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# **Subsidiary Legislation Relating to the Implementation of Regulation EC 1257/2013 on Ship Recycling into the Laws of Malta.**

**A Legislation Drafting Project submitted in partial fulfillment of the  
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# Explanatory Note to Drafting Project on Ship Recycling

## Introduction

This explanatory note deals with Regulation 1257/2013 passed by the EU on the 20 November 2013 and will make a case for the repeal of L.N. 442 of 2018 which came into force on the 31 December 2018. Since Malta is an EU Member State, it is under an obligation to incorporate such a regulation into its laws.

Malta, as an island state, is at the forefront when it comes to the protection of the marine environment given its geographic position but when it comes to recycling of ships, it has not yet adopted the latest EU Regulation on ship recycling, namely, Regulation 1257/2013.

Regulation 1257/2013 is ‘to prevent, reduce, minimise and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by ship recycling.’<sup>1</sup> The scope of this Regulation is ‘to enhance safety, the protection of human health and the marine environment throughout a ship’s life-cycle, in particular, to ensure that hazardous waste from such ship recycling activity is subject to environmentally sound management.’<sup>2</sup>

The marine environment is an important asset and a vital resource for the continuation of life on Earth. Science has demonstrated that marine ecosystems are key players in regulating the climate, preventing erosion, accumulating and distributing solar energy, absorbing carbon dioxide and maintaining biological control.<sup>3</sup> The seas and oceans cover 71% of the Earth’s surface and contain 90% of the biosphere. Hence, it is no surprise that they are our greatest source of biodiversity.<sup>4</sup> This bio-diversity contributes to economic prosperity, social well-being and quality of life. Hence, the marine environment’s protection is crucial for the economy.<sup>5</sup> The Mediterranean marine

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<sup>1</sup> Eionet ‘Legislative Instrument Details: Regulation (EU) No 1257/2013 on Ship Recycling’ (2013) <<https://rod.eionet.europa.eu/instruments/669>> accessed 2 February 2019

<sup>2</sup> Ibid

<sup>3</sup> Sea First ‘Importance of the Sea’ (2019) <<https://www.seafirst.nl/themas/importance-of-the-sea/?lang=en>> accessed 16 February 2019

<sup>4</sup> Ibid

<sup>5</sup> Environment fact sheet: protecting and conserving the marine environment <<http://ec.europa.eu/environment/pubs/pdf/factsheets/marine.pdf>> accessed 2<sup>nd</sup> February 2019

environment has greatly deteriorated in recent years mainly due to a host of unbridled forms of pollution.

## **1. What: The Historical Context of Ship Recycling**

During the International Maritime Organization (IMO) Marine Environment Protection Committee's (MEPC) 42<sup>nd</sup> Session in 1998, the environmental issues of ship recycling procedures, facilities and the consequences thereof were brought to the committee's attention.<sup>6</sup>

The issue of ship recycling was then first discussed by the IMO at the 44<sup>th</sup> MEPC Session in March 2000.<sup>7</sup> A correspondence group was set up for this purpose, and the IMO's role in ship recycling was researched and built. Guidelines on ship recycling were developed and then finalised during the MEPC 49<sup>th</sup> session.<sup>8</sup> These guidelines were adopted by the 23<sup>rd</sup> Assembly in November/December 2003 through Resolution A.962(23)<sup>9</sup> and subsequently amended by Resolution A.980(24).<sup>10</sup>

The A.962 (23) guidelines are targeted to producing zero waste through the following:

1. Steel is re-processed to become, for instance, reinforcing rods for use in the construction industry or as corner castings and hinges for containers.
2. Batteries find their way into the local economy.
3. Light fittings find further use on land.

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<sup>6</sup> Report of the Marine Environment Protection Committee at Its Forty-Second Session MEPC 42/22  
<[http://www.crs.hr/Portals/0/docs/eng/imo\\_iacs\\_eu/imo/mepc\\_reports/MEPC42.pdf?ver=2010-11-04-105636-000](http://www.crs.hr/Portals/0/docs/eng/imo_iacs_eu/imo/mepc_reports/MEPC42.pdf?ver=2010-11-04-105636-000)>  
accessed on 8 December 2018

<sup>7</sup> Report of the Marine Environment Protection Committee at its Forty-Fourth Session MEPC 44/20  
<[http://www.crs.hr/Portals/0/docs/eng/imo\\_iacs\\_eu/imo/mepc\\_reports/MEPC44.pdf?ver=2010-11-04-105328-000](http://www.crs.hr/Portals/0/docs/eng/imo_iacs_eu/imo/mepc_reports/MEPC44.pdf?ver=2010-11-04-105328-000)>  
accessed on 8 December 2018

<sup>8</sup> Report of the Marine Environment Protection Committee at its Forty-Ninth Session MEPC 49/22  
<[http://crs.hr/Portals/0/docs/eng/imo\\_iacs\\_eu/imo/mepc\\_reports/MEPC49.pdf](http://crs.hr/Portals/0/docs/eng/imo_iacs_eu/imo/mepc_reports/MEPC49.pdf)> accessed on 8 December 2018

