

THE SHIPPING (CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE) REGULATIONS 2003

Made by the Minister under section 195A of the Shipping (Marine Pollution) Act 2007

Preliminary

1. These Regulations may be cited as the Shipping (Civil Liability for Bunker Oil Pollution Damage) Regulations 2007. Citation

2. (1) In these Regulations – Interpretation

“the Act” means the Shipping (Marine Pollution) Act 2007;

“damage” includes loss;

“the Bunker oil Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2007;

“Bunker oil Convention country” means a country in respect of which the Bunker oil Convention is in force; and

“Bunker oil Convention State” means a State which is a party to the Convention.

“bunker oil” means any persistent hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil;

“gross tonnage” means gross tonnage calculated in accordance with the tonnage regulations under section 39 of the Model Shipping Act 2000;

“registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a state which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“relevant threat of contamination” shall be construed in accordance with regulation 3(2); and

“ship”, subject to section 186(4) of the Act, means any sea-going vessel or sea-borne craft of any type whatsoever;

“owner” means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.

(2) In relation to any damage or cost resulting from the discharge or escape of any bunker oil from a ship, or from a relevant threat of contamination, references in these Regulations to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or, as the case may be, in the threat of contamination.

(3) References in these Regulations to the territory of any country includes the territorial sea of that country, and in the case of Trinidad and Tobago and any Liability Convention country, the exclusive economic zone thereof established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea thereof and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by the State in question in accordance with international law.

Liability

Liability for bunker
pollution damage

3. (1) Where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by these Regulations) the owner of the ship shall, subject to section 333 of the Shipping Act 2007, be liable-

- (a) for any damage caused outside the ship in the territory of Trinidad and Tobago by contamination resulting from the discharge or escape;
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Trinidad and Tobago by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of Trinidad and Tobago by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by these Regulations) the owner of the ship shall be liable-

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Trinidad and Tobago; and
- (b) for any damage caused outside the ship in the territory of Trinidad and Tobago by any measures taken,

and in these Regulations any such threat is referred to as a “relevant threat of contamination.”

(3) This section applies to any ship other than a ship to which section 185 of the Act applies.

(4) Where a person incurs a liability under sub-regulation (1) or (2) he shall also be liable for any damage or cost for which he would be liable under that sub-regulation if the references in it to the territory of Trinidad and Tobago included the territory of any other Liability Convention country.

(5) Where-

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships; but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable

each of the owners shall be liable jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(6) For the purposes of these Regulations-

- (a) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (b) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

4. No liability shall be incurred by the owner of a ship under regulation 3 by reason of any discharge or escape of bunker oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or the threat of contamination-

Exceptions from liability for bunker pollution damage

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

5. (1) Where, as a result of any occurrence-

Restriction of liability for bunker pollution damage

- (a) any bunker oil is discharged or escapes from a ship to which these Regulations applies or
- (b) there arises a relevant threat of contamination,

whether or not the owner of the ship in question incurs a liability under regulation 3 he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it.

(2) The liability of the owner of a ship under regulation 3 for any impairment of the environment shall be taken to be a liability only in respect of-

- (a) any resulting loss of profits; and
- (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

(3) If the owner proves that the damage referred to in regulation 3(1)(a) resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

Limitation of liability under regulation 3

6. For the purposes of Chapter 2 of Part XVI of the Shipping Act, any liability incurred under regulation 3 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in subsection (1)(a) of section 333 of that Act.

Extinguishment of claim

7. No action to enforce a claim in respect of a liability incurred under regulation 3 shall be entertained by a Court in Trinidad and Tobago unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or, as the case may be, in the relevant threat of contamination, by reason of which the liability was incurred.

Compulsory Insurance

Compulsory insurance against liability for pollution

8. (1) Subject to the provisions of these Regulations relating to Government ships, sub-regulation (2) shall apply to any ship having a gross tonnage of greater than 1000 gross tons other than a ship operating wholly within the territory of Trinidad and Tobago.

(2) The ship shall not enter or leave a port in Trinidad and Tobago or arrive at or leave a terminal in the territorial sea of Trinidad and Tobago nor, if the ship is a Trinidad and Tobago ship, a port in any other country or a terminal in the territorial sea of any other Country, unless there is in force a certificate complying with the provisions of sub-regulation (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article 7 of the Bunker oil Convention (cover for owner's liability).

(3) Subject to regulation 10, the certificate must be-

- (a) if the ship is a Trinidad and Tobago ship, a certificate issued by the Director;
- (b) if the ship is registered in a Bunker oil Convention country other than Trinidad and Tobago, a certificate issued by or under the authority of the government of the other Bunker oil Convention Country; or
- (c) if the ship is registered in a country which is not a Liability Convention Country, a certificate issued by the Director or by or under the authority of the government of any Bunker oil Convention country other than Trinidad and Tobago.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs and excise, the Director or any surveyor

authorised by the Director for the purpose and, if the ship is a Trinidad and Tobago ship, to any proper officer.

(5) Where a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of sub-regulation (2), the master or owner is guilty of an offence and liable on summary conviction to a fine not exceeding [\$100,000].

