

Chapter:	434	MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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An Ordinance to provide for and to limit the liability of shipowners and others, and for ancillary matters.

(Enacted 1993)

[1 October 1993] *L.N. 381 of 1993*

(Originally 55 of 1993)

Section:	1	Short title		30/06/1997
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PART I

PRELIMINARY

(1) This Ordinance may be cited as the Merchant Shipping (Limitation of Shipowners Liability) Ordinance.

(2) (Omitted as spent)

(Enacted 1993)

Section:	2	Interpretation	1 of 2005	18/03/2005
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In this Ordinance-

"Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974" (《1974年海上運輸旅客及其行李雅典公約》) means-

- (a) the convention of that name done at Athens on 13 December 1974; and (Amended 1 of 2005 s. 2)
- (b) the protocol to that convention done at London on 19 November 1976,

both of which were established in a single original in the English and French languages;

"contract of carriage" (運輸合約) has the meaning assigned to it in Article 1 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974; (Added 1 of 2005 s. 2)

"Convention on Limitation of Liability for Maritime Claims, 1976" (《1976年海事索賠責任限制公約》) means the convention of that name done at London on 19 November 1976, which was established in a single original in the English, French, Russian and Spanish languages.

"international carriage" (國際運輸) has the meaning assigned to it in Article 1 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974; (Added 1 of 2005 s. 2)

"the Mainland" (內地) means any part of China other than Hong Kong, Macau and Taiwan; (Added 1 of 2005 s. 2)

"regional carriage" (區域運輸) means any carriage in which-

- (a) according to the contract of carriage, the place of departure and the place of destination are situated in-
 - (i) Hong Kong and Macau, or vice versa; or
 - (ii) Hong Kong and any port in the Mainland, or vice versa; and
- (b) according to the contract of carriage or the scheduled itinerary, the intermediate port of call, if any, is in Hong Kong, Macau or the Mainland. (Added 1 of 2005 s. 2)

(Enacted 1993)

Section:	3	Convention to have force of law	1 of 2005	18/03/2005
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PART II

CARRIAGE OF PASSENGERS AND LUGGAGE BY SEA

(1) Subject to this Part, the provisions of the Athens Convention relating to the Carriage of Passengers and their

Luggage by Sea, 1974 set out in Schedule 1 (in this Part and in that Schedule referred to as "the Convention" (公約)) have the force of law in Hong Kong. (Amended 1 of 2005 s. 3)

(2) Notwithstanding paragraph 1 of Article 2 of the Convention, and subject to this Part, the Convention applies to regional carriage. (Added 1 of 2005 s. 3)

(Enacted 1993)

Section:	4	Interpretation		30/06/1997
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For the purposes of this Ordinance-

- (a) notwithstanding paragraph 3 of Article 1 of the Convention, "ship" (船、船舶) in the Convention means any seagoing vessel, and includes any air-cushion vehicle designed to operate in or over water while so operating;
- (b) "the provisions of the law of that court" (該法院的適用法律) in Article 6 of the Convention means section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23); and
- (c) "contract of carriage" (運輸合約) in the Convention does not include a contract of carriage which is not for reward.

(Enacted 1993)

Section:	5	Application	1 of 2005	18/03/2005
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(1) For the purposes of paragraph 2 of Article 2 of the Convention, provisions of such an international convention as is mentioned in that paragraph which apart from this subsection do not have mandatory application to international carriage by sea shall be treated as having mandatory application to international 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. (Amended 1 of 2005 s. 4)

(2) In its application to regional carriage, the Convention is to be read as if paragraph 2 of Article 2 were omitted. (Added 1 of 2005 s. 4)

(Enacted 1993)

Section:	6	Limit of liability for personal injury	1 of 2005	18/03/2005
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(1) In relation to a carrier whose principal place of business is in Hong Kong the Chief Executive may by order specify a limit in substitution for, but not lower than, the limit specified in paragraph 1 of Article 7 of the Convention. (Amended 1 of 2005 s. 5)

(2) In its application to regional carriage, the Convention is to be read as if paragraph 2 of Article 7 were omitted. (Added 1 of 2005 s. 5)

(Enacted 1993)

Section:	6A	Unit of account and conversion	1 of 2005	18/03/2005
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In its application to regional carriage, Article 9 of the Convention is to be read as if the words "currency of Hong Kong" were substituted for the words "national currency of the State of the court seized of the case".

(Added 1 of 2005 s. 6)

Section:	7	Aggregation of claims		30/06/1997
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For the avoidance of doubt it is declared that the limitations on liability mentioned in Article 12 of the Convention 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.

(Enacted 1993)

Section:	8	Time-bar for actions		30/06/1997
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Article 16 of the Convention applies to an arbitration as it applies to an action.

