

- (3) any destruction or loss of or damage to baggage carried on board the aircraft;
- (4) any destruction or loss of or damage to cargo carried on board the aircraft; or
- (5) any destruction or loss of or damage to post carried on board the aircraft.

The combined single limit coverage is set out in the Schedule to the Civil Aviation (Insurance) Order and operates on a sliding scale based upon take off weight. This may cover other liabilities (excluding liability for damage to the hull) and need not cover employment liabilities.¹ Documentary proof of the insurance – including the policy or other document providing coverage – must be carried on the aircraft (Civil Aviation (Insurance) Order, s 7);² and an aircraft which does not produce the documentary proof may be prohibited from taking off (Civil Aviation (Insurance) Order s 11).

18.003 *Merchant shipping* Part VA of the Merchant Shipping (Local Vessels) Ordinance (Cap 548)³ imposes a compulsory insurance requirement on local vessels other than laid up vessels and non-mechanically propelled vessels (Merchant Shipping (Local Vessels) Ordinance, s 23B). It is a criminal offence; or cause or permit any other person to use,⁴ a local vessel in the waters of Hong Kong unless there is in force a policy of liability insurance (Merchant Shipping (Local Vessels) Ordinance, s 23C). A policy must comply with the requirements of Merchant Shipping (Local Vessels) Ordinance, s 23D, in that it must:

- (1) be issued by an authorised insurer;⁵
- (2) be governed by the laws of Hong Kong;
- (3) insure against liability for death or bodily injury of any person caused by or arising out of the use of a local vessel in the waters of Hong Kong; and
- (4) include liability for interest, costs and expenses.

A policy is to be accompanied by a certificate of insurance, setting out the details of the coverage,⁶ and the certificate is to be displayed on the vessel so that it is conspicuous and easily legible.⁷

¹ These are separately covered by the Employees' Compensation Ordinance. Such evidence is to be produced within 24 hours on request or when the aircraft is about to take off (Civil Aviation (Insurance) Order, ss 8-10. There is a criminal sanction for non-compliance or the provision of false information (Civil Aviation (Insurance) Order, ss 14-15).

² Modified chiefly on the Motor Vehicles (Third Party Risks) Ordinance (Cap 272).

³ Subject to a due diligence defence (Merchant Shipping (Local Vessels) Ordinance, s 23C).

⁴ Including an approved P&I Club (Merchant Shipping (Local Vessels) (Compulsory Third Party Risks) Regulations, (Cap 548) ss 4-10 and 19. If approval is withdrawn, the vessel may only enter or terminate the cover (ibid s 17).

⁵ Merchant Shipping (Local Vessels) (Compulsory Third Party Risks) Regulations, s 13; s 13 requires the certificate to be substantiated; and under s 16 an insurer is to issue a certificate which has been lost or destroyed.

⁶ Merchant Shipping (Local Vessels) (Compulsory Third Party Risks) Regulations, s 14.

The policy need not cover employees, contractual liability and liability for any sum in excess of that set out in regulations: the sum is presently \$3,000,000 in respect of a ferry, launch or tug, \$600,000 in respect of a pleasure vessel, \$5,000,000 if the vessel is permitted to carry more than 12 passengers and \$1,000,000 if the vessel is permitted to carry 12 or fewer passengers.¹⁰ Any policy term which provides that liability shall not arise or shall cease in the event of some specified thing being done or omitted to be done after the event giving rise to the claim is void, unless the claim itself, but the insurers are entitled to include a policy term which reserves them a right of recourse against the assured in the event that they have to pay where there would otherwise be no liability (Merchant Shipping (Local Vessels) Ordinance, s 23E). Accordingly, notification clauses are rendered ineffective.

A third party is entitled to obtain insurance information from the assured prior to the commencement of proceedings against the assured for death or personal injury (Merchant Shipping (Local Vessels) Ordinance, s 23J).¹¹ Where the third party has obtained judgment against the assured, the insurers are required to satisfy the judgment despite any right that it might have to cancel or avoid the policy, irrespective of the assured's insolvency (Merchant Shipping (Local Vessels) Ordinance, s 23H), but subject to a right of recourse against the assured (Merchant Shipping (Local Vessels) Ordinance, s 23F). Insurers may not rely upon policy terms relating to (Merchant Shipping (Local Vessels) Ordinance, s 23I): the age or physical or mental condition of persons in charge of the vessel; the condition of the vessel; the number of persons on the vessel; the times at which or the areas in which the vessel is used; the propulsion power or value of the vessel's engine; the carrying on the vessel of any particular apparatus; and the carrying on the vessel of any particular means of identification. Insurers do, however, have limited defences here, in that they are relieved of liability (Merchant Shipping (Local Vessels) Ordinance, s 23C), where:

- (1) they were not given notice of the proceedings in which judgment was given before or within seven days of their commencement;
- (2) execution on the judgment has been stayed pending an appeal;
- (3) the insurance was cancelled before the event giving rise to liability and either (a) the policy was surrendered to the insurers before the happening of the event; or (b) after the happening of the event and within 14 days the policy was surrendered to the insurers; or

¹⁰ Compulsory Third Party Risks Regulations, s 21 provides that the sum insured is to be published in the Gazette from time to time. The present figure is set out in the Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice (Cap 548).

