

PRELIMINARY DRAFT AND POLICY BRIEF

**MARINE POLLUTION PREVENTION (SPECIAL
PROVISIONS) ACT 2022**

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EXPLANATORY MEMORANDUM

The purpose of this Special Provisions draft Bill is to provide a legal framework to deal with marine pollution prevention in Sri Lanka. This draft Bill seeks to transform several IMO conventions relating to marine pollution into national legislation.

PART I - IMPLEMENTATION OF IMO CONVENTIONS

This Part gives force of law to several international conventions listed in the Schedule and empowers the Minister to determine the date of commencement for various Parts of this Draft Bill by Order published in the Gazette.

PART II - POWERS AND JURISDICTION UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982 UNCLOS.

This Part grants jurisdiction and responsibilities to prevent of marine pollution and the conservation of marine resources in terms of 1982 UNCLOS.

PART III - INTERVENTION ON THE HIGH SEAS.

This Part grants powers in regard to the prevention of marine pollution under IMO Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

PART IV - DUMPING WASTE AT SEA.

This Part grants powers and duties pertaining to waste disposal at sea under the 1972 Convention of the Prevention of Pollution by Dumping of Wastes and the 1996 Protocol.

PART V - PREVENTION OF POLLUTION FROM SHIPS.

This Part gives effect to the International Conventions for Prevention of Pollution from Ships 1973 as amended by the Protocol of 1978 and requires Regulations to be made to implement the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.

PART VI - OIL POLLUTION PREPAREDNESS AND RESPONSE.

This Part specifies the powers and duties with respect to oil pollution incidents under the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990. It requires the preparation of a contingency plan.

PART VII – LIABILITY AND COMPENSATION FOR BUNKER OIL POLLUTION DAMAGE (NOT ACCEDED)

This Part details the legislative regime governing liability and compensation for oil pollution damage under the International Convention on Civil Liability on Bunker Oil Pollution Damage, 2001.

PART VIII – LIABILITY AND COMPENSATION FOR DAMAGE CAUSED BY CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES (NOT ACCEDED)

This Part details the country's obligation under the HNS Convention. The HNS Convention needs to be acceded by drafting relevant treaty instruments.

PART IX – MANAGEMENT OF BALLAST WATER AND SEDIMENTS

This Part gives effect to the Convention for the Control and Management of Ballast Water and Sediments. The Ballast Water can cause harm to marine ecosystems. This part provides various measures designed for de-ballasting.

PART X - CIVIL LIABILITY CONVENTION 1992 AS AMENDED BY PROTOCOL 1996 AND FUND CONVENTION 1992

This Part is absolutely necessary for registration of foreign ships in Sri Lanka in order to provide jobs for youth in Sri Lanka as seafairers. Unless the liability is limited, foreign ships may not sail under the Sri Lankan flag.

MARINE POLLUTION PREVENTION (SPECIAL PROVISIONS) ACT 2022

A BILL to transform international conventions relating to Marine Pollution Prevention into national legislation; and for matters connected thereto.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows.

Short Title and Date of commencement

1. This Act may be cited as Marine Pollution (Special Provisions) Act 2022 any part of this Act shall come into force on such date/dates as the Minister may determine by Order published in the Gazette.

PART I – International Conventions relating to Marine Pollution Prevention to have force of law

International Conventions listed in the Schedule to have force of law.

2.(1) The international conventions listed in the Schedule to this Act and any Resolutions made thereunder shall have force of law in Sri Lanka subject to the Provisions of this Act.

(2) When any amendment is made to the international conventions listed in the Schedule after the date of commencement, the Minister may by Order amend the Schedule to give legal effect to the Amendment.

(3) Any Order made under sub-section (2) may contain consequential, supplemental, or ancillary provisions as appear to the Minister to be necessary for the purpose of giving effect to the Amendment.

(4) Every Order made under this section shall be subject to an affirmative resolution of Parliament.

(5) Any Resolution or Code of Conduct shall not come into force after the commencement of this Act, except by affirmative Resolution of Parliament.

PART II - UNCLOS AND MARINE POLLUTION

Interpretation

3. In this Part, “UNCLOS” means the United Nations Convention on the Law of the Sea 1982.

Pollution prevention measures

4.(1) The Authority shall take all measures necessary to protect the marine environment as required by the UNCLOS

(2) In taking measures to prevent, reduce or control pollution of the marine environment, the Authority shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights in conformity with UNCLOS.

(3) Measures taken to prevent, reduce or control pollution of the marine environment shall include those necessary to protect and preserve rare or fragile ecosystems, biodiversity as well as the habitat of depleted, threatened, or endangered species and other forms of marine life.

(4) In taking measures to prevent, reduce and control pollution of the marine environment, the Authority shall not transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

Notification of imminent or actual damage

5. Where the Authority becomes aware of cases in which the marine environment is in imminent danger or has been damaged by pollution, the Authority shall immediately notify other States likely to be affected by such damage, as well as the IMO.

Measures relating to seaworthiness of vessels to avoid pollution

6.(1) Subject to subsection (2), where the Director General of Merchant Shipping has ascertained that a vessel within a port or offshore terminal in Sri Lanka is in violation of any law of Sri Lanka relating to seaworthiness of vessel and thereby threatens damage to the marine environment shall, as far as practicable, prevent the vessel from sailing into our territorial waters.

(2) The Director General of Merchant Shipping may, where he deems appropriate, permit the vessel to proceed only to the nearest repair yard.

Violation of this Part

7.(1) Where there are clear grounds for believing that a vessel navigating in the territorial sea of Sri Lanka has, during its passage therein, been in violation of this Act, the Director General of Merchant may, without prejudice to the vessel's right of innocent passage under UNCLOS, undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with this Act.

(2) Where there are clear grounds for believing that a vessel has committed a violation of this Act in Sri Lanka protected waters, the Director General of Merchant Shipping may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

(3) Sri Lanka ships shall comply with requests for similar information as referred to in subsection (2) made by the relevant authorities of MARPOL member States.

(4) Where there are clear grounds for believing that a vessel has committed a violation referred to in subsection (2), resulting in a substantial discharge causing or threatening significant pollution of the marine environment, the Director General of Merchant Shipping may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the factual situation and if the circumstances of the case justify such inspection.

(5) Where there is clear evidence that a vessel has committed a violation referred to in subsection (2) resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of Sri Lanka or to any resources of Sri Lanka, the Director General of Merchant Shipping may, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with this Act.

Monitoring the risks relating to marine pollution

8. The Authority shall -

- (a) endeavour, as far as practicable, directly or through the IMO, to observe, measures, evaluate and analyse, by recognized scientific methods the risks relating to pollution of the marine environment in consultation with the Director General of Merchant Shipping; and
- (b) in particular, keep under surveillance the effects of any activities which it permits or in which it engages in order to determine whether these activities are likely to pollute the marine environment.

Publication of reports by the Authority

9. The Authority shall provide reports of the results obtained to the relevant authorities.

Assessment of potential effects of marine activities.

10. Where the Authority has reasonable grounds for believing that substantial pollution may be caused or has been caused the Authority shall make an assessment in the manner provided under this Act in accordance with UNCLOS.