<sup>9</sup>IMO 'Resolution A.962(23), Adopted on 5 December 2003 (Agenda item 19) IMO Guidelines On Ship Recycling'  
<[https://www.transportstyrelsen.se/globalassets/global/sjofart/dokument/guidelines\\_on\\_ship\\_recycling\\_resolution\\_962.pdf](https://www.transportstyrelsen.se/globalassets/global/sjofart/dokument/guidelines_on_ship_recycling_resolution_962.pdf)> accessed on 8 December 2018

<sup>10</sup> IMO 'Resolution A.980 (24) Adopted on 1 December 2005 (Agenda Item 11)'  
<<http://www.imo.org/en/OurWork/Environment/ShipRecycling/Documents/980.pdf>> accessed 2<sup>nd</sup> February 2019

4. Hydrocarbons on board become reclaimed oil products to be used as fuel in rolling mills or brick kilns.
5. Ships' generators are re-used ashore.<sup>11</sup>

These guidelines emphasised the fact that there was a lack of adequate working practices and mediocre environmental standards in ship dismantling. Greater emphasis was put on shipyards in developing countries where practices are not being addressed by the administration of the relevant country. The guidelines highlight the pivotal and responsible role that ship owners and Flag States have to exercise in ship recycling.

The Hong Kong Convention was adopted in July 2005 at the MEPC's 53<sup>rd</sup> Session<sup>12</sup> when it was decided that the IMO would develop an international legally binding instrument in the form of a convention. Such a convention would comprise measures to be applied by ship dismantling facilities and detailed procedures with regards to the design, construction, operation and preparation of vessels. Such measures would have the aim of enabling safe and environmentally friendly recycling while securing the safety and operational efficiency of vessels. In its primary draft, the working group issued the requirements for ships and ship recycling yards and the upkeep of appropriate records.

During its 55<sup>th</sup> Session, in October 2006,<sup>13</sup> the MEPC continued to develop the proposed convention and forwarded a request to the IMO Council for a five-day conference in order to adopt it. The Hong Kong Convention (HKC), as it came to be known, was adopted in Hong Kong, China between May 11 and May 15 2009, with the participation of delegates from 63 countries.<sup>14</sup> The Hong Kong Convention entered into force 24 months after ratification by 15 states representing

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<sup>11</sup> IMO 'IMO Assembly Resolution A.962(23) Implementation of the IMO Guidelines on Ship Recycling' 2003 (n 9)

<sup>12</sup> Report of the Marine Environment Protection Committee On its Fifty-Third Session, 53<sup>rd</sup> Session <[http://www.crs.hr/Portals/0/docs/eng/imo\\_iacs\\_eu/imo/mepc\\_reports/MEPC53-Add-1.pdf?ver=2010-11-04-102302-000](http://www.crs.hr/Portals/0/docs/eng/imo_iacs_eu/imo/mepc_reports/MEPC53-Add-1.pdf?ver=2010-11-04-102302-000)> accessed 8 December 2018

<sup>13</sup> Ibid

<sup>14</sup> IMO 'Recycling of Ships' <<http://www.imo.org/en/OurWork/Environment/ShipRecycling/Pages/Default.aspx>> accessed 8 December 2018

40 per cent of world merchant shipping by gross tonnage, having a combined maximum annual ship recycling volume not less than 3 per cent of their combined tonnage.

The HKC is made up of 21 articles covering a wide diversity of topics, such as: the general obligations of Member States, definitions related to the ship recycling process, application of the convention, controls related to ship recycling, the survey and certification of ships, the authorisation of ship recycling facilities, the exchange of information among the Member States, the inspection of ships subjected to the recycling process and the detection of violations.

There is also an Annex divided into four chapters. Chapter 1 targets the General Provisions of Regulations 1, 2 and 3. Requirements for ships under regulations 4 to 14 are found in Chapter 2 while chapter 3 states the requirements for ship-recycling facilities which can be found in regulations 15-23. Chapter 4 emphasises the reporting requirements and their importance as stated in regulations 24 to 25. There are seven appendices besides the annex.

The Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC originated from the Hong Kong Convention (HKC). The fact that prompted the introduction of this Regulation is that the HKC was not adhered to, and the EU wanted to enforce the HKC in EU countries successfully.

## **2. The Background to the Regulation**

The Council of the EU exhorted the tackling of ship recycling in November 2006.<sup>15</sup> The European Commission agreed and indicated its intention of addressing ship recycling in a Green Paper (GP) issued in 2007.<sup>16</sup> The scope of the paper was to come up with innovative and accessible ideas

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<sup>15</sup> EU Green Paper on Better Ship Dismantling

<[http://ec.europa.eu/environment/waste/ships/pdf/com\\_2007\\_269\\_en.pdf](http://ec.europa.eu/environment/waste/ships/pdf/com_2007_269_en.pdf)> accessed 8 December 2018

<sup>16</sup> Ibid

which would precipitate positive and proactive discussions between stakeholders and EU Member States. The Commission also stated that its main aim was to safeguard the lives and health of all those involved in the process and not to try to relocate ship recycling to EU shores. It intended to do this by introducing minimum environmental and health and safety standards worldwide.