(6) Where a ship fails to carry, or the master of a ship fails to produce, a certificate as required by sub-regulation (4), the master is guilty of an offence and liable on summary conviction to a fine not exceeding [\$25,000].

(7) Where a ship attempts to leave a port in Trinidad and Tobago in contravention of this section the ship may be detained.

9. (1) Subject to sub-regulation (2), if the Director is satisfied, on the application for such a certificate as is mentioned in regulation 8 in respect of a Trinidad and Tobago ship or a ship registered in any country which is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Director shall issue such a certificate to the owner.

Issue of certificate by
Director

(2) Where the Director is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under regulation 2 in all circumstances, he may refuse the certificate.

(3) The Director shall make available for public inspection a copy of any certificate issued by him under this section in respect of a Trinidad and Tobago ship.

(4) Where, at any time while a certificate under regulation 8 is in force, the person to whom the certificate has been issued ceases to be the owner of the ship to which the certificate relates, he shall forthwith deliver up the certificate to the Director or to a proper officer and in such a case the certificate shall be cancelled by the Director.

(5) Where, at any time while a certificate under regulation 8 is in force, it is established in any legal proceedings that the contract of insurance or other security in respect of which the certificate was issued is or may be treated as invalid, the certificate may be cancelled by the Director and, if so cancelled, shall on demand forthwith be delivered up to him by the person to whom it was issued.

(6) Where, at any time while a certificate under regulation 8 is in force, circumstances arise in relation to the insurer or guarantor named in the certificate (or, where more than one is so named, to any of them) such that, if the certificate were applied for at that time, the Director would be entitled to

refuse the application under sub-regulation (2) of that regulation the certificate may be cancelled by the Director and, if so cancelled, shall on demand forthwith be delivered up to him by the person to whom it was issued.

(7) Where a person required by sub-regulations (4),(5) or (6) to surrender a certificate fails to do so he is guilty of an offence and liable on summary conviction to a fine not exceeding [\$40,000].

Delegation of issue of certificates

10. (1) (a) Subject to sub-regulation (3) the Director may authorize either an institution or an organization to issue the certificate referred to in regulation 8. Such institution or organization shall inform the Director of the issue of each certificate. In all cases, the Government fully guarantees the completeness and accuracy of the certificate so issued.

(b) Regulation 9(1) to (3) shall apply to certificates issued under paragraph (a) as if in such cases references to the Director were references to the institution or organization.

(2) The Director shall notify the Secretary-General of IMO of :

(a) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by him;

(b) the withdrawal of such authority; and

(c) the date from which such authority or withdrawal of such authority takes effect.

(3) An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(4) (a) The institution or organization authorized to issue certificates in accordance with this regulation shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the Director.

(b) Regulation 9(4) to (7) shall apply to certificates issued sub-regulation (1) (a) as if in such cases references to the Director were references to the institution or organization.

Rights of third parties against insurers

11. (1) Where it is alleged that the owner of a ship has incurred a liability under regulation 3 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in regulation 8 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as “the insurer”).

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence in addition to any defence affecting the owner’s liability, to prove that the discharge or escape, or, as the case may be, the

threat of contamination, was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape, or, as the case may be, the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 336 of the Shipping Act 2007.

(4) Where the owner and the insurer each apply to the Court for the limitation of his liability any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.

Supplemental

12. (1) Where-

- (a) any bunker oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of Trinidad and Tobago and no measures are reasonably taken to prevent or minimise such damage in that territory; or
- (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of Trinidad and Tobago,

Jurisdiction of
Trinidad and Tobago
Court and registration
of foreign
judgements

no Court in Trinidad and Tobago shall entertain any action, whether *in rem* or *in personam*, to enforce a claim arising from any relevant damage or cost-

(i) *against the owner of the ship; or*

(2) In sub-regulation (1) “relevant damage or cost” means-

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that sub-regulation, any damage caused in the territory of another Bunker Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunker Convention country;
- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that sub-regulation, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b).

(3) Any judgement given by a court in a Bunker Convention country in respect of a liability incurred under any provision corresponding to regulation 3 shall be enforceable by the Court.

Government ships

13. (1) Nothing in the preceding provisions of these Regulations applies in relation to any warship or any ship for the time being used by the government of any state for other than commercial purposes.

(2) In relation to a ship owned by a state and for the time being used for commercial purposes it shall be a sufficient compliance with regulation 8(2) if there is in force a certificate issued by the government of that state and showing that the ship is owned by that state and that any liability for pollution damage as defined in Article I of the Bunker Convention will be met up to the limit prescribed by Article V of the Convention.

(3) Every Bunker Convention State shall, for the purposes of any proceedings brought in the Court in Trinidad and Tobago to enforce a claim in respect of a liability incurred under regulation 3 be deemed to have submitted to the jurisdiction of the Court, and accordingly rules of Court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this sub-regulation shall authorise the issue of execution against the property of any state.

Saving for recourse actions

14. Nothing in these Regulations shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under these Regulations may have against another person in respect of that liability.