PART III – INTERVENTION ON THE HIGH SEAS

Interpretation

11. In this Part -

“Convention” means the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, as applicable to Sri Lanka;

“Maritime casualty” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;

“ship” means -

- (a) any seagoing vessel of any type whatsoever; and
- (b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

“substances other than oil” has the meaning given in the Convention.

Director General of Merchant Shipping to take measures regarding pollution

12.(1) Subject to subsection (2), the Director General of Merchant Shipping may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to the coastline or related interests from pollution or threat of pollution of the sea by oil or substances other than oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

(2) No measures shall be taken under this Part against-

- (a) any Sri Lanka Government ship on government non-commercial service; and
- (b) any warship or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

Duties of General of the Authority

13.(1) In taking measures under this part, the General Manager -

- (a) shall consult without delay with other States affected by the maritime casualty, particularly with the flag State or States;
- (b) shall notify without delay to any persons natural or corporate or any organisation, authority or body known to it, or made known to it during the consultations, to have interest which can reasonably be expected to be affected by those measures, and shall take into account their views, if any;
- (c) before doing so, may consult with independent experts, whose names shall be chosen from a list maintained by the IMO;

- (d) in cases of extreme urgency requiring immediate action, may take measures rendered necessary by such urgency, without prior notification or consultation or without continuing consultations already begun;
- (e) shall, before taking such measures and during their course, use its best endeavours to avoid risk to human life, and to afford persons in distress any assistance of which they may stand in need, and in appropriate cases to facilitate the repatriation of ships' crews and to raise no obstacle thereto.

(2) The Director General of Merchant Shipping shall notify without delay the States and the entities referred to in subsection (1) (b), as well as the Secretary-General of the IMO, of the measures taken under this Part.

Limitation on measures taken by General Manager

14.(1) Measures taken by the General Manager in accordance with this Part -

- (a) be proportionate to the damage, actual or threatened, to Sri Lanka;
- (b) shall not go beyond what is reasonably necessary to prevent, mitigate or eliminate the danger referred to in this Part and shall cease as soon as that has been achieved; and shall not unnecessarily interfere with the rights and interest of the flag State, third States and of any entities concerned.

(2) In considering whether the measures are proportionate to the damage, the General Manager shall take account of -

- (a) the extent and probability of imminent damage if those measures are not taken; and
- (b) the likelihood of those measures being effective; and
- (c) the extent of the damage which may be caused by such measures.

Settlement of disputes

15. Any dispute between Sri Lanka and a State Party to the Convention as to whether measures taken under this Part are in contravention of the Convention, to whether compensation is payable under this Part, and to the amount of such compensation shall, if settlement by negotiation between Sri Lanka and the State Party involved or the physical or corporate claimants has not been possible, and if the parties to the dispute do not otherwise agree, be submitted upon request of any such party to conciliation or, if conciliation does not succeed, to arbitration, as set out in the Convention, notwithstanding that any remedies under the law of Sri Lanka.

PART IV – DUMPING OF WASTES AT SEA

Interpretation

16. In this Part -

“Convention” means the 1971 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter and the 1996 Protocol;

dumping includes-

- (a) any deliberate disposal into the sea of wastes from vessels, aircraft, platforms or other man-made structures at sea;
- (b) any storage of wastes in the seabed and the subsoil thereof from vessels, aircraft, platforms, or other man-made structures at sea; and
- (c) any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal;

but does not include -

- (d) the disposal into the sea of wastes incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of wastes or derived from the treatment of such wastes on such vessels, aircraft, platforms or other man-made structures;
- (e) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to this Part; and
- (f) abandonment at sea of things such as cables, pipelines and marine research devices placed for a purpose other than the mere disposal thereof;

“incineration at sea” means the combustion on board a vessel, platform or other man-made structure at sea of wastes for the purpose of their deliberate disposal by thermal destruction, but does not include the incineration of wastes on board a vessel, platform, or other man-made structure at sea if such wastes were generated during the normal operation of that vessel, platform or other man-made structure at sea.

Application of this Part

17. (1) This Part shall apply to the sea and the internal waters of Sri Lanka.

(2) The Authority shall provide the Director General of Merchant Shipping with information on the application of this Part to the internal waters of Sri Lanka, including the type and nature of the materials dumped in those waters, and the Director General of Merchant Shipping shall communicate that information to the IMO.

(3) This part shall apply to all.

(a) vessels and aircraft which are registered in Sri Lanka or are otherwise entitled to fly the flag of Sri Lanka.

(b) vessels and aircraft loading in the territory of Sri Lanka, wastes which are to be dumped or incinerated at sea; and

(c) vessels, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which Sri Lanka is entitled to exercise jurisdiction in accordance with international law.

(4) This Part shall not apply to the disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated offshore processing of seabed mineral resources.

(5) This Part shall not apply to those vessels and aircraft entitled to sovereign immunity under international law.

(6) This Part shall apply to Sri Lanka Government ships.

Object of this Part

18. The object of this Part is to prevent, reduce and where practicable, eliminate pollution caused by dumping or incineration at sea of wastes.

Administration of this Part

19. In administering this Part, the Authority shall apply a precautionary approach to environmental protection from dumping of wastes whereby appropriate preventative measures are taken when there is reason to believe that wastes introduced into the marine environment are likely to cause harm even where there is no conclusive evidence to prove a causal relation between inputs and their effects.

Obligations of authorised person

20. A person authorised to engage in dumping or incineration at sea under this Part shall -

(a) bear the cost of meeting the pollution prevention and control requirements for the authorised activities, having due regard to the public interest; and

- (b) not cause, directly or indirectly, damage or likelihood of damage to the environment or transform one type of pollution into another.

Dumping

21. Subject to this Part, the dumping of any wastes is hereby prohibited except in accordance with this Part.

Dumping permits

22. The dumping of wastes listed in Annex 1 to the Convention shall be dealt by Regulations made under this Act.

Prohibition of import of wastes

23. The import of wastes from other countries shall be dealt by way of Regulations made in accordance with the BASEL Convention.

Exceptions in cases of force majeure

24. Where it is necessary to secure and the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur.

Offences

25. Any person who contravenes the provisions of this Part shall be guilty of an offence and shall be liable on summary conviction to a fine of [\$100,000 US] or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Liability for damage arising out of dumping at sea

26. The principles, legal and equitable, applicable under the law to liability and compensation for marine pollution damage, and the principles of international law regarding state responsibility for damage to the environment shall apply in cases of liability arising from the dumping or incineration at sea of wastes.

Settlement of disputes

27. In the event of a dispute between Sri Lanka and another State Party to the Convention, the provisions of Article 16 of the Convention shall apply with regard to the settlement of such dispute.

PART V - PREVENTION OF POLLUTION FROM SHIPS (MARPOL 73/78)

Interpretation

28. In this Part, unless the context otherwise requires -

"MARPOL" means International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and Protocols and Annexes thereto, and any amendments or reservation that may be in effect for Sri Lanka;

"MARPOL Member State" means a State the Government of which is a party to MARPOL;

"ship" means a vessel of any type whatsoever operating in the marine environment and includes, without limitation, pleasure vessels, fishing vessels, hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

"shipowner" has the same meaning as "owner";

"undue delay" means a delay that is unreasonable and unnecessary in light of the particular conditions of a ship's cargo, destination and schedule, and in light of the purpose and scope of the investigation, inspection or other cause for detaining a ship.