Several policy options were then highlighted with regard to this latter aim, and in November 2008 the Commission issued a communication entitled ‘An EU Strategy for Better Ship Dismantling’.<sup>17</sup> This was based upon two documents, namely the result of discussions with stakeholders after the issuing of the GP and the draft convention that later became the HKC.

### **3. Overview of the Regulation**

The EU Ship Recycling Regulation came into force on 20 November 2013 and entered into full effect on 31 December 2018. This obliges EU-flagged vessels to conduct dismantling operations in European Commission-approved ship-recycling facilities in accordance with the Inventory of Hazardous Materials and the Ship-Specific Ship-Recycling Plan (SSSRP).<sup>18</sup> The operator of the ship recycling facility is expected to develop a ship recycling plan in accordance with HKC. Ship owners, on the other hand, must furnish all ship-relevant information necessary for the development of the SSSRP.<sup>19</sup> This includes the Inventory of Hazardous Materials which identifies harmful materials contained in the structure or equipment of the ship, their location and approximate quantities. New ships must have such an inventory on board to comply with all relevant IMO Guidelines and provide evidence that the ship complies with the restrictions or prohibitions of hazardous materials.<sup>20</sup>

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<sup>17</sup> EU ‘An EU Strategy for Better Ship Dismantling’

<[http://ec.europa.eu/environment/waste/ships/pdf/com\\_2008\\_767.pdf](http://ec.europa.eu/environment/waste/ships/pdf/com_2008_767.pdf)> accessed 8 December 2018

<sup>18</sup> Fenech & Fenech Advocates ‘Future of Ship Recycling in the European Union’

<<https://www.internationallawoffice.com/Newsletters/Shipping-Transport/European-Union/Fenech-Fenech-Advocates/Future-of-ship-recycling-in-the-European-Union>> accessed 8 December 2018; The Future of ship Recycling in Europe (08 October 2018) <<http://infoworld-uae.blogspot.com/2018/10/the-future-of-ship-recycling-in-europe.html>> accessed 30 March 2019

<sup>19</sup> Ibid

<sup>20</sup> Ibid

This regulation also requires ships to be subject to several surveys undertaken by a recognised organisation. These surveys are the initial survey, the renewal survey, the additional survey and the final survey. Following the successful completion of either the initial or renewal survey, an inventory certificate, supplemented by the Inventory of Hazardous Materials, is issued. Initial surveys of new ships are conducted before the ship is in service while for existing ships it will be conducted by 31 December 2020. The surveys aim to ensure that the ship recycling plan and Inventory of Hazardous Materials comply with the Regulation. A final survey is conducted when a ship is to be serviced or recycled. If the survey is successful, a ready-for-recycling certificate is issued by the appointed recognised organisation. The certificate has to be supplemented by the Inventory of Hazardous Materials and the SSSRP.<sup>21</sup> If the specifics and state of the ship are not adequately documented in the inventory certificate, the operator of the ship-recycling facility may refuse the ship for recycling. Owners of such ships are also required to minimise the amount of cargo and ship-generated waste remaining on board.

Ships flying third country flags are equally required to have on board an Inventory of Hazardous Materials in compliance with the regulation on the same level of Member State flagged ships. On arrival in a Member State, they must submit this inventory together with a statement of compliance to the authorities on request. Failure to do so may result in detention, dismissal or exclusion from ports.

These measures aim to mitigate, prevent, minimize and possibly eventually eliminate accidents, injuries and the negative effects of operating, maintaining and recycling of EU-flagged ships on human health and the environment.<sup>22</sup> The purpose is also to enhance safety, protect human health and the environment throughout a ship's life-cycle and, in particular, to ensure that hazardous waste from such ship recycling is subject to environmentally sound management.<sup>23</sup> The Regulation also brings into force the early implementation of the requirements of the 2009 Hong

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<sup>21</sup> Ibid

<sup>22</sup> EU Ship Recycling Regulation Art 1  
<<https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32013R1257&from=EN>> accessed 8 December 2018

<sup>23</sup> Ibid

Kong Convention for the Safe and Environmentally Sound Recycling of Ships, therefore contributing to its global entry into force.

### **3.1 Scope**

This new Regulation applies to the whole life cycle of EU flagged ships from before their inception into service to their final recycling stage. They shall be allowed to be recycled only at approved and listed facilities. Ships flying a third country flag calling at EU ports or anchorages must follow the same procedure. Warships, naval auxiliary, or other ships owned or operated by a State and used only on governmental non-commercial service, ships less than 500 gross tonnage (GT) and ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of a Member State whose flag the ship is flying are excluded from the scope of the Regulation.<sup>24</sup> Ships covered by this regulation are excluded from the scope of the Waste Shipment Regulation (EC) No 1013/2006 and Directive 2008/98/EC of the European Parliament.<sup>25</sup>

The Regulation sets out a number of requirements for European ships, European ship owners, ship recycling facilities (located either in an EU Member State or outside of the EU) willing to recycle European ships, and the relevant competent authorities or administrations.