(Enacted 1993)

Section:	9	Competent jurisdiction	1 of 2005	18/03/2005
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(1) The court before which proceedings are brought in pursuance of Article 17 of the Convention to enforce a liability which is limited by virtue of Article 12 of the Convention may at any stage of the proceedings make such order as appears to the court to be just and equitable in view of the provisions of Article 12 of the Convention 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.

(2) Without prejudice to the generality of subsection (1), where such liability is or may be partly enforceable in other proceedings in Hong Kong or elsewhere, such court has 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.

(3) In its application to regional carriage, Article 17 of the Convention is to be read as if-

(a) paragraph 1 were omitted; and

(b) in paragraph 2, the words "the court" were substituted for the words "any jurisdiction". (Added 1 of 2005 s. 7)

(Enacted 1993)

Section:	9A	Invalidity of contractual provisions	1 of 2005	18/03/2005
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In its application to regional carriage, Article 18 of the Convention is to be read as if the words "or having the effect of restricting the option specified in paragraph 1 of Article 17," were omitted.

(Added 1 of 2005 s. 8)

Section:	10	Notice by carrier to passenger	1 of 2005	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 1 of 2005 s. 9

The Chief Executive may by order make provision- (Amended 1 of 2005 s. 9)

(a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner prescribed in the order, notice of such of the provisions of the Convention as are so prescribed;

(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 \$10000.

(Enacted 1993)

Section:	11	Application of Part		30/06/1997
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Nothing in this Part affects the operation of Part III.

(Enacted 1993)

Section:	12	Convention to have force of law	1 of 2005	18/03/2005
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PART III

LIMITATION OF LIABILITY FOR MARITIME CLAIMS

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

(Enacted 1993. Amended 1 of 2005 s. 10)

Section:	13	Interpretation	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

For the purposes of this Ordinance-

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

Section:	14	Right to limit liability		30/06/1997
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Notwithstanding paragraph 2 of Article 1 of the Convention, the right to limit liability under the Convention applies in relation to any ship whether seagoing or not, and "shipowner" (船東) in that paragraph has a corresponding meaning.

(Enacted 1993)

Section:	15	Claims subject to limitation	1 of 2005	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 1 of 2005 s. 13

- (1) The Chief Executive may by order provide for- (Amended 1 of 2005 s. 13)
 - (a) the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of paragraph 1(d) of Article 2 of the Convention, of amounts recoverable by them in claims of the kind there mentioned; and
 - (b) the maintaining of such a fund by contributions from such authorities raised and collected by them in respect of vessels in the same manner as other sums so raised by them.
- (2) Any order under subsection (1) may contain such incidental and supplemental provisions as appear to the Chief Executive to be necessary or expedient. (Amended 1 of 2005 s. 13)
- (3) Paragraph 1(d) of Article 2 of the Convention shall not apply unless an order has been made under subsection (1).

(Enacted 1993)

Section:	16	Claims excluded from limitation		30/06/1997
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(1) The claims excluded from the Convention by paragraph (b) of Article 3 of the Convention are claims in respect of any liability incurred under section 6 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414).

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

(Enacted 1993)

Section:	17	Calculation of ship's tonnage	1 of 2005	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 1 of 2005 s. 14

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

- (a) paragraph 1(a)(i) referred to 166667 Units of Account; and
- (b) paragraph 1(b)(i) referred to 83333 Units of Account.

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

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

(Enacted 1993. Amended 1 of 2005 s. 14)

Section:	18	Limit for passenger claims	30/06/1997
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(1) In the case of a passenger ship within the meaning of Part II of the Merchant Shipping (Safety) Ordinance (Cap 369) the ship's certificate mentioned in paragraph 1 of Article 7 of the Convention is the passenger ship's certificate issued under section 14 of that Ordinance.

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

(Enacted 1993)

Section:	19	Constitution of fund	30/06/1997
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(1) The Monetary Authority may from time to time by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article 11 of the Convention.

(2) Where a fund is constituted with the court in accordance with Article 11 of the Convention 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.

(Enacted 1993)

Section:	20	Distribution of fund	30/06/1997
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No lien or other right in respect of any ship or property shall affect the proportions in which under Article 12 of the Convention the fund is distributed among several claimants.

(Enacted 1993)

Section:	21	Bar to other actions	30/06/1997
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Where the release of a ship or other property is ordered under paragraph 2 of Article 13 of the Convention, the person on whose application it is ordered to be released is 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.

(Enacted 1993)

Section:	22	Exclusion of liability	30/06/1997
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- (1) Subject to subsection (3), the owner of a Hong Kong ship is not liable for any loss or damage-
- (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), 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, subsection (1) also excludes 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.

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

(Enacted 1993)

Section:	23	Application of Part	1 of 2005	18/03/2005
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(1) Nothing in this Part relieves a person of any liability imposed on him under Part II.