Scope and application of this Part

29.(1) Unless otherwise specified, this Part shall apply to -

(a) all Sri Lanka ships; and

(b) all ships operating within the internal waters, territorial sea, or exclusive economic zone of Sri Lanka.

(2) With respect to the application of this Part to ships of States which are not MARPOL member States, no more favourable treatment shall be given to such ships than is provided for under MARPOL.

(3) Subject to the applicable regulations, referred to in this Part, shall not apply to –

(a) ships belonging to the Government which are engaged in government, non-commercial service; and

(b) warships, naval auxiliary, or other ships owned or operated by a MARPOL member State and used for the time being only on government non-commercial service.

Violations of this Part

30.(1) The Authority shall cause regulatory action, or legal proceedings to be taken or sanctions imposed in respect of any violation under this Part as soon as possible if the Authority is satisfied that sufficient evidence is available for such action or proceedings to be taken or such sanction to be imposed.

(2) In respect of ships, other than Sri Lanka ships, the Director General of Merchant Shipping may furnish to the Government of the flag State of such ship, such information and evidence as may be in his possession in respect of the violation.

(3) Where such information and evidence as referred to in sub-section (2) is received by the General Manager from the Government of a MARPOL member State in respect of a violation by a Sri Lanka ship, he shall promptly inform such Government and IMO of the action taken.

(4) Where the Director General of Merchant Shipping has reason to believe that a ship proposing to enter a Sri Lanka port or offshore terminal is not in compliance with the requirements of this Part, and he is satisfied that the ship presents an unreasonable threat of harm to the marine environment, it may deny entry of such ship to any port or offshore terminal.

(5) In any case where a ship to which this Part applies is suspected of being in violation of the requirements of this Part, the ship shall be liable to be detained.

Certificates and special rules on inspection of ships

31.(1) Subject to sub-section (2), a certificate issued by a MARPOL member State in accordance with MARPOL shall be accepted by the Director General of Merchant Shipping and regarded for all purposes of MARPOL as having the same validity as a corresponding certificate issued under this Act.

(2)

(a) A ship holding a certificate referred to in sub-section (1) shall while in a port or offshore terminal of Sri Lanka, be subject to inspection by officers duly authorised by the Director General of Merchant Shipping for that purpose.

(b) Any inspection referred to in paragraph (a) shall be limited to verifying that there is on board a valid certificate, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate, in which case, or if the ship does not carry a valid certificate, the Director General of Merchant Shipping shall, subject to paragraph (c), cause the ship to be detained and prevent it from sailing until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

- (c) The Director General of Merchant Shipping may grant a ship subject to a detention order referred to in paragraph (b), permission to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.
- (d) Where a ship of a MARPOL member State is found not to be in compliance with this Part, the Director General of Merchant Shipping may request consultation with the Government of the State concerned before denying such ship entry to a Sri Lanka port or offshore terminal or taking any other action against the ship.
- (e) Where the Director General of Merchant Shipping denies entry to or takes any action against a ship referred to in paragraph (d), it shall immediately inform the consular or diplomatic representative of the State concerned, or if such is not possible, the Government of that State.
- (f) Where a ship referred to in this section does not carry a valid certificate as required by this Part or by MARPOL, the Director General of Merchant Shipping shall inform the Government of the State concerned of such fact.
- (g) Notwithstanding paragraph (a), and without prejudice to any specific provisions relating to control over operational procedures which may be contained Regulations, made under the Merchant Shipping Act or contained elsewhere in this Part, an inspection referred to in subsection (2), may include an investigation of any operation regulated by this Part if there are clear grounds for believing that the master or crew are not familiar with essential ship board procedures for preventing pollution, and if such inspection reveals any deficiencies, the Director General of Merchant Shipping shall take such steps as may be necessary to ensure that the ship does not sail until the situation has been brought to order in accordance with the requirements of this Part.

(3) Inspections under this Part shall be carried out in accordance with any Shipping (Port State) Regulations.

Detection of violations and enforcement.

32.(1) The Director General of Merchant Shipping shall co-operate with Governments of other MARPOL member States in the detection of violations and enforcement of this Part, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.

(2) A ship to which this Part applies may, in any port or offshore terminal of Sri Lanka, be subject to inspection by officers appointed or authorised by the Director General of Merchant Shipping for the purpose of verifying whether the ship has discharged any harmful substances in violation of this Part, and if such inspection indicates a violation by a ship of a MARPOL member State, a report shall be forwarded to the Government of the State concerned for any appropriate action.

- (3) (a) Where it is alleged that a ship of a MARPOL member State has discharged harmful substances or effluents containing such substances in violation of this Part, the Director General of Merchant Shipping shall furnish to the Government of the State concerned, evidence, if any, of the alleged violation, and if it is practicable, notify the master of the ship concerned.
- (b) Where the Director General of Merchant Shipping receives from a MARPOL member State such evidence as is referred to in paragraph (a) in respect of a Sri Lanka ship, it may request the Government of such State to furnish further or better evidence of the alleged violation.
- (c) Where the Director General of Merchant Shipping is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, and shall promptly inform the Government of the State which has reported the alleged violation, and the IMO of the action taken.

(4) Where the Government of a MARPOL member State furnishes sufficient evidence that a ship to which MARPOL applies has discharged harmful substances or effluents containing such substances in any place and requests an investigation, the Director General of Merchant Shipping may inspect such ship when it enters a port or offshore terminal of Sri Lanka, and shall send the report of such investigation to the Government of the State requesting it and to the Government of the flag State of the ship so that appropriate action may be taken under MARPOL.

Undue delay to ships

33.(1) The Director General of Merchant Shipping shall make every possible effort to avoid unduly detaining or delaying a ship under this Part.

(2) A ship that is unduly detained or delayed under this Part shall be entitled to compensation for any loss or damage suffered.

Reports on incidents involving harmful substances

34.(1) For the purposes of this section -

"harmful substances", "noxious liquid substance", "oil" and "packaged form" have the meaning given in MARPOL.

(2) (a) When an incident involves

- (i) a discharge or probable discharge of oil, or noxious liquid substances carried in bulk, resulting from damage to the ship or its equipment, or for the purpose of securing the safety of a ship or saving life at sea; or
- (ii) a discharge or probable discharge of harmful substances in packaged form; or
- (iii) a discharge during the operation of the ship of oil or noxious liquid substances in excess of the quantity or instantaneous rate permitted under this Part, the master or other person having been in-charge of the ship, shall report the particulars of such incident without delay and to the fullest extent possible in accordance with this section.

(b) Where a ship referred to in paragraph (a) is abandoned, or where a report from such a ship is incomplete or unobtainable, the owner or charterer of the ship, or their agent shall, to the fullest extent possible, assume the obligations of the master under this section.

(3) The contents of a report referred to in sub-section (2) shall include -

- (a) the identities of the ships involved;
- (b) the time, type and location of the incident;
- (c) the quantity and type of harmful substance involved; and
- (d) the assistance received and salvage measures taken.

(4) The Director General of Merchant Shipping shall -

- (a) make all arrangements necessary for an appropriate officer or agency to receive and process all reports on incidents; and
- (b) notify the IMO with complete details of such arrangements for circulation to other MARPOL member States and member States of IMO.