### **3.2 Requirements for Ship Owners and Ships**

European ship owners must recycle their ships only in ship recycling facilities included in the European list of ship recycling facilities. They must also ensure that each end-of-life ship is correctly prepared for recycling. They must provide relevant information about the ship that is required for the charting of the ship recycling plan to the ship recycling facility and give notice of their intention to the relevant administrative authorities. They must also provide an updated

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<sup>24</sup> Ibid Art 2

<sup>25</sup> Ibid, preamble para 10



inventory of hazardous materials, minimise the amount of cargo residues, remaining fuel oil and ship-generated waste still on board.<sup>26</sup>

They also have to provide a Ready for Recycling Certificate issued by their Member (flag) State and the ship recycling plan (SSSRP). Tankers must prepare their cargo tanks and pump rooms for safety certification for hot work prior to arriving at the ship recycling facility. The recycling facility may decline to accept a ship for recycling if its condition does not suffice the particulars of the Inventory of Hazardous Materials (IHM).<sup>27</sup>

Hazardous materials are typically used in ship repair and shipbuilding and are also found in ship fuel and cargo residues. Annex I contains a list of hazardous materials, which, according to the Regulation are prohibited or restricted from being installed or used on ships. These materials include asbestos, ozone-depleting substances, polychlorinated biphenyl (PCBs), perfluorooctane sulfonic acid (PFOS) and anti-fouling compounds and systems.<sup>28</sup>

It is compulsory for every new ship to have on board an IHM which are contained in the structure or equipment of the ship, their location and approximate quantities, verified by the relevant administration or authority.

Annex II establishes which hazardous materials must be included in the IHM, any hazardous materials listed in Annex I, cadmium and cadmium compounds, hexavalent chromium and hexavalent chromium compounds, lead and lead compounds, mercury and mercury compounds, polybrominated biphenyl (PBBs), polybrominated diphenyl ethers (PBDEs), polychlorinated

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<sup>26</sup> Ibid Art 6 (1)(2).

<sup>27</sup> Ibid Art 6 (3) (5)

<sup>28</sup> Perfluorooctane is also known as octadecafluorooctane. It is a fluorocarbon liquid—a perfluorinated derivative of the hydrocarbon octane.

naphthalenes, radioactive substances, certain short-chain chlorinated paraffins, brominated flame retardant (HBCDD).

The IHM has to be specific to each ship and comply with the relevant IMO guidelines. It must also be properly maintained and updated through the operational life of the ship and verified by competent administration or authority.<sup>29</sup>

### **3.3 Ships Flying the Flag of a Third Country**

Ships flying the flag of a third country must have an IHM on board that complies with the Regulation as specified in article 12 (1). This IHM supplements the statement of compliance which is a ship specific certificate issued to such ships. It is issued by the authorities of the third country whose flag the ship is flying, in accordance with national law.<sup>30</sup> In the event of failure of submission of both documents that ship may be warned, detained, dismissed or excluded from the ports or offshore terminals under the jurisdiction of the Member State.<sup>31</sup> The remaining provisions concerning the installation, use and inventory of hazardous materials which relate to ships flying the flag of a third country are identical to Articles 4 and 5 of the Regulation.

### **3.4 Survey and Certification**

Officers of the competent administration or authority are in charge of IHM compliance with the requirements of the Regulation. Vessels are subject to four surveys: an initial survey, a renewal survey, an additional survey and a final survey. An inventory certificate, supplemented by IHM is awarded after successful completion of an initial or renewal survey for a period not exceeding five years.<sup>32</sup> The initial survey of new ships is conducted before the ship is put in service or before the inventory certificate is issued. The initial survey for existing ships shall be conducted by 31

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<sup>29</sup> Ibid Art 5 (6)

<sup>30</sup> Ibid Art 12 (9)

<sup>31</sup> Ibid Art 12 (5)

<sup>32</sup> Ibid Art 9 (1), 10 (1)

December 2020.<sup>33</sup> In the event of a change, replacement or significant repair of the structure, equipment and material which has impacted on the IHM, the shipowner must request the additional survey. The final survey is carried out before the ship is being taken out of service and before the recycling has initiated. This survey confirms that the IHM complies with the Regulation, ship recycling plan and that ship recycling facility where the ship is to be recycled included in the European List.<sup>34</sup>

After the final survey deems to be a successful one, a Ready for Recycling Certificate is issued, by the competent authority, supplemented by IHM and ship recycling plan, for a period that does not exceed three months.<sup>35</sup> The initial and final survey may also be carried out at the same time for ships intended for recycling, in which case only a Ready for Recycling Certificate is issued.<sup>36</sup>

