

Chapter:	479	NUCLEAR MATERIAL (LIABILITY FOR CARRIAGE) ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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An Ordinance to regulate liability in respect of injury or damage caused by the carriage of nuclear material in Hong Kong.

(Enacted 1995)

[16 June 1995]

(Originally 45 of 1995)

Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Nuclear Material (Liability for Carriage) Ordinance.

(Enacted 1995)

Section:	2	Interpretation	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) In this Ordinance, unless the context otherwise requires-

"excepted material" (列為例外材料) means nuclear material consisting only of one or more of the following, that is to say-

- (a) isotopes prepared for use for industrial, commercial agricultural, medical, scientific or educational purposes;
- (b) natural uranium;
- (c) any uranium of which isotope 235 forms not more than 0.72%;
- (d) nuclear material of such other description, if any, as may be excluded from the operation of the relevant international agreement by the relevant law;

"home territory" (裝置所在地區), in relation to a relevant operator, means the relevant territory in which, for the purposes of a relevant international agreement, he is the operator of a relevant installation;

"injury" (傷害) means personal injury and includes loss of life;

"nuclear material" (核材料) means, subject to any exceptions which may be prescribed-

- (a) any fissile material in the form of uranium metal, alloy or chemical compound (including natural uranium), or of plutonium metal, alloy or chemical compound, and any other fissile material which may be prescribed; and
- (b) any radioactive material produced in, or made radioactive by exposure to the radiation incidental to, the process of producing or utilizing any fissile material as aforesaid;

"occurrence" (事故), in sections 9(1) and (2) and 10(3), means in the case of a continuing occurrence the whole of that occurrence;

"relevant carriage" (有關運載), in relation to nuclear material, means carriage on behalf of-

- (a) a relevant operator; or
- (b) a person authorized to operate a nuclear reactor which is comprised in a means of transport and in which the nuclear material in question is intended to be used;

"relevant contribution" (有關分擔款項), in relation to any claim, means any sums falling by virtue of any relevant international agreement to be paid by the government of any relevant territory towards the satisfaction of that claim;

"relevant foreign judgment" (有關外地判決) means a judgment of a court of a relevant territory other than Hong Kong which, under a relevant international agreement, is to be enforceable anywhere within the relevant territories;

"relevant installation" (有關裝置) means an installation to which a relevant international agreement applies;

"relevant international agreement" (有關國際協議) means an international agreement with respect to third-party liability in the field of nuclear energy which has been applied to Hong Kong, other than an agreement relating to liability in respect of nuclear reactors comprised in means of transport;

"relevant law" (有關法律) means the law of a relevant territory regulating in accordance with a relevant international agreement matters falling to be so regulated and, in relation to a particular relevant operator, means such law of his home territory;

"relevant operator" (有關營運者) means a person who, for the purposes of a relevant international agreement, is the operator of a relevant installation in a relevant territory;

"relevant territory" (有關地區) means a country, territory or place to which for the time being a relevant international agreement applies; (Amended 64 of 1999 s. 3)

"special drawing rights" (特別提款權) means units of account as used by the International Monetary Fund and known as special drawing rights;

"territorial limits" (領地範圍) includes territorial waters.

(2) References in this Ordinance to the carriage of nuclear material shall be construed as including references to any storage incidental to the carriage of that material before its delivery at its final destination.

(3) Any question arising under this Ordinance as to whether-

- (a) any person is a relevant operator;
- (b) any law is the relevant law with respect to any matter; or
- (c) any country, territory or place is for the time being a relevant territory,

shall be determined by the Chief Executive. (Amended 64 of 1999 s. 3)

(4) The exceptions referred to in the definition of "nuclear material" may be prescribed by the Chief Executive in Council by order. (Amended 64 of 1999 s. 3)

(Enacted 1995)
[cf. 1965 c. 57 s. 26 U.K.]

Section:	3	Duty of relevant operators	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

In the case of any nuclear material which is not excepted material and which-

- (a) is in the course of carriage on behalf of a relevant operator;
- (b) is in the course of carriage to such an operator's relevant installation with the written agreement of that operator from a place outside the relevant territories; or
- (c) having been on such an operator's relevant installation or in the course of carriage on behalf of such an operator, has not subsequently been on any other relevant installation or in the course of any other relevant carriage or (except in the course of relevant carriage) within the territorial limits of a country, territory or place which is not a relevant territory, (Amended 64 of 1999 s. 3)

it shall be the duty of that operator to secure that no occurrence taking place wholly or partly within Hong Kong causes injury to any person or damage to any property of any person other than that operator, being injury or damage arising out of or resulting from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of that nuclear material.

(Enacted 1995)
[cf. 1965 c. 57 s. 10(1) U.K.]