(5) Whenever the Director General of Merchant Shipping receives a report referred to in this section, he shall relay the report without delay to the Government of the flag State of the ship involved and to the Government of any other MARPOL member State which may be affected.

(6) The Director General of Merchant Shipping shall issue instructions to his appropriate offices and personnel to report any incident referred to in this section, and shall, if he considers it appropriate, report accordingly to the IMO and to the Government of any other MARPOL member State concerned.

(7) The Minister may make regulations for procedures to be followed in reporting incidents involving harmful substances based on guidelines developed by IMO.

Amendment of the Convention, Protocol and Annexes

35.(1) Any accession or amendment to the Convention and the Annexes I, II, III, IV, V and VI of, the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 shall have the force of law in Sri Lanka subject to Part VI of this Act.

(2) In the application of MARPOL 73/78 any unified interpretation approved by the Marine Environment Protection Committee of IMO for the time being in force shall have effect.

General duty to comply with MARPOL

36.(1) It shall be the duty of the owner and the master of the ship to comply with and ensure compliance with the provisions of MARPOL 73/78 together with any Code adopted by IMO which relates to a provision of MARPOL. In complying with a requirement of MARPOL the owner and master shall take into account any Resolution of the IMO.

(2) It shall be the duty of any person -

(a) upon whom an obligation is imposed by MARPOL 73/78; or

(b) to whom a direction is given in pursuance of MARPOL 73/78 (whether under subsection (1) or otherwise) to comply or ensure compliance with MARPOL 73/78.

(3) Where any natural or legal person other than a person specified in section (1) has control of the matter to which the section relates, then any duty imposed by that section shall extend to the person who has control of that matter.

Surveys and certificates

37.(1) All ships to which Annex I or Annex II of MARPOL 73/78 applies shall be subject to such surveys as are required by the respective Annex, and where such surveys are satisfactory, shall be issued with the appropriate certificates specified in MARPOL 73/78. The grant, revocation, extension, validation, suspension, exemption from, and variation and the form and recording of certificates shall be in accordance with MARPOL 73/78.

(2) The Director General of Merchant Shipping shall establish appropriate measures for Sri Lanka ships which are not subject to the surveys required by MARPOL in order to ensure that the appropriate provisions of this Chapter are complied with.

Fraud, misuse of certificates, etc.

38.(1) No person shall -

- (a) intentionally alter a certificate issued for the purposes of MARPOL 73/78;
- (b) falsely make a certificate referred to in MARPOL 73/78;
- (c) in connection with any survey required by MARPOL 73/78, knowingly or recklessly furnish false information;
- (d) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in MARPOL 73/78;
- (e) fail to surrender a certificate to be surrendered for the purposes of MARPOL 73/78.

(2) A person who contravenes subsection (1) shall be guilty of an offence and is liable conviction to a fine of [20,000US\$]. or to a term of imprisonment of six months or to both such fine and term of imprisonment.

Regulations

39. The Minister may make regulations as he considers appropriate to give effect to MARPOL 73/78.

PART VI - OIL POLLUTION PREPAREDNESS AND RESPONSE

Interpretation

40. In this part -

“Convention” means International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;

“oil pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;

Application of Part to government ships and naval vessels

41.(1) This part shall not apply to –

- (a) any Sri Lanka Government ship on government non-commercial service; and
- (b) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

(2) Ships referred to in subsection (1) (a) shall, so far as is reasonable and practicable, act in a manner consistent with this Part.

Oil pollution emergency contingency plans

42.(1) Sri Lanka shall have oil pollution emergency contingency plans, which are co-ordinated with the system established in accordance with this Part and approved in accordance with procedures established by the National Coordinator.

(2) Authorities or the operators in charge of seaports and oil handling facilities under the jurisdiction of Sri Lanka shall have oil pollution emergency contingency plans or similar arrangements which are co-ordinated with the system established in accordance with this Part and approved in accordance with procedures established by the Authority.

Action on receiving an oil pollution report

43.(1) When the Authority receives a report referred to under this Part or pollution information provided by other sources, the Authority shall -

- (a) assess the event to determine whether it is an oil pollution incident;
- (b) assess the nature, extent, and possible consequences of the oil pollution incident; and
- (c) then, without delay, inform all States whose interests are affected or likely to be affected by such oil pollution incident, together with—
 - (i) details of its assessments and any action it has taken, or intends to take, to deal with the incident, and
 - (ii) further information as appropriate, until the action taken to respond to the incident has been concluded or until joint action has been decided by such States.

(2) In the event of a serious oil pollution incident, the Authority shall forthwith inform the Director General of Merchant Shipping, and if the Director General of Merchant Shipping deems it appropriate, he shall provide IMO directly or, through the relevant regional organisation.

National preparedness and response

44.(1) There shall be established a national plan for responding promptly and effectively to oil pollution incidents.

(2) The Authority shall -

- (a) undertake the responsibility for oil pollution preparedness and response;
- (b) be the contact point responsible for the receipt and transmission of oil pollution reports as referred to in this Part; and
- (c) act on behalf of the Government.

(3) A national contingency plan for preparedness and response which shall be prepared taking into account the guidelines contained in the Manual on Oil Pollution - Contingency Planning, developed by the Marine Environment Protection Committee of IMO.

(4) The Authority shall within its capabilities either individually or through bilateral or multilateral co-operation and, as appropriate, in co-operation with the oil and shipping industries, port authorities and other relevant entities establish-

- (a) a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, and programmes for its use;
- (b) a programme of exercises for oil pollution response organisations and training of relevant personnel;
- (c) detailed plans and communication capabilities which are continuously available to an oil pollution incident; and
- (d) arrangements to co-ordinate the response to an oil pollution incident with, if appropriate, the capabilities to mobilise the necessary resources.

(5) The Authority shall provide the Director General of Merchant Shipping with current information.

Bilateral and multilateral co-operation

45.(1) The Minister may enter into bilateral or multilateral arrangements for oil pollution preparedness and response, and in such circumstances, the Director General of Merchant Shipping shall send to IMO, copies of relevant instruments or documents relating to such arrangements.

(2) The Minister may make Regulations in regard to matters relating to this Part.

Relation to other Parts

46. Nothing in this Part shall be construed as altering the rights or obligations provided under any other Part of this Act.

PART VII - LIABILITY AND COMPENSATION FOR BUNKER OIL POLLUTION DAMAGE

International Convention

47.(1) This Part gives effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 done at London on 23 March 2001 (in this Chapter referred to as the "Bunker Oil Liability Convention") and the Annex.

(2) In this Part, "Bunker Oil Liability Convention Country" means a country which is party to the Bunker Oil Liability Convention and "oil" means Bunker Oil.

Compulsory insurance against liability for bunker oil pollution

48.(1) Subject to the provisions of this Part relating to Government ships, subsection (2) shall apply to any ship having a gross tonnage of more than 1000.

(2) The ship shall not enter or leave a port in Sri Lanka or arrive at or leave a terminal in the territorial sea of Sri Lanka nor, if the ship is a Sri Lanka 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 subsection (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 VII of the Bunker Oil Liability Convention (cover for owner's liability).

Issue and cancellation of certificates

49.(1) If the Director General of Merchant Shipping is satisfied that there is in force in respect of a Sri Lanka ship or a ship registered in another country, a contract of insurance or security satisfying the requirements of article 7 of the Bunker Oil Liability Convention, the Director General of Merchant Shipping shall issue a certificate to the owner of the ship.

