STATUTORY INSTRUMENTS

# 1985 No. 448

# MERCHANT SHIPPING

## The Merchant Shipping (Liner Conferences) (Hong Kong) Order 1985

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| *Made* - - - - | 20*th March* 1985 |
| *Coming into Operation* | 10*th April* 1985 |

At the Court at Buckingham Palace, the 20th day of March 1985

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 15(4) of the Merchant Shipping (Liner Conferences) Act 1982.(**a**), 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 (Liner Conferences) (Hong Kong) Order 1985 and shall come into operation on 10th April 1985.

**2.** The provisions of the Merchant Shipping (Liner Conferences) Act 1982 (except sections 12 and 13 thereof), the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 (**b**) and the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985 (**c**) shall extend to Hong Kong, subject to the modifications and adaptations specified in the schedule hereto.

*G. I. de Deney,*
Clerk of the Privy Council.

(**a**) 1982 c.37. (**b**) S.I. 1985/406. (**c**) S.I. 1985/405.

## SCHEDULE

### PART A

TEXT OF THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982, AS EXTENDED TO HONG KONG, SUBJECT TO MODIFICATIONS AND ADAPTATIONS

*Main implementing provisions*

Introductory provisions: the Code and the Contracting Parties to it.

**1.**—(1) In this Act "the Code" means the Convention on a Code of Conduct for Liner Conferences signed at Geneva on 6th April 1974.

(2) The text of the Code is set out in the Schedule to this Act as it applies in the United Kingdom.

(3) Her Majesty may by Order in Council made under this Act as it applies in the United Kingdom certify which states are Contracting Parties to the Code, and in respect of what countries they are parties, and such an Order in Council shall be conclusive evidence of the matters certified by it.

Implementing Regulations: Application.

**2.**—(1) Those provisions of the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 as extended to Hong Kong which provide that the provisions of Chapters I to V of the Code shall apply—

(i) to a conference which has its seat in Hong Kong, so far as it serves the trade between states which are Contracting Parties to the Code, and

(ii) to a conference which does not have its seat in Hong Kong, so far as it serves the trade between Hong Kong and another state which is a Contracting Party to the Code,

shall so apply whether or not the law of Hong Kong would fall to be applied in accordance with the ordinary rules of private international law.

(2) For the purposes of subsection (i) a conference has its seat in Kong Kong if, and only if—

*(a)* it is incorporated or formed under the law of Hong Kong, or

*(b)* its central management and control is exercised in Hong Kong.

Implementing Regulations: Implied Terms.

**3.** Where the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 as extended to Hong Kong provide that a mandatory provision of the Code has effect as an implied term of a contract, then—

*(a)* any agreed terms which are to any extent inconsistent with that term shall to that extent be of no effect; and

*(b)* without prejudice to paragraph *(a)*, any agreed provision for the settlement of disputes arising out of the contract shall apply to disputes arising out of that term only if—

(i) the parties to the contract have expressly agreed that that provision shall apply to such disputes; or

(ii) the parties to the dispute in question agree that it should apply to that dispute.

Power to exclude or restrict operation of the Code for lack of reciprocity.

**4.** Where after consultation with the Governor it appears to the Secretary of State that—

*(a)* a state which is a Contracting Party to the Code has made reservations when becoming a party to the Code or has materially failed to fulfil its obligations under the Code, and

*(b)* the implementation of those reservations or, as the case may be, the failure to fulfil those obligations is damaging to or threatens to damage the shipping or trading interests of Hong Kong,

the Governor may, with the concurrence of the Secretary of State, by regulations exclude or restrict the operation of all or any of the provisions of Chapters I to V of the Code, as they apply by virtue of regulations made under this Act as it applies in the United Kingdom and extended to Hong Kong, in relation to trade with that state or in relation to persons having any such connection with that state as may be specified in the regulations.

*Proceedings arising out of the Code*

Liability of members of conference to be in proportion to their responsibility.

**5.**—(1) Where proceedings arising out of the Code are brought against a member of a conference in respect of damage or loss suffered by any person and other members of the conference are also liable (whether jointly or otherwise) in respect of the same damage or loss, the liability of that member to make good that damage or loss shall be in proportion to his responsibility.

The reference above to the liability of other members of the conference is to any such liability which has been or could be established in proceedings brought before the same court or other tribunal by or on behalf of the person suffering the damage or loss; and for the purposes of this subsection it is immaterial by reference to what law the issue of liability was or would be determined.