### **3.5 Port State Control**

Port authorities in the EU Member States are authorized to control and verify certification on European ships. A detailed inspection may be carried out if there is not a valid certification or if there is any suspicion of non-compliance. In the case of failure to submit the relevant certification to the competent authority, a ship may be warned, dismissed, detained or excluded from the ports or offshore terminals under the jurisdiction of a Member State.<sup>37</sup> The Member State shall inform the concerned administration about the case and also in the event that the IHM certificate has not been updated. This latter situation shall be rectified at the time of the next survey.<sup>38</sup>

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<sup>33</sup> Ibid Art 8 (4)

<sup>34</sup> Ibid Art 8 (7)

<sup>35</sup> Ibid Art 9 (9), 10 (3)

<sup>36</sup> Ibid Art 9 (1)

<sup>37</sup> Ibid Art 11 (3)

<sup>38</sup> Ibid

### **3.6 Requirements for ship recycling facilities to be included in the European List**

In order to be included in the European List, all ship recycling facilities, irrespective of their location, have to comply with requirements set out in the Regulation, in accordance with the Hong Kong Convention and relevant guidelines of the IMO, the ILO, the Basel Convention, the Stockholm Convention and of other international guidelines.<sup>39</sup>

The first requirement of the ship recycling facility, as set out in the Regulation, must be the authorization by the competent authorities to conduct ship recycling operations. The ship recycling facility must be designed, constructed and operated in a safe and environmentally sound manner. This adds new requirements in comparison to the HKC for ship recyclers. It also introduces a section stating that facilities must operate from built structures.<sup>40</sup> This implicates that recycling on the beaches is not permitted. Yards must also operate in a manner to prevent any negative effects on human health and the environment. Ship recycling must be carried out only on impermeable floors with effective drainage systems and all waste generated from the ship recycling must be disposed of in waste management facilities.<sup>41</sup>

Ship recycling facilities must establish and maintain emergency preparedness and response plan, provide safety and training for workers, including the use of personal protective equipment, all incidents, accidents occupational diseases and chronic effects must be recorded and reported.<sup>42</sup>

### **3.7 Ship Recycling Plan**

The ship recycling plan (SSSRP) is plotted by the operator of the recycling yard in compliance with the relevant provision of the HKC and IMO guidelines and on the relevant information

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<sup>39</sup> Ibid Art 13 (1)

<sup>40</sup> Ibid Art 13 (1) (c)

<sup>41</sup> Ibid Art 13 (1) (g)

<sup>42</sup> Ibid Art 13 (1) (h), (i), (j)

supplied by the shipowner.<sup>43</sup> The approval of the plan must be in accordance with the requirements of the State in question where the facility is located.<sup>44</sup> The ship recycling plan must include information on the type and amount of hazardous material and waste including the materials and waste identified in IHM and how they will be managed and stored. Information about the establishment, maintenance and monitoring of the safe-for-entry and safe-for-work conditions for the specific ship, also constitute part of the plan.

### **3.8 Reporting and Enforcement**

Each Member State is expected to send the Commission a report containing a list of the ships flying its flag to which Ready to Recycling Certificate has been issued, the name of the ship recycling company and the location of the ship recycling facility every three years.<sup>45</sup> This report must also contain a list of the ships flying its flag for which the statement of completion has been received. Information regarding illegal ship recycling, penalties and actions taken by Member State must also be supplied in the report.<sup>46</sup>

It is expected that the Member States lay down provisions on penalties in the case of infringements to this Regulation. They must also take the necessary measures to ensure that these penalties are applied in order to prevent the evasion of ship recycling rules.<sup>47</sup> The penalties must be effective, proportionate and dissuasive.<sup>48</sup> The Member States must also communicate their provisions of the national law relating to the enforcement of the Regulation and the penalties to the Commission.<sup>49</sup>

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<sup>43</sup> Ibid Art 7 (2) (b)

<sup>44</sup> Ibid Art 7 (3)

<sup>45</sup> Ibid Art 21 (1)

<sup>46</sup> Ibid

<sup>47</sup> Ibid Art 22 (1)

<sup>48</sup> Ibid

<sup>49</sup> Ibid Art 22 (4)

#### **4 WHY Such a Regulation is Important for the European Union**

The main objective of the HKC was to address the environmental, occupational, health and safety risks related to ship recycling. States have been either reluctant or slow in ratifying the Convention which has caused concern that ‘entry into force of the HKC was critical.’<sup>50</sup> This view has been put forward by the Global Shipowners’ Associations which have reaffirmed commitment to the Hong Kong Convention and the need for a global solution for environmentally sustainable ship recycling. For sustainable ship recycling to happen, it is essential that the ship recycling States commit to improving the standards of ship recycling and ratify the HKC. In this regard, the participating associations said they would:

1. Encourage member associations to approach their respective governments to hasten the process of ratification of the HKC;
2. Encourage national associations to request their respective governments to include ratification of the HKC as an agenda item when having an opportunity to talk with officials of the ship recycling states;
3. Encourage all ship recycling states to ratify the HKC; and
4. Encourage IMO and its Member States to establish a team for early enactment of the HKC under IMO which would act as a focal point for activities of the concerned stakeholders including governments, recyclers, workers, shipowners and observer organisations.<sup>51</sup>