(2) Where the person to whom a certificate has been issued under this part ceases to be the owner of the ship to which the certificate relates the certificate shall cease to be valid and he shall immediately deliver up the certificate to the Director General of Merchant Shipping for cancellation.

Liability for oil pollution damage

50.(1) Subject to subsection (3) where, as a result of any occurrence, any oilis discharged or escapes from a ship, then (except as otherwise provided by this Part) the owner of the ship shall be liable -

- (a) for any damage caused outside the ship in the territory of Sri Lanka 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 Sri Lanka by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of Sri Lanka by any measures so taken.

(2) Subject to subsection (3), where as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which the 1992 Liability Convention applies by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Part) 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 Sri Lanka; and
- (b) for any damage caused outside the ship in the territory of Sri Lanka by any measures so taken,
- (c) and in the subsequent provisions of this Part any such threat is referred to as a “relevant threat of contamination.”

Exemptions from liability

51. No liability shall be incurred by the owner of a ship under this Part by reason of any discharge or escape of 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-

- (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.

Government ships

52.(1) Nothing in the preceding provisions 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 -

- (a) it shall be sufficient compliance 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 Civil Liability Convention will be met up to the limit prescribed by Article V of that Convention; and
- (b) it shall be sufficient compliance 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 1 of the Bunkers Convention will be met up to the limits set out in that Convention.

(3) Every Liability Convention ratified by the State shall, for the purposes of any proceedings brought in the Court in Sri Lanka to enforce a claim in respect of a liability incurred under the 1992 Civil Liability Convention 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 subsection shall authorise the issue of execution against the property of any State.

(4) Every Bunker Oil Liability Convention State shall, for the purposes of any proceedings brought in a Court in Sri Lanka to enforce a claim in respect of a liability incurred under Bunker Oil Liability Convention, be deemed to have submitted to the jurisdiction of that 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 subsection shall authorize the issue of execution against the property of any State.

Limitation of liability

53. For the purposes of this Act, any liability incurred under this Part shall be deemed to be a liability to damages in respect of such damage to property as mentioned in that Act.

Saving for recourse actions

54. Nothing in this Part shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Part may have against another person in respect of that liability.

PART VIII - LIABILITY AND COMPENSATION FOR DAMAGE CAUSED BY CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES

Interpretation

55.(1) In this Part, unless the context otherwise requires –

“carriage by sea” means the period from the time when the hazardous and noxious substances enter any part of the ship’s equipment, on loading, to the time they cease to be present in any part of the ship’s equipment, on discharge; and if no ship’s equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship’s rail;

“contributing cargo” means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of Sri Lanka and discharged in; cargo intransit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination;

“Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.

“damage” means -

- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;
- (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
- (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

- (d) the costs of preventive measures and further loss or damage caused by preventive measures;
- (e) where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in this Part; and
- (f) in paragraphs(a) and (b), “caused by those substances” means caused by the hazardous or noxious nature of the substances.

“hazardous and noxious substances” (HNS) has the meaning given in the Convention;

“HNS Fund” means the International Hazardous and Noxious Substances Fund established under article 13 of the Convention;

“IMDG Code” means the International Maritime Dangerous Goods Code adopted by the IMO by Resolution A.716(17) as amended from time to time by the Maritime Safety Committee of the Organization;

“incident” means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage;

“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, so however, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “owner” shall mean such company;

“person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions;

“preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage;

“receiver” means –

- (a) the person who physically receives contributing cargo discharged in the ports and terminals of Sri Lanka; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of Sri Lanka, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or
- (b) the person in Sri Lanka who in accordance with the law of Sri Lanka is deemed to be the receiver of contributing cargo discharged in the ports and terminals of Sri Lanka, provided that the total contributing cargo received according to such law is substantially the same as that which would have been received under paragraph (a);

“ship” means any seagoing vessel and seaborne craft, of any type whatsoever;

“State of the ship’s registry” means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly;

“State Party” means a State which is a party to the Convention;

“terminal” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated offshore and linked by pipeline or otherwise to such site;

(2) In interpreting the definition of “hazardous and noxious substances” any reference in that definition to a particular convention or code shall be taken to be a reference to that convention or code as amended from time to time as provided in this Part.

Application

56.(1) This Part shall apply exclusively to -

- (a) any damage caused in the territory, including the territorial sea, of Sri Lanka;
- (b) damage by contamination of the environment caused in the area adjacent to the territorial sea of Sri Lanka; and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured;

- (c) damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of Sri Lanka, if this damage has been caused by a substance carried on board a Sri Lanka ship, or a ship registered in a State Party, or in the case of an unregistered ship, a ship entitled to fly the flag of a State Party;
- (d) preventive measures, wherever taken.

(2) This Part shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.

(3) This Part shall not apply to -

- (a) pollution damage specified in Article 4(3)(a) of the Convention; and
- (b) damage specified in Article 4(3)(b) of the Convention.

(4) This Part shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

(5) Where ships owned by a State Party are used for commercial purposes, the State shall be subject to suit in Sri Lanka if such a ship has caused such damage as is referred to paragraphs (a) or (b) or both paragraphs (a) and (b) of subsection (1), and preventive measures have been taken; and in such a case, the State shall waive all defences based on its status as a sovereign State.

Liability of the owner

57.(1) Except as provided in subsections (2) and (3), the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

(2) No liability shall attach to the owner if the owner proves that-

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party;

- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
- (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either-
 - (i) has caused damage, wholly or partly; or
 - (ii) has led the owner not to obtain insurance in accordance with the provisions of this Part;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

(3) No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Part.

(4) No claim for compensation for damage under this Part or otherwise may be made against except in terms of the Convention -

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a demise or bare boat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures; and
- (f) the servants or agents of persons mentioned in paragraphs (c), (d) and (e);
- (g) unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Incidents involving two or more ships

58.(1) Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner unless exonerated, shall be liable for the damage.

(2) The owners referred to in subsection (1) shall be jointly and severally liable for all such damage which is not reasonably separable; and shall be limited to the limits of liability applicable to each of them.

(3) Nothing in this section shall prejudice any right of recourse of an owner against any other owner.

Limitation of liability

59.(1) The owner of a ship shall be entitled to limit liability under this Part in respect of any one incident to an aggregate amount calculated as provided under this Convention and amended from time to time –

(2) The owner shall not be entitled to limit liability under this Part if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

(3) For the purposes of this section the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage regulations.

Limitation fund

60.(1) The owner shall, for the purpose of benefiting from the limitation provided under this Part, constitute a fund for the total sum representing the limit of liability established in accordance with the provisions of this Part with the Court if the incident occurred in any place referred to, whether or not preventive measures were taken; and if the incident occurred in any other place, the court or other competent authority of any one of the States Parties in which action is brought under this Convention or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under that Article.

(2) The fund may be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted and considered to be adequate by the court or other competent authority.

(3) Subject to this Part, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

(4) Where before the fund is distributed the owner, or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends, such owner or person shall, up to the amount that he has paid, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(5) Where the owner or other person referred to in subsection (4), establishes that he may be compelled to pay at a later date in whole or in part any such amount as is referred to in subsection (4), with regard to which the position referred to in that subsection would have subsisted had the amount been paid before the fund was distributed, the Court may order that a sufficient sum shall be previously set aside to enable such owner or person at such later date to enforce the claim against the fund.