(2) In ascertaining the responsibility of a member of a conference for the purposes of subsection (1), regard shall be had not only to the member's part (if any) in the particular matters giving rise to the proceedings but also to his general involvement in the affairs of the conference as shown, for example, by his share of the conference trade, the nature of pooling arrangements to which he is a party and the extent to which he contributes to the administrative expenses of the conference.

(3) Subsections (1) and (2) apply to any proceedings in Hong Kong and to proceedings elsewhere in which the extent of the liability of a member of a conference falls to be determined by reference to the law of Hong Kong.

(4) Where in proceedings arising out of the Code—

*(a)* judgment is given against a member of a conference in respect of damage or loss caused to any person, and

*(b)* the extent of the member's liability is not determined by reference to subsections (1) and (2),

the member shall not, if it is sought to enforce the judgment in Hong Kong, be liable to make good any greater proportion of that damage or loss than if the extent of his liability had been determined by reference to those subsections.

(5) A member of an unincorporated conference against which judgment is given, whether in Hong Kong or elsewhere, in proceedings arising out of the Code in respect of damage or loss caused to any person by a breach of duty by the conference, shall not, by virtue of section 6(3), be liable to make good any greater proportion of that damage or loss than he would have been if the proceedings had been brought against him and the other members of the conference in respect of a duty owed by all the members of the conference and the extent of his liability had been determined by reference to subsections (1) and (2).

(6) Subsections (4) and (5) shall not affect the enforcement in Hong Kong of a judgment required to be enforced there by virtue of Part I of the Foreign Judgments (Reciprocal Enforcement) Ordinance (**a**).

Proceedings by or against unincorporated conferences.

**6.**—(1) A conference which is not a body corporate may nevertheless sue and be sued in its own name in proceedings arising out of the Code.

(2) Subsection (1) applies to any proceedings in Hong Kong and to proceedings elsewhere in which the capacity of a conference to sue and be sued in its own name falls to be determined by reference to the law of Hong Kong.

(3) A judgment given for or against an unincorporated conference in proceedings brought against the conference in its own name, whether in Hong Kong or elsewhere, shall be binding on the members of the conference, and such a judgment given against a conference shall be enforceable—

*(a)* against any property held in trust for the purposes of the conference, to the like extent and in the like manner as if the conference were a body corporate; and

*(b)* against any member of the conference, subject to section 5(5).

(**a**) Laws of Hong Kong, Cap.319.

(4) Subsection (3) applies to judgments given by a court of Hong Kong or which are enforceable or entitled to recognition in Hong Kong.

Restrictions on legal proceedings.

**7.**—(1) Legal proceedings arising out of a dispute relating to the application or operation of the Code may be brought in Hong Kong only in the Supreme Court; and in this section "the court" means the Supreme Court.

(2) Proceedings arising out of a dispute to which Article 23, paragraph 2 applies (disputes to be resolved within the framework of the national jurisdiction concerned) shall not be entertained by the court except as permitted by that paragraph.

(3) The court shall stay proceedings before it if on the application of a party to the proceedings, made after appearance but before delivering any pleadings or taking any other steps in the proceedings, it is shown that the proceedings arise out of a dispute to which Article 23, paragraph 4 applies and that—

*(a)* the dispute has not been referred to conciliation in accordance with that paragraph or has been so referred and conciliation proceedings are still in progress; or

*(b)* the parties to the dispute have made an agreement to which Article 25, paragraph 1 applies (agreed procedures in lieu of conciliation) which is capable of being, or has been, performed.

(4) The court may attach to a stay granted under subsection (3) such conditions as appear to it appropriate, in particular conditions with respect to the institution or prosecution of conciliation or other proceedings; and the court may remove a stay granted under that subsection if any such condition is not complied with or if at any time it appears to the court that the circumstances are such that a new application for the stay would not be granted.

(5) In relation to an arbitration agreement to which Article 25, paragraph 1 applies, subsections (3) and (4) apply in place of sections 6(1) and 6A(1) of the Arbitration Ordinance (**a**) (which also provide for the staying of legal proceedings).

Time for bringing legal proceedings.

**8.**—(1) No legal proceedings arising out of a dispute relating to the application or operation of the Code shall be brought in Hong Kong after the end of the period of two years from the date on which the cause of action accrued or, if later, the end of the period of six months from the date on which conciliation proceedings relating to the dispute were completed or abandoned.