¹¹ Insurance information may also be demanded by authorized officers (Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance, s 23K. There are criminal sanctions under both provisions. Insurance documents are also to be produced on the licensing and transfer of vessels (Merchant Shipping (Local Vessels) (Certification and Licensing) Regulations (Cap 548D) and on application for actual clearance, entry to be refused in the absence of insurance (Merchant Shipping (Local Vessels) (General) Regulations (Cap 548F)).

- (4) the insurers have obtained a declaration of their right to avoid the policy for non-disclosure or misrepresentation of a material fact in proceedings commenced within three months of the date of the action in which judgment was given, providing that the insurers have given notice of to the third party victim of the action and the matter relied upon is specified.

The relevant shipping and police authorities are to be informed if a policy ceases to be effective without the consent of the assured.¹² Insurers are required to keep a record of any policy for one year after it ceases to have effect.¹³

18.004

Oil pollution. Compensation for damage caused by oil pollution is governed by two international conventions, the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1992 and the International Convention on Civil Liability for Oil Pollution Damage 1992. Each has since been amended. Those Conventions have been given the force of law in Hong Kong by the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance 2000 (Cap 414). The Liability Convention and the Ordinance impose strict liability upon a shipowner who by oil pollution causes damage to a third party, subject to the shipowner's right to establish a limitation fund.

These rules are supplemented by compulsory insurance. Article VII of the Liability Convention, as implemented in Hong Kong by the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance, s 15, requires any ship carrying a bulk cargo of more than 2000 tons of oil to be insured against liability, and it may not enter or leave Hong Kong waters unless there is in force a certificate of insurance. Further, and almost uniquely for statutes requiring liability insurance, the plaintiff may bring a direct action against the insurers, who have the same defences against the third party as they would have had there been a claim by the assured, and the insurers are also free from liability if they prove that the loss was caused by the assured's willful misconduct (Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance, s 17).

18.005

Securities and futures. The Securities and Futures (Insurance) Rules (Cap 571AD), made under the authority of the Securities and Futures Ordinance 2003 (Cap 571), require any corporation granted a licence under the SFO to carry on any regulated activity to insure against losses arising from licensed activities. The insurance cover is one taken out by the trader itself or it may subscribe to a master policy obtained by the Regulator. In either case the sum insured is to be at least \$25,000,000 in respect of all activities (there is a sliding scale for particular activities) and the deductible is not to exceed \$3,000,000 (ss 4 and 5 of, and Sch 2 to the Rules). The insured is to be insured under s 6 of the Rules:

- (1) fraudulent or dishonest conduct by employees;
- (2) robbery or theft while the client assets are in the custody of the licensee;
- (3) forgery or fraudulent alteration of a cheque or other negotiable instrument;
- (4) fraudulent use of an information system; and
- (5) forged or fraudulent instructions relating to client assets.

Building management. The Building Management Ordinance (Cap 344) is a lengthy piece of legislation concerned primarily with management of blocks of flats. The Ordinance was amended in 2007 to bring in compulsory insurance requirements for a corporation in respect of any liability that it may incur for death or bodily injury. The relevant measure is the Building Management (Third Party Risks Insurance) Regulation 2007 (Cap 344B), which is not yet in force. When it is brought into force it will require insurance for liabilities other than those covered by compulsory motor and employee cover, for buildings, to breach of the Building Ordinance (Cap 123) and nuclear risks (s 3). The insurance must be for not less than \$10,000,000 for all losses arising out of one event (s 4). Once a policy has been issued, the insurers must also issue a notice of insurance in the form set out in the Schedule to the Regulation, Building Management (Third Party Risks Insurance) Regulation, s 5.

In the event of a claim, the insurers cannot avoid liability by relying on policy terms dealing with any of the following matters (Building Management (Third Party Risks Insurance) Regulation, s 6): the number of claims that may be made during the currency of the policy; the age of the building to which the policy relates; the condition or maintenance of the building; the number of flats in the building; the use of the building; and the existence of a statutory instrument relating to the building. Any sum payable by reason of s 6 may be recovered from the assured by the insurers. A policy condition which provides that liability is not to arise or is to cease for something done or omitted to be done after the event giving rise to the claim is also of no effect and insurers may insert in the policy a provision giving them recourse against the assured.

Any agreement between an insured corporation and a third party which purports to limit or oust liability is null and void, and a claim is not to be defeated by voluntary acceptance of risk on the part of the third party (Building Management (Third Party Risks Insurance) Regulation, s 7). If there is a claim, the assured must disclose insurance coverage information to the plaintiff (Building Management (Third Party Risks Insurance) Regulation, s 11). A judgment obtained against the assured is to be satisfied by the insurers up to policy limits (Building Management (Third Party Risks Insurance) Regulation, s 8), although insurers are able to avoid liability under s 9 of the Regulation if:

- (1) they were not given notice of the proceedings in which judgment was given before or within seven days of their commencement;

¹² Merchant Shipping (Local Vessels) (Compulsory Third Party Risks) Regulations, s 12.

¹³ Merchant Shipping (Local Vessels) (Compulsory Third Party Risks) Regulations, s 13.

18.006