the words "700,000 francs" or any other words which, by virtue of paragraph 4 of Part II of this Schedule, are specified in that article in the place of those words there shall be substituted the words "46,666 units of account".

2. In the said Part I, in article 8 of the Convention, for the word "francs" wherever it occurs there shall be substituted the words "units of account" and for the figures "12,500", "50,000", "18,000", "1,750" and "200" there shall be substituted respectively the figures "833", "3,333", "1,200", "117" and "13".

3. In the said Part I for article 9 there shall be substituted the following—

ARTICLE 9

Unit of account and conversion

The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 7 and 8 shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties.

4. In Part II of this Schedule for paragraph 5 there shall be substituted the following—

5.—(1) For the purposes of articles 7 to 9 the Secretary for Monetary Affairs may specify 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 those articles.

(2) A certificate given by or on behalf of the Secretary for Monetary Affairs in pursuance of paragraph (1) above shall be conclusive evidence of those matters for the purposes of articles 7 to 9 of the Convention; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Sections 17, 18, 19(1).

SCHEDULE 4 TO THE ACT

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

PART I

TEXT OF CONVENTION

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" shall mean the owner, charterer, manager or operator of a seagoing ship.

3. Salvor shall mean any person rendering services in direct connexion with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(*d*), (*e*) and (*f*).

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 connexion 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 connexion 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 29th 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.

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 (i):

for each ton from 501 to 3,000 tons, 500 Units of Account;

for each ton from 3,001 to 30,000 tons, 333 Units of Account;

for each ton from 30,001 to 70,000 tons, 250 Units of Account; and

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 (i):

for each ton from 501 to 30,000 tons, 167 Units of Account;

for each ton from 30,001 to 70,000 tons, 125 Units of Account; and

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*).

4. 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 authorised 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" shall mean any such claims brought by or on behalf of any person carried in that ship:

(*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.

3. A fund constituted by one of the persons mentioned in paragraph 1(*a*), (*b*) or (*c*) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(*a*), (*b*) or (*c*) or paragraph 2, respectively.

ARTICLE 12

Distribution of the fund

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

ARTICLE 13

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

(*a*) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or

(*b*) at the port of disembarkation in respect of claims for loss of life or personal injury; or

(*c*) at the port of discharge in respect of damage to cargo; or

(*d*) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

ARTICLE 14

Governing law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV. SCOPE OF APPLICATION

ARTICLE 15

This Convention shall apply wherever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

Right to limit liability

2. The right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of "shipowner" in paragraph 2 of article 1 shall be construed accordingly.

Claims subject to limitation

3.—(1) Paragraph 1(*d*) of article 2 shall not apply unless provision has been made by an order of the Governor for 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 the said paragraph 1(*d*), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

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

(3) If immediately before the coming into force of section 17 of this Act an order is in force under section 2(6) of the Merchant Shipping (Liability of Shipowners and Others) Act 1958(a) (which contains provisions corresponding to those of this paragraph) that order shall have effect as if made under this paragraph.

Claims excluded from limitation

4.—(1) The claims excluded from the Convention by paragraph (*b*) of article 3 are claims in respect of any liability incurred under section 1 of the Merchant Shipping (Oil Pollution) Act 1971(b).

(2) The claims excluded from the Convention by paragraph (*c*) of article 3 are claims made by virtue of any of sections 7 to 11 of the Nuclear Installations Act 1965(c).

(a) 1958 c. 62; S.I. 1963/1632. (b) 1971 c. 59; S.I. 1975/2169.
(c) 1965 c. 57; S I. 1972/126.

The general limits

5.—(1) In the application of article 6 to a ship with a tonnage less than 300 tons that article shall have effect as if—

(*a*) paragraph (*a*)(i) referred to 166,667 Units of Account; and

(*b*) paragraph (*b*)(i) referred to 83,333 Units of Account.

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

(3) Any order under this paragraph 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.

Limit for passenger claims

6.—(1) In the case of a passenger steamer within the meaning of Part III of the Merchant Shipping Act 1894(a) the ship's certificate mentioned in paragraph 1 of article 7 shall be the passenger steamer's certificate issued under section 274 of that Act.

(2) In paragraph 2 of Article 7 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(b).

Units of Account

7.—(1) For the purposes of articles 6 and 7 the Secretary for Monetary Affairs may specify 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 those articles.

(2) A certificate given by or on behalf of the Secretary for Monetary Affairs in pursuance of paragraph (1) above shall be conclusive evidence of those matters for the purposes of those articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Constitution of fund

8.—(1) The Governor may from time to time by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11.

(2) Where a fund is constituted with the court in accordance with article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

Distribution of fund

9. No lien or other right in respect of any ship or property shall affect the proportions in which under article 12 the fund is distributed among several claimants.

(a) 1894 c. 60.