(2) The following provisions of the Limitation Ordinance (**b**) apply to the limitation period prescribed by subsection (1) as they apply to the limitation periods prescribed by that Ordinance—

*(a)* section 22(1) (extension of limitation period in case of disability);

*(b)* section 26 (postponement of limitation period in case of fraud or mistake);

*(c)* section 35 (provisions as to set-off or counterclaim).

Recognition and enforcement of recommendations, etc of conciliators.

**9.**—(1) Where a recommendation of conciliators has become binding as between two or more parties in accordance with Article 37, then, subject to subsection (2)—

*(a)* it shall be recognised in Hong Kong as conclusive as between those parties of the dispute to which it relates; and

*(b)* any of those parties may apply to have the recommendation registered for enforcement in the Supreme Court.

(2) A recommendation shall not be so recognised or enforced if it is affected by any of the matters mentioned in sub-paragraphs *(a)* to *(d)* of Article 39, paragraph 2 (disability, fraud, coercion, public policy or irregularity of composition or procedure of the conciliators), unless the affected part can be severed as mentioned in Article 39, paragraph 3 and the remainder of the recommendation recognised and enforced.

(**a**) Laws of Hong Kong, Cap.341. (**b**) Laws of Hong Kong, Cap.347.

(3) Where the costs to be borne by a party to conciliation proceedings in accordance with Article 43, paragraph 1 (costs of the conciliation and its administration) have been determined, the person to whom those costs are to be paid may apply to have the determination registered for enforcement in the Supreme Court.

(4) A party in whose favour an award of costs has been made by conciliators under Article 43, paragraph 3 (vexatious or frivolous proceedings) may apply to have the award registered for enforcement in the Supreme Court.

(5) Provision may be made by the rules of court as to—

*(a)* the manner in which application is to be made for registration of a recommendation, determination or award under this section;

*(b)* the documents to be produced and the matters to be proved by a person seeking recognition of a recommendation or enforcement of a recommendation, determination or award;

*(c)* the manner in which a recommendation, determination or award is to be registered under this section;

*(d)* the manner in which and the conditions subject to which a recommendation, determination or award so registered may be enforced.

(6) Subject to any provision made under subsection (5)*(d)*, a recommendation, determination or award registered under this section shall, for the purposes of its enforcement, be of the same force and effect, the Supreme Court shall have the same powers in relation to its enforcement, and proceedings for or with respect to its enforcement may be taken, as if the recommendation, determination or award had been a judgment or decree originally given in the Supreme Court and had (where relevant) been entered.

(7) Where a recommendation, determination or award is registered under this section, the reasonable costs or expenses of, and incidental to, its registration are recoverable as if they were sums recoverable under it, except that they carry interest as if they were the subject of an order for the payment of costs or expenses made by the Supreme Court on the date of registration.

*Other supplementary provisions*

Governor to be appropriate authority in Hong Kong.

**10.**—(1) The appropriate authority in Hong Kong for the purposes of the Code is the Governor.

(2) Information obtained by the Governor as appropriate authority for the purposes of the Code shall not, without the consent of the person from whom it was obtained, be disclosed except—

*(a)* for the purpose of the discharge by the Governor of his functions in connection with the Code; or

*(b)* for the purpose of any proceedings arising out of the Code; or

*(c)* with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;

and a person who discloses any information in contravention of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding 10,000 Hong Kong dollars.

(3) Proceedings for an offence under subsection (2) shall not be brought except by or with the consent of the Attorney General of Hong Kong.

Exclusion of restrictive practices law.

**11.**—(1) No agreement shall so far as it relates to any restriction to which this section applies be unenforceable by virtue of any rule of law about unreasonable restraint of trade.

(2) This section applies to restrictions of any of the following descriptions which relate to the trade between states which are Contracting Parties to the Code and are accepted within the framework of a conference, that is to say—

*(a)* restrictions in respect of the provision of international liner services accepted by the operators of such services under an agreement to which two or more such operators are parties;

*(b)* restrictions in respect of international liner services accepted by operators of such services or persons for whom such services are provided under an agreement to which one or more such operators and one or more such persons are parties;

*(c)* restrictions in respect of the supply or acquisition of any service in connection with the operation of international liner services accepted by operators of such services or persons in the business of supplying such a service under an agreement to which one or more such operators and one such supplier are parties.

(3) Where a restriction relates only in part to the matters mentioned in subsection (2), this section applies to the restriction so far as it relates to those matters.