- (6) (a) The insurer or other person providing financial security shall be titled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the owner.
- (b) Such a fund may be constituted even if, under the provisions of this Part, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

(7) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise damage shall rank equally with other claims against the fund.

Limitation fund to be constituted in dollars

61. A payment into Court for the constitution of a fund under this Part shall be made in dollars as provided under this Convention.

Death and injury

62. Claims in respect of death or personal injury shall have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with the Fund.

Compulsory insurance of the owner

63.(1) The owner of -

- (a) a Sri Lanka ship operating anywhere; and

- (b) a ship registered in a State Party operating under this Part of this Act.

and actually, carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the amounts fixed by applying the limits of liability prescribed under this Convention to cover liability for damage.

- (2)
 - (a) A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Part shall be issued to each Sri Lanka ship after the Director General of Merchant Shipping has determined that the requirements of subsection (1) have been complied with.
 - (b) With respect to a ship registered in a State Party such compulsory insurance certificate shall be accepted by the Director General of Merchant Shipping if it is issued or certified by the appropriate authority of the State of the ship's registry;
 - (c) With respect to a ship not registered in a State Party it may be accepted by the Director General of Merchant Shipping if it is issued or certified by the appropriate authority of any State Party.
 - (d) The compulsory insurance certificate shall be in the form specified in the Convention.
- (3)
 - (a) The compulsory insurance certificate shall be in English for Sri Lanka ships, and for other ships, shall be in the official language or languages of the issuing State.
 - (b) If the language used is not English, the text shall include an English translation.

(4) The compulsory insurance certificate shall be carried on board every Sri Lanka ship to which this Part applies, and a copy shall be deposited with the Director General of Merchant Shipping.

- (5)
 - (a) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under subsection (2), before three months have elapsed from the date on which notice of its termination is given to the Director General of Merchant Shipping, unless the compulsory insurance certificate has been issued within the said period.

- (b) Paragraph (a) shall apply to any modification which results in the insurance or security no longer satisfying the requirements of this section.

(6) The Director General of Merchant Shipping may at any time request consultation with an issuing or certifying State should he believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Part.

- (7)
 - (a) Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security or the owner's liability for damage.
 - (b) In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability referred to in subsection (1).
 - (c) The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke and may further invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant.
 - (d) The defendant shall in any event have the right to require the owner to be joined in the proceedings.

(8) Any sums provided by insurance or by other financial security maintained in accordance with subsection (1) shall be available exclusively for the satisfaction of claims under this Part.

(9) No Sri Lanka ship to which this Part applies shall trade unless a certificate has been issued under subsection (2).

(10) No ship to which this Part applies shall enter or leave a port or offshore facility in Sri Lanka unless there is in force in respect of that ship insurance or other security in the amounts specified in subsection (1).

(11) Where insurance or other financial security is not maintained in respect of a ship owned by the Government, the provisions of this section relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the Director General of Merchant Shipping stating that the ship is owned by the Government and that the ship's liability is covered within the limit prescribed in accordance with subsection (1) and such certificate shall follow as closely as possible the form set out in the Nineteenth Schedule to the Convention.

PART IX - MANAGEMENT OF BALLAST WATER AND SEDIMENTS

Interpretation

64.(1) In this Part -

“Convention” means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004;

“Annex” means the annex to the Convention;

“Certificate” means the International Ballast Water Management Certificate;

“Company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

“Sri Lanka waters” means any waters in which Sri Lanka has jurisdiction in respect of the protection and preservation of the marine environment under international law;

“Gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 as amended, or any successor Convention;

“Merchant Shipping Notice” means a Notice entitled as such published by the Director General, and includes any amendment which he considers relevant from time to time;

“Party” means a State which is a Party to the Convention.

(2) Any reference in this Act to an IMO Guideline is a reference to it as amended or replaced in accordance with Part VI of this Act.

Application

65.(1) Except as expressly provided otherwise in this Part, this Act shall apply to -

- (a) ships entitled to fly the flag of Sri Lanka;

- (b) ships not entitled to fly the flag of Sri Lanka, but which operate under the authority of Sri Lanka; and
- (c) other ships when in Sri Lanka waters.

(2) This Act shall not apply to -

- (a) ships not designed or constructed to carry Ballast Water;
- (b) Sri Lanka ships which only operate in Sri Lanka waters, unless the Director General of Merchant Shipping determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States;
- (c) other ships which only operate in Sri Lanka waters, subject to the authorization of the Director General of Merchant Shipping for such exclusion. The Director General of Merchant Shipping shall not grant such authorization if doing so would impair or damage their environment, human health, property, or resources, or those of adjacent or other States. If the Director General of Merchant Shipping refuses such authorization, he shall notify the Administration of the ship concerned that this Act applies to such ship;
- (d) ships which only operate in Sri Lanka waters and on the high seas, unless the Director General determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property, or resources, or those of adjacent or other States. The exception contained in this subparagraph does not apply to ships not granted an authorization pursuant to sub-paragraph (c);
- (e) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service; and
- (f) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.

Surveys

66.(1) Sri Lanka ships of 400 gross tonnage and above to which this Act applies, excluding floating platforms, FSUs and FPSOs, shall be subject to the surveys specified in Regulation E of the Annex to the Convention-1 Surveys shall be endorsed on the Certificate as required by the Convention.

(2) The Director General of Merchant Shipping shall establish appropriate measures for ships that are not subject to the provisions of subsection (1) in order to ensure that the applicable provisions of this Act are complied with.

Nominated surveyors and recognized organisations

67.(1) Surveys of ships for the purpose of enforcement of the provisions of this Act shall be carried out by surveyors appointed under the Merchant Shipping Act.

(2) The Director General of Merchant Shipping may, however, entrust the surveys referred to in subsection (1) either to surveyors nominated for the purpose or to organizations recognized by him, in accordance with the guidelines adopted by IMO and the specifications adopted by IMO.

(3) The Director General of Merchant Shipping, in nominating surveyors or organizations under subsection (2) shall, as a minimum, empower such nominated surveyors or recognized organizations to -

- (a) require a ship that they survey to comply with the provisions of this Act; and
- (b) carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party.

(4) The Director General of Merchant Shipping shall notify IMO specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations.

Issue of certificate

68.(1) A Certificate shall be issued, after successful completion of a survey in accordance with this Part to any Sri Lanka ship to which that section applies.

(2) The Certificate shall be issued either by the Director General of Merchant Shipping or by any person or organisation duly authorised by it and in every such case the Director General of Merchant Shipping shall assume full responsibility for the Certificate.

Issue of certificate upon request by a Convention member state

69.(1) The Director General of Merchant Shipping may at the request of the Government of a Party cause a ship to be surveyed and, if satisfied that this Part has been complied with, shall issue, or authorise the issue of a Certificate to the ship in accordance with this Part.

(2) A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Government of a Party and a copy of it together with a copy of the survey report shall be transmitted as early as possible to the Government requesting the survey.

(3) A Certificate issued by another Party in respect of a Sri Lanka ship at the request of the Director General of Merchant Shipping, shall have the same force and receive the same recognition in Sri Lanka as a Certificate issued under this Part.