(2) (Repealed 1 of 2005 s. 15)

(Enacted 1993)

Section:	24	Meaning of "State Party"	1 of 2005	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 1 of 2005 s. 16

PART IV

MISCELLANEOUS

The Chief Executive may by order declare that any State specified in the order is, or was at a date specified in the order, a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 or to the Convention on Limitation of Liability for Maritime Claims, 1976 in respect of a particular country, and any such order shall be conclusive evidence that that State is, while the order remains in force, or was at that date, a party to that convention in respect of that country.

(Enacted 1993. Amended 1 of 2005 s. 16)

Section:	25	Units of Account	1 of 2005	18/03/2005
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(1) For the purposes of Articles 7 and 8 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and of Articles 6 and 7 of the Convention on Limitation of Liability for Maritime Claims, 1976, the Monetary Authority may certify the respective amounts in Hong Kong dollars which are to be taken as equivalent for a particular day to the sums expressed in special drawing rights in those Articles. (Amended 1 of 2005 s. 17)

(2) A certificate given by or on behalf of the Monetary Authority in pursuance of subsection (1) shall be conclusive evidence of the matters referred to in that subsection 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.

(3) The Monetary Authority may charge a fee for any certificate given by him or on his behalf under this section.

(Enacted 1993)

Section:	26	Crown		30/06/1997
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This Ordinance binds the Crown.

(Enacted 1993)

Section:	27	Application of Interpretation and General Clauses Ordinance		30/06/1997
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Sections 23 to 26 of the Interpretation and General Clauses Ordinance (Cap 1) apply in relation to the repeal of a provision of a United Kingdom enactment effected by this Ordinance as they apply in relation to the repeal of a

provision of an Ordinance.

(Enacted 1993)

Section:	28	Amendment of Schedules 1 and 2	1 of 2005	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 1 of 2005 s. 18

The Chief Executive in Council may by order published in the Gazette amend Schedules 1 and 2 in accordance with any revision to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 or to the Convention on Limitation of Liability for Maritime Claims, 1976, or to any protocol to those conventions, which may apply to Hong Kong from time to time.

(Enacted 1993. Amended 1 of 2005 s. 18)

Section:	29	Repeal and savings	1 of 2005	18/03/2005
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- (1) The Merchant Shipping Act 1979 (Hong Kong) Order 1980 (App. III p. AN 1) is repealed.
- (2) Notwithstanding the repeal effected by subsection (1)-
 - (a) the Merchant Shipping (Liability of Shipowners and Others) (Calculation of Tonnage) (Hong Kong) Order (App. I p. BJ 1) shall continue in force and is deemed for all purposes to have been made by the Chief Executive under section 17(2). (Amended 1 of 2005 s. 19)
 - (b)-(c) (Repealed 1 of 2005 s. 19)

(Enacted 1993)

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

(Enacted 1993)

Schedule:	1	ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974		30/06/1997
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[sections 3 & 28]

ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS
AND THEIR LUGGAGE BY SEA, 1974

ARTICLE 1

Definitions

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

1. (a) "carrier" (承運人) 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" (實際承運人) 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" (運輸合約) 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" (船、船舶) means only a seagoing vessel, excluding an air-cushion vehicle;

4. "passenger" (旅客) 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" (行李) 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" (自帶行李) 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" (行李滅失或損壞) 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" (運輸、運送) 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" (國際運輸) means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in 2 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 46666 Units of Account 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 833 Units of Account 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 3333 Units of Account 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 1200 Units of Account 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 117 Units of Account in the case of damage to a vehicle and not exceeding 13 Units of Account 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

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.

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 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 agent, 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 other 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 15 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 2 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 3 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 3 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.

Schedule:	2		30/06/1997
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[sections 12 & 28]

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

CHAPTER I. THE RIGHT OF LIMITATION

ARTICLE 1

Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term "shipowner" (船東) shall mean the owner, charterer, manager or operator of a seagoing ship.
3. "Salvor" (救助者) shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in paragraph 1(d), (e) and (f) of Article 2.
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

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

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

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

ARTICLE 2

Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability-

- (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

ARTICLE 3

Claims excepted from limitation

The rules of this Convention shall not apply to-

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

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) 333000 Units of Account for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in sub-subparagraph (i)-
 - (A) for each ton from 501 to 3000 tons, 500 Units of Account;
 - (B) for each ton from 3001 to 30000 tons, 333 Units of Account;
 - (C) for each ton from 30001 to 70000 tons, 250 Units of Account; and
 - (D) for each ton in excess of 70000 tons, 167 Units of Account;
 - (b) in respect of any other claims-
 - (i) 167000 Units of Account for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in sub-subparagraph (i)-
 - (A) for each ton from 501 to 30000 tons, 167 Units of Account;
 - (B) for each ton from 30001 to 70000 tons, 125 Units of Account; and
 - (C) for each ton in excess of 70000 tons, 83 Units of Account.

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

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1500 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 46666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" (有關船

船旅客人身傷亡的索償) shall mean any such claims brought by or on behalf of any person carried in that ship-

- (a) 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 there to 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 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or 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;
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury;
- (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.

Schedule:	3	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1993)