*General*

Interpretation.

**14.**—(1) In this Act—

"Article" means Article of the Code;

"the Code" has the meaning given by section 1(1);

"conciliation" means international mandatory conciliation under Chapter VI of the Code, and references to the institution or completion of conciliation proceedings shall be construed in accordance with subsection (2);

"conference" has the meaning given by Chapter I of the Code;

"Governor" means the Governor of Hong Kong or any officer authorised by him;

"judgment", in relation to proceedings arising out of the Code, means any judgment, decree, order, award, recommendation or determination of any description given or made in such proceedings, and references to the giving of a judgment shall be construed accordingly;

"mandatory provision", in relation to the Code, means a provision identified as such by the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 as extended to Hong Kong;

"proceedings arising out of the Code" means legal proceedings, conciliation proceedings, arbitration proceedings or any other proceedings for the determination or resolution of a dispute arising out of the Code;

"trade" has the same meaning as in the Code.

(2) For the purposes of this Act conciliation proceedings relating to a dispute are instituted when a party to the dispute requests that it be referred to conciliation and are completed when the conciliators notify the parties of their recommendations.

Short title and commencement.

**15.**—(1) This Act may be cited as the Merchant Shipping (Liner Conferences) Act 1982.

(2) This Act comes into force on such day as the Governor may appoint by notice in the Hong Kong Government Gazette or any supplement thereto.

PART B

MODIFICATIONS AND ADAPTATIONS IN THE EXTENSION OF THE MERCHANT SHIPPING (LINER CONFERENCES) (MANDATORY PROVISIONS) REGULATIONS 1985 TO HONG KONG

**1.** In regulations 1(1) and 2 for the words "the United Kingdom" wherever they occur and in regulation 1(2) for the words "United Kingdom", there shall be substituted the words "Hong Kong".

**2.** In regulations 1(2) (in the definitions of "representative of shippers", "shipper" and "shippers' organisations") for the words "Secretary of State" there shall be substituted the word "Governor".

**3.** The references to the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985 shall be construed as references to those regulations as extended to Hong Kong.

**4.** In regulation 3(1), for the words which appear in brackets after the words "mandatory provisions", there shall be substituted "(the operation of certain of which shall be modified by the provisions of the Annex to the Table, as indicated in column 7 of the Table)".

**5.** In the Table in the Schedule to the Regulations, the heading to column 7 shall be amended to read "Relevant provision of the Annex to this Table", and the entries in column 7 of the Table in relation to the various provisions of the Code shall be as indicated below:—

| 1 | 7 |
|---|---|
| Article, paragraph or sentence of the Code * | Relevant provision of the Annex to this Table |
| *Article 1* | |
| 1.1(1) | Paragraph 1 |
| *Article 2* | |
| 2.1–2.4 | Paragraphs 2 to 9 |
| *Article 3* | |
| 3 | Paragraphs 10 and 11 |
| *Article 14* | |
| 14.9(2) | Paragraph 10 |

* A numeral in brackets indicates that the reference is to that sentence in the paragraph.

**6.** The Annex to the Table in the Schedule to the Regulation shall read as follows:—

*ANNEX*

1. In the case of an existing conference, shipping lines established in Hong Kong which are members thereof shall determine by commercial negotiation with another shipping line so established whether the latter may participate as a national shipping line in the said conference. If a new conference is created, the shipping lines established in Hong Kong shall determine by commercial negotiations which of them may participate as a national shipping line in the future conference.

2. In a conference trade between Hong Kong and a State which has made a reservation disapplying Article 2 in respect of its trade with the United Kingdom (hereinafter referred to as "a relevant state"), a shipping line of a relevant state wishing to participate in the redistribution provided for in paragraphs 3 to 7 of this Annex may do so subject to reciprocity defined at governmental or ship-owners' level.

3. Where a liner conference operates a pool or a berthing, sailing and/or any other form of cargo allocation agreement in accordance with Article 2 of the Code, the volume of cargo to which the group of national shipping lines of Hong Kong and all relevant states participating in that trade or the shipping lines of Hong Kong and all relevant states participating in that trade as third-country shipping lines are entitled under the Code shall be redistributed, unless a decision is taken to the contrary by all the lines which are members of the Conference and parties to the present redistribution rules. This redistribution of cargo shares shall be carried out on the basis of a unanimous decision by those shipping lines which are members of the conference and participate in the redistribution, with a view to all these lines carrying a fair share of the conference trade.