Section:	4	Duty of other persons carrying nuclear material or causing nuclear material to be carried		30/06/1997
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Where any nuclear material, not being excepted material, is in the course of carriage within Hong Kong on behalf of any person (in this section referred to as "the responsible party") and the carriage is not relevant carriage, it shall be the duty of the responsible party to secure that no occurrence involving that nuclear material causes injury to any person or damage to any property of any person other than the responsible party, being injury or damage incurred

within Hong Kong and arising out of or resulting from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of that nuclear material.

(Enacted 1995) [cf. 1965 c. 57 s. 11 U.K.]

Section:	5	Right to compensation by virtue of section 3		30/06/1997
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- (1) Where any injury or damage has been caused in breach of a duty imposed by section 3-
- (a) subject to sections 6(1), 8, 9(2) and 10(1), compensation in respect of that injury or damage shall be payable wherever the injury or damage was incurred;
 - (b) subject to subsections (3) and (4) and to section 11(5), no other liability shall be incurred by any person in respect of that injury or damage.

(2) Subject to subsection (3), any injury or damage which, though not caused in breach of a duty imposed by section 3 is not reasonably separable from injury or damage so caused, shall be deemed for the purposes of subsection (1) to have been so caused.

(3) Where any injury or damage is caused partly in breach of a duty imposed by section 3 and partly by an emission of ionising radiations which does not constitute such a breach, subsection (2) shall not affect any liability of any person in respect of that emission apart from this Ordinance, but a claimant shall not be entitled to recover compensation in respect of the same injury or damage both under this Ordinance and otherwise than under this Ordinance.

- (4) Subject to section 6(2), nothing in subsection (1)(b) shall affect the operation of-
- (a) the Carriage of Goods by Sea Ordinance (Cap 462); or
 - (b) the Carriage by Air Ordinance (Cap 500). (Replaced 13 of 1997 s. 20)

(Enacted 1995)
[cf. 1965 c. 57 s. 12 U.K.]

Section:	6	Exclusion, extension or reduction of compensation in certain cases	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

- (1) The duty imposed by section 3 or 4-
- (a) shall not impose any liability on the person subject to that duty with respect to injury or damage caused by an occurrence which constitutes a breach of that duty if the occurrence, or the causing thereby of the injury or damage, is attributable to hostile action in the course of any armed conflict, including any armed conflict within Hong Kong; but
 - (b) shall, subject to section 9(2), impose such a liability where the occurrence, or the causing thereby of the injury or damage, is attributable to a natural disaster, notwithstanding that the disaster is of such an exceptional character that it could not reasonably have been foreseen.
- (2) Where, in the case of an occurrence which constitutes a breach of the duty imposed by section 3, a person other than the person subject to that duty makes any payment in respect of injury or damage caused by that occurrence and-
- (a) the payment is made in pursuance of any of the following international agreements-
 - (i) the International Convention for the Unification of certain Rules of Law relating to Bills of Lading concluded at Brussels on 25 August 1924;
 - (ii) the International Convention for the Unification of certain Rules relating to International Carriage by Air concluded at Warsaw on 12 October 1929;
 - (iii) the Protocol to amend the Convention for the Unification of certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 concluded at The Hague on 28 September 1955; and
 - (iv) the Convention supplementary to the Warsaw Convention, for the Unification of certain Rules relating to International Carriage by Air performed by a Person other than the Contracting Carrier concluded at Guadalajara on 18 September 1961; or
 - (b) the injury or damage was incurred in a country, territory or place which is not a relevant territory and the payment is made by virtue of a law of that country, territory or place and by a person who has his

principal place of business in a relevant territory or is acting on behalf of such a person, (Amended 64 of 1999 s. 3)

the person making the payment may make the like claim under this Ordinance for compensation of the like amount, if any, not exceeding the amount of the payment made by him, as would have been available to him if the injury in question had been suffered by him or, as the case may be, the property suffering the damage in question had been his.

(3) The amount of compensation payable to or in respect of any person under this Ordinance in respect of any injury or damage caused in breach of the duty imposed by section 3 may be reduced by reason of the fault of that person if, but only if, and to the extent that, the causing of that injury or damage is attributable to any act of that person committed with the intention of causing harm to any person or property or with reckless disregard for the consequences of his act.

(Enacted 1995)
[cf. 1965 c. 57 s. 13 U.K.]

Section:	7	Protection for ships and aircraft	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

Where there is a claim under this Ordinance in respect of any occurrence as described in section 3 or 4 which constitutes a breach of a person's duty under section 3 or 4-

- (a) such claim shall not give rise to any lien or other right in respect of any ship or aircraft; and
- (b) neither section 12B(3) and (4) of the High Court Ordinance (Cap 4) nor the Merchant Shipping (Limitation of Shipowners' Liability) Ordinance (Cap 434) shall apply to the claim. (Amended 25 of 1998 s. 2)

[cf. 1965 c. 57 s. 14(1) U.K.]