The participating associations also expressed concern over the lack of facilities on the EU List on the Regulation’s entry into force on 31 December 2018, as well as the fact that until now no non-EU ship recycling yard is included in the EU list. They urged the European Commission to increase the recycling capacity on the EU List with the inclusion of facilities outside of Europe.<sup>52</sup>

As a response to the delay in the implementation of the HKC, the EU has taken action and brought forward European Regulation 1257/2013 as stated above. Other reasons which prompted the EU to act were the fact that it has a large fleet of ships which sail under the flag of the Member States

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<sup>50</sup> ICS ‘Hong Kong Convention’s Entry into Force is Critical’  
<<https://worldmaritimenews.com/archives/253685/ics-hong-kong-conventions-entry-into-force-is-critical/>>  
Accessed 9 December 2018

<sup>51</sup> Ibid

<sup>52</sup> Ibid

and many more owned by European companies<sup>53</sup> and the fact that it did not have an adequate ship recycling regulation. The only existing one was the Waste Shipment Regulation, which rarely applied to ships sent for recycling.<sup>54</sup>

The most important advantage of Regulation 1257/2013 is that it provides a prompt and immediate application of its requirements in all Member States. This move will also encourage other non-EU countries towards the global endorsement and entry into force of the HKC. Experience with IMO conventions such as MARPOL shows that third countries normally ratify and implement international agreements after the EU has made its rules binding for all ships visiting European waters.

With the Regulation's entry into force on 31 December 2018,<sup>55</sup> it has become immediately binding in its entirety and directly applicable in all Member States. It also forms part of the national law for each Member State. Therefore, the Regulation is implementing the HKC to all its Member States without waiting for the Convention to enter into force. It also simplifies and encourages ratification of the HKC by its member states. The Regulation has also enhanced the EU's role and contribution to ship recycling beyond the HKC. It sets additional requirements for recycling facilities including a higher level of control for those facilities located in third countries. The Regulation requires recycling facilities to comply with the provisions of the HKC and to satisfy three new requirements:

- 1) 'operate from built structures'
- 2) demonstrate 'the control of any leakage in particular in intertidal zones' and
- 3) ensure 'the handling of hazardous materials and waste generated during the ship recycling process only on impermeable floors with effective drainage systems.'

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<sup>53</sup> COWI *Sustainability Report (2009)* 5  
<[https://www.unglobalcompact.org/system/attachments/4805/original/Sustainability2009\\_COWI.pdf?1270624382](https://www.unglobalcompact.org/system/attachments/4805/original/Sustainability2009_COWI.pdf?1270624382)>  
Accessed 9 December 2018

<sup>54</sup> Ibid 12

<sup>55</sup> Transport Malta 'Application of Regulation (EU) 1257/2013 on Ship Recycling Merchant Shipping Notice 147'  
<<https://news.transport.gov.mt/wp-content/uploads/2018/12/MS-Notice-147-APPLICATION-OF-REGULATION-EU-12572013-ON-SHIP-RECYCLING.pdf>> accessed 11 December 2018

The second and third provisions have to be met regardless of the recycling method used, while the first requirement is not definitive and could be interpreted as a prohibition of beaching. The Regulation also extends the HKC's list of prohibited substances. It adds two new hazardous materials namely, perfluorooctane sulfonic acid and its derivatives (PFSO) and brominated flame retardant (HBCDD).<sup>56</sup> This latter which is listed in Annex II needs only to be included in the inventory of hazardous materials of new ships.

The HKC delegates the authorisation of recycling facilities to the competent authorities of the recycling state. Conversely, the EU Regulation prescribes different procedures for facilities located in an EU Member State and facilities located in third countries to be included in the European list. For this latter, a certificate of compliance after inspection by an independent verifier is required.

These requirements aim to stop substandard ship recycling procedures and introduce higher responsibilities. However, they could also encourage reflagging of EU ships and consequently be counter-productive. A ship owner's choice of where to recycle his vessel is controlled by the highest price obtainable for his ship. As safe and environmentally sound facilities involve higher costs they are not able to compete with conventional Asian recycling facilities.<sup>57</sup> This means that from an economic point of view there is little incentive for a shipowner to choose an EU listed facility.<sup>58</sup> Since the Regulation covers only EU flagged ships, it risks being ineffective due to the existence of open and easily accessible registries. This disadvantage can be counteracted if there is a funding mechanism which bridges the gap between prices offered by conventional and green facilities.

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<sup>56</sup> PFSO is extra hazardous material used in some fire-fighting foams.

HBCDD is used for cryogenic insulation such as for liquefied gas tanks and for refrigerator areas, which is highly toxic to aquatic organisms.