(b) Laws of Hong Kong Revised Ed. 1970, Cap. 22.

Bar to other actions

10. Where the release of a ship or other property is ordered under paragraph 2 of article 13 the person on whose application it is ordered to be released shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

Meaning of "court"

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are references to the High Court of Justice of Hong Kong.

Meaning of "ship"

12. References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

Meaning of "State Party"

13. An Order in Council made for the purposes of this paragraph as it applies in the United Kingdom and declaring that any State specified in the Order is a party to the Convention shall, subject to the provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a party to the Convention.

SCHEDULE 5 TO THE ACT

Section 19

LIABILITY OF SHIPOWNERS AND SALVORS: CONSEQUENTIAL AMENDMENTS

The Merchant Shipping (Liability of Shipowners and Others) Act 1900(a)

1.—(1) In section 2(1) of the Merchant Shipping (Liability of Shipowners and Others) Act 1900 for the reference to the actual fault or privity of the owners or authority there shall be substituted a reference to any such personal act or omission of the owners or authority as is mentioned in article 4 of the Convention in Part I of Schedule 4 to this Act.

(2) The limit of liability under that section shall be ascertained by applying to the ship mentioned in subsection (1) the method of calculation specified in paragraph 1(*b*) of article 6 of the Convention read with paragraph 5(1) and (2) of Part II of that Schedule.

(3) Articles 11 and 12 of the Convention in Part I of that Schedule and paragraphs 8 and 9 of Part II of that Schedule shall apply for the purposes of that section.

The Carriage of Goods by Sea Act 1971(b)

5. In section 6(4) of the Carriage of Goods by Sea Act 1971 for the words from "section 502" to "1958" there shall be substituted the words "section 18 of the Merchant Shipping Act 1979 (which".

The Merchant Shipping (Oil Pollution) Act 1971

6.—(1) In sections 5(4)(*b*) and 7(*b*) of the Merchant Shipping (Oil Pollution) Act 1971 for the words "the Merchant Shipping (Liability of Shipowners and Others) Act 1958" there shall be substituted the words "the Merchant Shipping Act 1979".

(a) 1900 c. 32. (b) 1971 c. 19.

(2) For section 15(2) of that Act there shall be substituted—

"(2) For the purposes of section 17 of the Merchant Shipping Act 1979 (limitation of liability) 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 Part I of Schedule 4 to that Act."

Section 50(4).

SCHEDULE 7 TO THE ACT

ENACTMENTS REPEALED

PART I

ENACTMENTS RELATING TO LIABILITY OF SHIPOWNERS AND SALVORS

Chapter	Short title	Extent of repeal
1894 c. 60.	The Merchant Shipping Act 1894.	Part VIII.
1900 c. 32.	The Merchant Shipping (Liability of Shipowners and Others) Act 1900.	Section 2(2) and (3).
1906 c. 48.	The Merchant Shipping Act 1906.	Section 69.
1911 c. 42.	The Merchant Shipping Act 1911.	Section 1(2).
1921 c. 28.	The Merchant Shipping Act 1921.	In section 1 the words "and VIII".
1958 c. 62.	The Merchant Shipping (Liability of Shipowners and Others) Act 1958.	The whole Act except section 11 so far as applying to the Merchant Shipping (Liability of Shipowners and Others) Act 1900.
1965 c. 57.	The Nuclear Installations Act 1965.	In section 14(1) the words from "and section 503" to "shipowners)".
1971 c. 59.	The Merchant Shipping (Oil Pollution) Act 1971.	Section 4(1)(*a*). Section 8A.
1974 c. 43.	The Merchant Shipping Act 1974.	Section 4(1)(*c*)(ii) together with the word "or" preceding it. Section 9.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order extends to Hong Kong certain provisions of the Merchant Shipping Act 1979, with the necessary modifications. The extension of section 14 and Schedule 3 enables effect to be given to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea opened for signature on 13th December 1974 (Cmnd. 6326) and the Protocol thereto of 19th November 1976 (Cmnd. 6765). The extension of sections 17, 18 and 19(1) and Schedules 4 and 5 enables effect to be given to the Convention on Limitation of Liability for Maritime Claims opened for signature in London on 19th November 1976 (Cmnd. 7035). The extension of section 51 enables the Secretary for Monetary Affairs to charge for certificates issued in pursuance of the provisions of the Act. The Athens Convention contains uniform rules relating to the liability of carriers under contracts for the carriage of passengers and their luggage by sea and the Protocol thereto substitutes Special Drawing Rights for Gold Francs as the unit of account to be used in connection with the Convention. The Convention on Limitation of Liability for Maritime Claims lays down uniform rules relating to the liability of shipowners and salvors in respect of certain maritime claims.

The Act will come into force in respect of Hong Kong on a date to be appointed by the Governor in accordance with section 52(2).

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