Section:	8	Time for bringing claims under sections 3 and 4		30/06/1997
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(1) Subject to subsection (2) but notwithstanding any other Ordinance relating to limits of time for claims, a claim by virtue of section 3 or 4 may be made at any time before, but shall not be entertained if made at any time after, the expiration of 10 years from the date of the occurrence which gave rise to the claim or, where that occurrence was a continuing one, the date of the last event in the course of that occurrence to which the claim relates.

(2) Notwithstanding subsection (1), a claim in respect of injury or damage caused by an occurrence involving nuclear material stolen from, or lost, jettisoned or abandoned by, the person whose breach of a duty imposed by section 3 gave rise to the claim shall not be entertained if the occurrence takes place after the expiration of 20 years beginning with the day when the nuclear material in question was so stolen, lost, jettisoned or abandoned.

(Enacted 1995)
[cf. 1965 c. 57 s. 15 U.K.]

Section:	9	Satisfaction of claims under section 3		30/06/1997
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(1) A relevant operator shall not be required by virtue of section 3 to make any payment by way of compensation in respect of an occurrence-

- (a) when the occurrence involves nuclear material in the course of carriage and the claim is in respect of damage to the means of transport being used for that carriage, unless the relevant law otherwise provides;
- (b) to the extent that the amount required for the satisfaction of the claim is not required to be made available by the relevant law and has not been made available by means of a relevant contribution.

(2) A relevant operator shall not be required by virtue of section 5(1)(a) or 6(1)(b) to make any payment by way of compensation in respect of an occurrence if he would not have been required to make that payment if the occurrence had taken place in his home territory and the claim had been made by virtue of the relevant law.

(Enacted 1995)
[cf. 1965 c. 57 s. 16 U.K.]

Section:	10	Jurisdiction, shared liability and foreign judgments	64 of 1999; 14 of 2002	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3; 14 of 2002 s. 3

(1) No court in Hong Kong shall have jurisdiction to determine any claim or question under this Ordinance which is certified by the Chief Executive to be a claim or question which, under any relevant international agreement, falls to be determined by a court of some other relevant territory, and any proceedings to enforce such a claim which are commenced in any court in Hong Kong shall be set aside. (Amended 64 of 1999 s. 3)

(2) Subject to subsection (3), where by virtue of section 3 and any relevant law liability in respect of the same injury or damage is incurred by 2 or more persons, then, for the purpose of any proceedings in Hong Kong relating to that injury or damage, including proceedings for the enforcement of a judgment registered under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319), both or all of those persons shall be treated as jointly and severally liable in respect of that injury or damage.

(3) Where liability as described in subsection (2) is incurred as a result of an occurrence involving nuclear material in the course of carriage in one and the same means of transport, the maximum total amount for which such persons shall be liable, apart from payments in respect of interest or costs, shall not exceed the highest amount required to be made available by the relevant law, together with such amounts, if any, as fall to be made available by means of relevant contributions.

(4) The Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) shall apply to any judgment obtained in a court outside Hong Kong which is certified by the Chief Executive to be a relevant foreign judgment for the purposes of this Ordinance, whether or not it would otherwise have so applied, and shall have effect in relation to any judgment so certified as if in section 6 of that Ordinance subsections (1)(a)(ii), (2) and (3) were omitted. (Amended 64 of 1999 s. 3)

(5) Subject to subsection (6), it shall be a sufficient defence to proceedings in Hong Kong against any person for the recovery of a sum alleged to be payable under a judgment given in a country, territory or place outside Hong Kong for that person to show that-

- (a) the sum in question was awarded in respect of injury or damage of a description which is the subject of a relevant international agreement;
- (b) the country, territory or place in question is not a relevant territory; and (Amended 14 of 2002 s. 3)
- (c) the sum in question was not awarded in pursuance of any of the international agreements referred to in section 6(2)(a).

(6) Subsection (5) shall not have effect where the judgment in question is enforceable in Hong Kong in pursuance of an international agreement.

(7) Where, in the case of any claim by virtue of section 3 the relevant operator is the government of a relevant territory, then, for the purposes of any proceedings brought in a court in Hong Kong to enforce that claim, that government shall be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on.

(8) Nothing in subsection (7) shall authorize the issue of execution against the property of the government of a relevant territory.

(Enacted 1995)

[cf. 1965 c. 57 s. 17 U.K.]