<sup>57</sup> COWI *Sustainability Report 2009* (n 49) 35

<sup>58</sup> *Ibid*



Such a funding system should be based on a stable financing source. Studies conducted by EU proposed three options for financing the EU ship dismantling fund: charges for newly built vessels, the annual tax on individual vessels and charges on ships calling EU ports.<sup>59</sup> Recurrent charges on all ships calling EU ports would be the most feasible solution.<sup>60</sup> Ship owners would thus be compensated on presenting evidence of recycling their vessel at a compliant facility. Such compensation should even out the lost income from recycling the ship in a compliant facility compared to doing so in a conventional one and hence place the former on a competitive level.<sup>61</sup> This fund, which would provide stable resources from EU port charges based on tonnage, would also be able to mitigate the issue of reflagging<sup>62</sup> and redirect ships to compliant recycling facilities. This financial incentive depends on the post Regulation resultant market.

#### **4.1 WHY such a Regulation is Important for Malta**

As an EU Member State, Malta has to ratify this Regulation as it is under an obligation to do so. Moreover, being a top ship registry, it is of paramount importance that Malta incorporates this same Regulation into its national law. Presently, Malta ranks first in Europe and sixth worldwide in terms of registered tonnage.<sup>63</sup> Ships registered in Malta show the highest average probability of being recycled in India and Bangladesh.<sup>64</sup> This implicates a reflagging threat for Malta which could be counteracted with measures such as funding as discussed in section 4 of this explanatory note. Such funding would then complement the present low tax regime. If such incentives are taken into account, Malta will maintain its present position as a top ship registry in the EU.

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<sup>59</sup> Ibid 23 a

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> CSB Group Ship Recycling 'Is Licensing the Way Forward in Preparation for 2018?'

<[https://www.csbgroup.com/malta-news/shipping/ship-recycling-is-licencing-the-way-forward-in-preparation-for-2018/#\\_ftnref1](https://www.csbgroup.com/malta-news/shipping/ship-recycling-is-licencing-the-way-forward-in-preparation-for-2018/#_ftnref1)> Accessed 9 December 2018

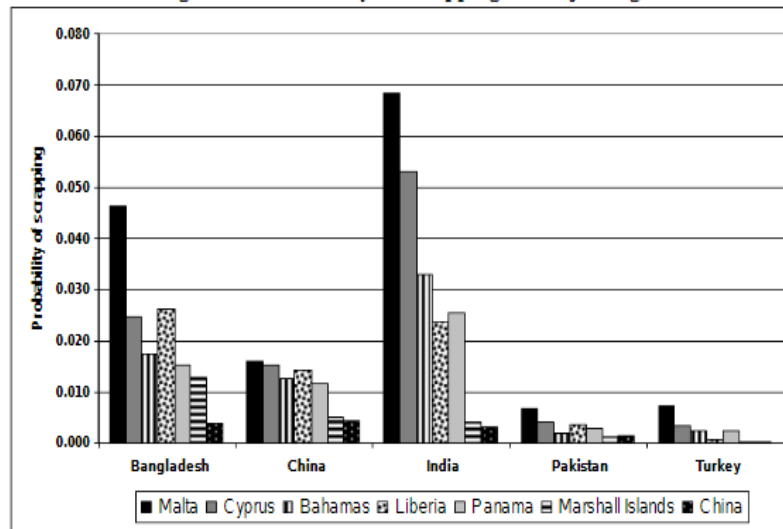
<sup>63</sup> KPMG 'Ship Registration in Malta – Your Flag of Convenience'

<<https://home.kpmg.com/content/dam/kpmg/mt/pdf/2018/11/ship-registration-in-malta.pdf>> accessed 9 December 2018

<sup>64</sup> Sabine Knapp, Shashi N Kumar & Anna Bobo Remijn, 'The Ship Recycling Conundrum: An Econometric Analysis of Market Dynamics and Industry Trends' Econometric Institute Report 2007-52 (revised) 17

<<https://core.ac.uk/download/pdf/6904666.pdf>> Accessed on 9 December 2018

Figure 10: Probability of Scrapping for major flags



Note: Based on average probabilities of 51,112 vessels

Figure 1 Sabine Knapp and others 'The Ship Recycling Conundrum...' <sup>65</sup>

With the adoption of Regulation 1257/2013, Malta will reaffirm its concern with regards to the protection and conservation of the marine environment. It will also encourage other countries to follow suit.

Ship recycling in Malta would be costly since labour costs and shipping of scrap would make it difficult to compete with other shipyards in Europe and elsewhere.<sup>66</sup> However, consultation with relevant stakeholders could be key in identifying a suitable location in Malta for ship recycling facilities. On the other hand, Malta could act as an ambassador for safe and environmentally sound ship recycling. It could be a meeting place for conferences and consultation meetings with major ship recycling states globally. It could encourage these states to strive for certification for safe and environmentally sound ship recycling. This encouragement will include Malta's ratification of

<sup>65</sup> Ibid 16. This graph visualizes the probability of recycling for some major flag states and China. Malta shows the highest average probability of ships being recycled in India and Bangladesh. Other flags with higher average probability of scrapping in India and Bangladesh include Cyprus and Liberia. Ships flagged in Bahamas and Panama also have a high probability of recycling in India. There is no significant difference among the major flags for China as a choice location for recycling.