(4) No Certificate shall be issued to a ship which does not fly the flag of a Party.

Form of certificate

70. A Certificate shall be in the form prescribed in the Convention.

Corrective action

71. When the Director General of Merchant Shipping, a nominated surveyor, or a recognized organization determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under this Part or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources such surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of that State shall be notified immediately.

Report of accidents and defects

72.(a) Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with the Convention or this Act, as appropriate, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Director General of Merchant Shipping, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required under this Part.

(b) If the ship is in a port of another Party, the owner, operator, or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

Maintenance requirements

73. The owner, master, or agent of any ship to which this Act applies shall ensure that –

- (a) the condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Convention to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources; and

- (b) after any survey of the ship under this Part has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by the Convention and covered by the survey without the prior approval of the Director General of Merchant Shipping, except the direct replacement of such equipment or fittings.

Duration and Validity of Certificate

74. The duration and validity of the Certificate shall be that specified in Regulation E-5 of the Annex.

Transfer of flag

75.(1) Upon transfer of a Sri Lanka ship to the flag of another Party, where such State so requests within three months after the transfer has taken place, the Director General of Merchant Shipping shall transmit as soon as possible to the Government of the State concerned, a copy of the Certificate carried by the ship before the transfer and, if available, a copy of the ship's most recent survey report.

(2) Where a ship is transferred to Sri Lanka flag, a new Certificate shall only be issued when the Director General of Merchant Shipping is fully satisfied that the ship is in full compliance with the requirements of Regulation E-1 of the Annex.

Discharge of Ballast Water controlled

76. Except where expressly provided otherwise in this Act, the owner and master of a ship shall ensure that the discharge of Ballast Water is only conducted through Ballast Water Management in accordance with the provisions of the Convention.

Exceptions from control

77. The requirements under this Part, or any measures adopted, whether pursuant to this Part or otherwise, shall not apply in the circumstances set out in Regulation A-3 of the Annex.

Exemptions

78.(1) Subject to subsections (2) and (3) the Director General of Merchant Shipping may grant exemptions, in relation to Sri Lanka waters, to any requirements under this Part, in addition to those exemptions contained elsewhere in this Act, in the circumstances set out in Regulation A-4 of the Annex

(2) Exemptions granted pursuant to sub-section (1) shall not be effective until after communication to IMO and circulation of relevant information to the Parties.

(3) The Director General of Merchant Shipping shall not grant an exemption under this section which would impair or damage the environment, human health, property or resources of adjacent or other States.

(4) Any exemptions granted under this section shall be recorded in the Ballast Water record book.

Equivalence

79.(1) The Director General of Merchant Shipping shall establish measures which provide equivalent compliance with the requirements of this Act for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres. In establishing such measures, the Director General of Merchant Shipping shall take into account IMO 'Guidelines for Ballast Water Management Equivalent Compliance (G3).

(2) Measures established under this section shall be published in a Merchant Shipping Notice.

(3) It shall be the duty of the owner and master of a craft referred to in subsection (1) to comply, and ensure compliance, with any measures established under that sub-section.

Regulations shall be made in regard to Ballast Water Management

80. Regulations will be made by the Minister in regard to Ballast Water Management Plan, Ballast Water Record Book, Ballast Water Management for Ships, Ballast Water Exchange, Sediment Management for Ships and any other related matters.

Duties of officers and crew

81. The owner and master of a ship shall ensure that officers and crew are familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and are, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

Warnings concerning Ballast Water uptake in certain areas

82. The Director General of Merchant Shipping shall by Merchant Shipping Notice/Notice to Mariners notify mariners of areas in Sri Lanka waters where ships should not uptake Ballast Water due to known conditions. Such notices shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water.

Reception facilities

83.(1)

- (a) Every port authority in respect of a port or terminal operator in respect of a terminal, where cleaning or repair of ballast tanks occurs, shall provide adequate facilities for the reception of Sediments from ships using the port or terminal.
- (b) A port authority within whose port cleaning or repair of ballast tanks is undertaken shall notify the Director General of Merchant Shipping of this.

(2) The Minister shall designate ports for the purposes of Article 5 of the Convention.

(3) The Minister may make regulations in regard to reception facilities.

Inspection of ships which are not Sri Lanka ships

84. A ship which is not a Sri Lanka ship to which this Act applies may, in any port or offshore terminal, be subject to inspection by officers duly authorized by the Director General of Merchant Shipping for the purpose of determining whether the ship is in compliance with Act in accordance with the Convention and the Regulations made under this Act.

Detection of violations and control of ships

85. If a ship which is not Sri Lanka ship which is operating in a Sri Lanka port or offshore terminal, is found to have contravened this Act, then, without prejudice to any penalties provided elsewhere in this Act, or any action described under this Part the Director General of Merchant Shipping may take steps to warn, detain, or exclude the ship.

Notification of control actions

86.(1) If an inspection conducted pursuant to section indicates a violation of this Convention, Director General of Merchant shipping shall notify the ship. The Director General of Merchant Shipping shall forward a report to the Administration of the ship concerned, including any evidence of the violation.

(2) In the event that any action is taken in relation to a ship under this Part, the officer carrying out such action shall forthwith inform, in writing, the Administration of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary. In addition, the recognized organization responsible for the issue of certificates shall be notified.

(3) The Director General of Merchant Shipping shall, in addition to parties mentioned in subsection (2), notify the next port of call of all relevant information about the violation, if it is unable to take action as specified under this Part or if the ship has been allowed to proceed to the next port of call.

Undue delay to ships

87.(1) The Director General of Merchant shipping shall make every possible effort to avoid unduly detaining or delaying a ship under this Part.

(2) A ship that is unduly detained or delayed under this Part shall be entitled to compensation for any loss or damage suffered.

Restriction on jurisdiction over offences outside Sri Lanka

88.(1) No proceedings for an offence of contravening any provision of this Part by a ship not being a Sri Lanka ship, which relates to a discharge in the internal waters, territorial seas or exclusive economic zone of another State shall be instituted unless-

- (a) that State, the flag State, or a State damaged or threatened by the discharge requests that proceedings be taken; or
- (b) the discharge has caused or is likely to cause pollution in the internal waters, territorial sea, or exclusive economic zone of Sri Lanka.

(2) Where proceedings for an offence of contravening any provision of this Part by a ship not being a Sri Lanka ship which relates to a discharge in the internal waters, territorial seas or exclusive economic zone of another State have been instituted but not concluded, and that State requests suspension of the proceedings, then -

- (a) proceedings shall be suspended; and
- (b) the Director General of Merchant Shipping shall transmit all the evidence and Court records and documents relating to the case, together with any sum paid or security given under this Part, to that State.

(3) It shall be a defence to a person charged with contravening any provision of this Part to show-

- (a) that the ship is not a Sri Lanka ship; and
- (b) the discharge took place outside Sri Lanka, its internal waters or Sri Lanka protected waters; and

- (c) the ship was in a port in Sri Lanka at the time of institution of proceedings by reason only of stress of weather or other reason beyond the control of the master or owner or charterer.

Suspension of proceedings at flag State request

89.(1) This section relates to an alleged offence or contravention of any provision of this Part by a ship which is not a Sri Lanka ship, in relation to a discharge outside Sri Lanka or its territorial seas.