Section:	11	Supplementary provisions with respect to cover for compensation in respect of carriage	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

(1) Where, in the case of an occurrence involving nuclear material in the course of carriage, a claim in respect of damage to the means of transport used for that carriage is duly established against a relevant operator by virtue of section 3, no payment towards the satisfaction of that claim shall be made out of funds which are required to be made available for the purpose by the relevant law or which have been made available by means of a relevant contribution, such as to prevent the satisfaction out of those funds up to an aggregate amount which is equivalent in Hong Kong

dollars (on the day, or first day, of that occurrence) to 5 million special drawing rights in respect of all claims which have been or may be duly established against the same person in respect of injury or damage caused by that occurrence other than damage to the said means of transport.

(2) The Chief Executive may by order increase or further increase the sum expressed in special drawing rights in subsection (1). (Amended 64 of 1999 s. 3)

(3) An order under subsection (2) shall not have effect in respect of any occurrence before (or beginning before) the order comes into force.

(4) For the purposes of this section-

- (a) the Monetary Authority may specify in Hong Kong dollars the amount which is to be taken as equivalent for a particular day to the sum expressed in special drawing rights in this section;
- (b) a certificate given by or on behalf of the Monetary Authority in pursuance of paragraph (a) shall be conclusive evidence of the matters stated in it for the purposes of this section;
- (c) 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; and
- (d) the Monetary Authority may charge a reasonable fee for any such certificate, and every such fee shall be paid into the general revenue.

(5) Where, in the case of an occurrence involving nuclear material in the course of carriage, a claim in respect of damage to the means of transport being used for that carriage is duly established against a relevant operator by virtue of section 3 but by virtue of section 9(1)(a) that operator is not required to make a payment in satisfaction of the claim, section 5(1)(b) shall not apply to any liability of that operator with respect to the damage in question which may arise apart from under this Ordinance.

(6) Where any nuclear material is to be carried by, or on behalf or with the agreement of, a relevant operator in such circumstances that he may incur liability by virtue of section 3 and that operator has, pursuant to the relevant law, provided the carrier with a document, issued by or on behalf of the person by whom there falls to be provided the funds required by the relevant law to be available to satisfy any claim in respect of the carriage in question and containing the name and address of that operator and particulars of those funds, none of the contents of that document shall be disputed in any court by the person by whom or on whose behalf it was issued.

(7) The requirements of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap 272) shall not apply in relation to an injury to any person for which any other person is liable by virtue of section 3.

(8) Subsection (6) shall not apply where the carriage in question is wholly within Hong Kong.

(Enacted 1995)

[cf. 1965 c. 57 ss. 21 & 25B U.K.]

Section:	12	Disabled birth due to radiation		30/06/1997
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(1) For the avoidance of doubt, it is hereby declared that anything which-

- (a) affects a man in his ability to have a normal, healthy child; or
- (b) affects a woman in that ability, or so affects her when she is pregnant that her child is born with disabilities which would not otherwise have been present,

is an injury for the purposes of this Ordinance.

(2) If a child is born disabled as the result of an injury to either of its parents caused in breach of a duty imposed by section 3 or 4, then subject to subsections (3) and (4), the child's disabilities are to be regarded for the purposes of this Ordinance (compensation and other matters) as injuries caused on the same occasion, and by the same breach of duty, as was the injury to the parent.

(3) Where the question arises of compensation being payable to a child born disabled as described in subsection (2), section 6(3) shall apply as if the reference there to fault were to the fault of the parent.

(4) In the case of a child born disabled as described in subsection (2), compensation is not payable if the injury to the parent preceded the time of the child's conception and at the time of conception either of the parents knew the risk of the child being born disabled as a result of that injury.

(Enacted 1995)

[cf. 1976 c. 28 s. 3 U.K.]

Section:	13	Evidence by certificate	64 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 64 of 1999 s. 3

A certificate purporting to be signed by the Chief Executive as to his determination under section 2(3) or of the matters specified in section 10(1) or (4) shall be conclusive evidence of the matters contained therein and shall in any legal proceedings under this Ordinance to which it relates be admissible on its production without further proof.

(Enacted 1995. Amended 64 of 1999 s. 3)

Section:	14	Repeals		30/06/1997
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(1) The following are repealed-

- (a) the Nuclear Installations (Hong Kong) Order 1972 (App. III p. DC1);
- (b) the Nuclear Installations (Hong Kong) Order 1983 (App. III p. CC1);
- (c) the Nuclear Installations (Hong Kong)(Amendment) Order 1986 (L.N. 57 of 1987).

(2) Sections 23 to 25 of the Interpretation and General Clauses Ordinance (Cap 1) shall apply in relation to the repeal of the orders mentioned in subsection (1) as they apply in relation to the repeal of an Ordinance.

(Enacted 1995)

Section:	15	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1995)

Section:	16	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1995)

Section:	17	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1995)