4. The share finally allocated to each participant shall be determined by the application of commercial principles, taking account in particular of:

*(a)* the volume of cargo carried by the conference and generated by the countries or territories whose trade is served by it;

*(b)* past performance of the shipping lines in the trade covered by the pool;

*(c)* the volume of cargo carried by the conference and shipped through the ports of the countries or territories concerned;

*(d)* the needs of the shippers whose cargoes are carried by the conference.

5. If no agreement is reached on the redistribution of cargoes referred to in paragraph 3, the matter shall, at the request of one of the parties, be referred to conciliation in accordance with the procedure set out in paragraph 7. Any dispute not settled by the conciliation procedure may, with the agreement of the parties, be referred to arbitration. In that event, the award of the arbitrator shall be binding.

6. At intervals to be laid down in advance, shares allocated in accordance with paragraphs 3, 4 and 5 shall be regularly reviewed, taking into account the criteria set out in paragraph 4 and in particular from the viewpoint of providing adequate and efficient services to shippers.

7. The parties to the dispute shall designate one or more conciliators. Should they fail to agree on the matter, each of the parties to the dispute shall designate a conciliator and the conciliators thus designated shall co-opt another conciliator to act as chairman. Should a party fail to designate a conciliator or the conciliators designated by the parties fail to reach agreement on the chairman, the President of the International Chamber of Commerce shall, at the request of one of the parties, make the necessary designations. The conciliators shall make every endeavour to settle the dispute. They shall decide on the procedure to be followed. Their fees shall be paid by the parties to the dispute.

8. Without prejudice to paragraph 9 of this Annex, Article 2 of the Code shall not be applied in conference trades between Hong Kong and relevant states.

9. Paragraph 8 of this Annex shall not affect the opportunities for participation as third country shipping lines in such trades, in accordance with the principles reflected in Article 2 of the Code, of the shipping lines of a developing country which are recognized as national shipping lines under the Code and which are:

*(a)* already members of a conference serving these trades; or

*(b)* admitted to such a conference under Article 1(3) of the Code.

10. Articles 3 and 14(9) of the Code shall not be applied in conference trades between Hong Kong and relevant States.

11. In trades to which Article 3 of the Code applies, the last sentence of that Article is interpreted as meaning that:

(1) the two groups of national shipping lines will co-ordinate their position before voting on matters concerning the trade between their two countries; and

(2) this sentence applies solely to matters which the conference agreement identifies as requiring the assent of both groups of national shipping lines concerned, and not to all matters covered by the conference agreement.

12. If any question arises as to whether a particular state is or is not a relevant State as defined in paragraph 2 of this Annex, or is or is not a developing country for the purposes of paragraph 9 of this Annex, that question shall be referred to the Governor and a certificate upon that question issued by or under the authority of the Governor with the concurrence of the Secretary of State shall be conclusive evidence of the facts stated in the certificate.

PART C

MODIFICATIONS AND ADAPTATIONS IN THE EXTENSION OF THE MERCHANT SHIPPING (LINER CONFERENCES) (CONDITIONS FOR RECOGNITION) REGULATIONS 1985 TO HONG KONG

**1.** In regulations 1(1), 2(4) and 3, for the words "the United Kingdom" wherever they occur there shall be substituted the words "Hong Kong".

**2.** For regulations 2(1) and 2(2), there shall be substituted the following:—

"*National Shipping Lines of Hong Kong*

**2.**—(1) Subject to paragraph (4) below, a body corporate, being a vessel-operating carrier, shall be recognised as a national shipping line of Hong Kong for the purposes of the Code in respect only of those conferences of which it is a member if it is established in Hong Kong in accordance with paragraph (2) below.

(2) For the purpose of this regulation a shipping line is established in Hong Kong if it is incorporated or formed under the law of Hong Kong, and has its principal place of business in Hong Kong."

**3.** Regulation 2(3) shall be deleted.

**4.** In regulation 2(4), the words "outside the European Economic Community" shall be deleted.

**5.** In regulations 3 and 5, for the references to the Secretary of State there shall be substituted references to the Governor.

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## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order extends to Hong Kong the provisions of the Merchant Shipping (Liner Conferences) Act 1982 and the regulations which implement that Act (namely the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985, and the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985). The purpose of the Merchant Shipping (Liner Conferences) Act 1982 is to enable effect to be given to the United Nations Convention on a Code of Conduct for Liner Conferences, 1974.

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