(2) (a) Any proceedings for such an offence shall be stayed if the Court is satisfied that the flag State has instituted proceedings corresponding to the proceedings in Sri Lanka in respect of the discharge, within six months of the institution of proceedings in Sri Lanka.

(b) Paragraph (a) above does not apply-

- (i) where the discharge resulted in major damage to Sri Lanka; or
- (ii) the Director General of Merchant Shipping certified that the flag State has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention referred to in this Part in respect of its ship.

(3) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated.

(4) Where the costs of the Director General of Merchant Shipping incurred in respect of proceedings suspended under subsection (2) have been paid, any money paid, or security given under this Part shall be released.

Offences and penalties

90.(1) It shall be the duty of the owner and master of the ship to comply with and ensure compliance with the provisions of this Part.

(2) It shall be the duty of any person upon whom an obligation is placed by or under this Part to comply or ensure compliance with that obligation.

(3) Where a person specified in subsection (1) or (2) contravenes the respective subsection that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding [\$100,000 US].

(4) It shall be a defence for a person charged under subsection (1) or (2) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(5) Where an offence under this section is committed or would have been committed save for the operation of subsection (4), by any person due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this subsection whether or not proceedings are taken against the first mentioned person.

Protection of Government and public officers

91. No suit shall be maintained against the Government, or any public officer or other person appointed or authorised to perform any function under this Part in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Part.

PART X – 1992 CIVIL LIABILITY CONVENTION, 1996 PROTOCOL AND FUND CONVENTION

1992 Civil Liability Convention

92.(1) The 1992 Civil Liability Convention, 1996 Protocol and International Oil Pollution Fund Convention shall apply to Sri Lanka by reference.

(2) The Minister shall make rules to give effect to the above Convention and Protocol, whenever changes are made by IMO.

Maritime Casualties

93.(1) Where pollution is caused or there is an imminent threat of pollution to the territorial waters of Sri Lanka or any other maritime zone, its fore-shore, and the coastal zone of Sri Lanka or in relation to any interest in such waters or foreshore, due to any maritime casualty or in consequence of any act resulting there from, the Authority may, direct -

- a) the owner of the ship, the charterer of the ship or to any other person in possession of the ship;
- b) the master of the ship;
- c) any salvor in possession of the ship or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation;
- d) any other person generally or specially authorized by the Authority,

to take such urgent and immediate measures in respect of the ship or its cargo or any oil on board the ship as may be necessary to prevent, mitigate or eliminate such pollution or the threat of such pollution.

(2) The directions issued to any person under subsection (1) may require –

- (a) the ship to be moved to a specified place, or to be removed from a specified area or locality;
- (b) the ship not to be moved to a specified place or area or locality or by way of a specified route;
- (c) any oil or other cargo to be either loaded or not to be loaded, unloaded or discharged as the case may be;
- (d) that specified salvage measures are to be or are not to be so taken.

(3) If in the opinion of the Authority, the direction issued under this section is proved to be ineffective or inadequate for the purpose of preventing or mitigating or eliminating pollution or the threat of pollution, the Authority may -

- (a) undertake operations for the sinking or destruction of the ship or any part of it;
- (b) undertake operations which may necessarily involve the taking over of control of the ship ;
- (c) undertake operations which may involve the loading, unloading or discharging of any oil.

(4) No action shall lie against the Authority or any person authorized by the Authority for damages in any civil Court, for any act done or purported to be done in good faith under this section.

Prevention of Pollution-Civil Liability

94.(1) Where any act referred to in the previous sections results in the pollution of the territorial waters of Sri Lanka or any other maritime zone, its fore-shore and the coastal zone of Sri Lanka, the owner or the operator of the ship or the owner or the person in charge of the apparatus or the owner or the occupier of the off-shore installation or the owner or occupier of the pipe line or the owner or the occupier of the place on land for the time being, as the case may be or the person carrying on the operation of exploration of natural resources including petroleum or the person in charge of such operation shall be liable for –

- (a) any damage caused by the discharge, escape or dumping of any oil, harmful substances or other pollutant in to the territorial waters of Sri Lanka or any other maritime zone, its fore-shore and the coastal zone of Sri Lanka under such Law or to the fore-shore or any interests related thereto ;

- (b) the costs of any measures taken for the purposes of preventing, reducing or removing any damage caused by the discharge, escape or dumping of any oil, harmful substance or pollutant into the territorial waters of Sri Lanka or any other maritime zone, its fore-shore and the coastal zone or any interests related thereto.

(2) For the purpose of this section, interests related to the territorial waters of Sri Lanka or any other maritime zone, its fore-shore of Sri Lanka include -

- (a) marine, coastal, port or estuarine activities including fisheries activities ;
- (b) the promotion of tourism and the preservation and development of tourist attractions in the territorial waters of Sri Lanka or any other maritime zone or on the fore-shore including beaches and coral reefs;
- (c) the health of the coastal population and their well-being ; and
- (d) the protection and conservation of living marine resources and wild life.

(3) Where any oil, harmful substance or other pollutant is discharged or escapes or is dumped from two or more ships and liability is incurred under this section by the owner or the operator of each ship and the damage or costs for which each owner or operator is liable cannot reasonably be separated from that for which the other or others is or are liable, each owner or operator shall be liable, jointly and severally with the other or others for the whole of the damage or costs for which the owner or the operator would be liable under this section.

Limitation of Liability

95.(1)

- (a) The liability in respect of any one incident shall be limited in accordance with the provisions of the International Convention on the Civil Liability for Pollution Damage, 1992 as may be incorporated into regulations made under this Act.
- (b) The maximum liability incurred by the owner or operator of a ship or the owner or person in charge of an apparatus or the owner or occupier of an off-shore installation, pipe line, or place on land, as the case may be, or any person carrying on the operation of exploration of natural resources including petroleum resources or the person in charge of such operation under this Part of the Act shall be limited in accordance with the provisions of the International Convention on the Civil Liability for Pollution Damage, 1992 as may be incorporated into regulations made under this Act.

(2) Where any act referred to above occurs due to the negligence of the owner, or operator of a ship or the owner or person in charge of an apparatus or the owner or occupier of an off- shore installation, pipe line or place on land, as the case may be or any person carrying on the operation of exploration of natural resources including petroleum resources or the person in charge of such operation such person shall not be entitled to avail himself of the limitations provided in this section.

SCHEDULE – SECTION 2

LIST OF CONVENTIONS RELATING TO MARINE POLLUTION TO WHICH SRI LANKA IS A STATE PARTY SUBJECT TO ANY RESERVATION MADE THERETO

United Nations Convention on the Law of the Sea, 1982,

International Convention Relating to Intervention on the High Sea in Cases of Oil Pollution Casualties, 1969,

Convention on the Prevention of Marine Pollution by Dumping of Wastes 1973 and the 1996 Protocol,

International Convention on the Prevention of Pollution from Ships, 1973, together with its Protocol of 1978,

International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990,

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, (NOT YET)

International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (NOT YET).

International Convention for the Control and Management of Ship's Ballast Water and Sediments, 2004

1992 Civil Liability Convention, 1996 Protocol and International Oil Pollution Fund Convention (Sri Lanka has withdrawn and not sure whether they apply to Sri Lanka still).