<sup>66</sup> Times of Malta 'Ship Recycling is the Most Misunderstood Industry'  
<<https://www.timesofmalta.com/articles/view/20150426/business-news/Ship-recycling-is-most-misunderstood-industry.565634>> Accessed 9 December 2018

Regulation 1257/2013 and its participation in conferences, consultation meetings and seminars held in Malta and worldwide.

## **The Incorporation of EU Regulations into the Laws of Malta**

International Law becomes constituent of Maltese Law through the Executive which is authorised by the State as a signatory to treaties. Subsequently, Parliament, as the legislative organ, ratifies the treaties and they become part of Maltese law. The process entails a First Reading, where the Minister reads the title of the Bill which has been drafted with the intent to implement the convention/treaty in question. At a later stage, the Second Reading takes place where the Bill is discussed by the Members of Parliament.

After the Second Reading is complete, the Bill goes to the Committee Stage. During the Third Reading, the chairman raises his hand, is given permission to speak by the Speaker, and informs the House about the progress of the Bill. Thus the Bill is set on the agenda. The Minister reads the Bill for the third time, and a vote is taken. Afterwards, the Bill is sent for Presidential assent and becomes a fully-fledged law once it is published in the Government Gazette.

In Malta, once an international convention or treaty is ratified and incorporated into Maltese Law, it would become instantly binding on all the domestic courts and the citizens of the State. Hence, international law is transposed into domestic law by an Act of Parliament. Consequently, the Maltese Government generally ensures that its domestic position reflects its international legal obligations.

These proposed amendments on Ship Recycling will be introduced into Maltese law by means of a Subsidiary Legislation that will repeal Legal Notice 442 of 2018 Merchant Shipping (Ship Recycling) Regulations, 2018 to incorporate Regulation 1257/2013 passed by the EU on 20 November 2013.

In order for this Subsidiary Legislation to enter into force, it must be approved by the Minister of Transport, Infrastructure and Capital Projects who has been delegated with relevant powers in this respect by the Merchant Shipping Act (Chapter 234 of the Laws of Malta). Once approved this amendment will be published in the Government Gazette and will consequently form part of Maltese Laws.

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**SUBSIDIARY LEGISLATION \*\*\*****MERCHANT SHIPPING (SHIP LIFE-CYCLE AND SHIP RECYCLING) REGULATIONS**XX<sup>st</sup> XXX, XXXX*LEGAL NOTICE xxx of xxx*

IN EXERCISE of the powers conferred by articles 308A and 374 of the Merchant Shipping Act, the Minister responsible for Transport, Infrastructure and Capital Projects has made the following regulations:

**1. (1)** The title of these regulations is the Merchant Shipping (Ship Life-Cycle and Ship Recycling) Regulations.

Citation and  
Commencement

(2) These regulations establish a system of regulations for the keeping of inventories and certificates throughout a ship's life cycle and establishes a system of penalties for failure to comply with the obligations set out in Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC, as may be amended from time to time, hereinafter referred to as the "EU Regulation".

(3) These regulations shall come into force on XXXX

Interpretation

**2. (1)** In these regulations, unless the context otherwise requires:

Cap. 234

“the Act” means the Merchant Shipping Act;2

“administration” means Transport Malta as being responsible for duties related to ships flying its flag or to ships operating under its authority;

“appropriate inspector” shall have the same meaning as is assigned to it in article 154 of the Act;

“competent authority” means Transport Malta as a governmental authority responsible for ship recycling facilities, within a specified geographical area or an area of expertise, relating to all operations within the jurisdiction of that state;

“competent person” means a person with suitable qualifications, training, and sufficient knowledge, experience and skill, for the performance of the specific work;

“European Commission” means the institution of the European Union responsible for proposing legislation, implementing decisions, upholding EU treaties and managing the day-to-day business of the EU.

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

“hazardous material” means any material or substance which is liable to create hazards to human health and/or the environment.

“inventory certificate” means a ship-specific certificate that is issued to ships flying the flag of a Member State in accordance with Article 8 and that is supplemented by an inventory of hazardous materials in accordance with Article 6;

“light displacement tonnes (LDT)” means the weight of a ship in tonnes without cargo, fuel, lubricating oil in storage tanks, ballast water, fresh water, feedwater, consumable stores, passengers and crew and their effects and it is the sum of the weight of the hull, structure, machinery, equipment and fittings of the ship.

“Maltese ship” shall have the same meaning as is assigned to it in article 3(1) of the Act;

“Ministry” means the Minister Responsible for Shipping and Transport.

“new ship” means a ship for which either: (a) the building contract is placed on or after the date of application of this Regulation; (b) in the absence of a building contract, the keel is laid or the ship is at a similar stage of construction six months after the date of application of this Regulation or thereafter; or (c) the delivery takes place thirty months after the date of application of this Regulation or thereafter;

“new installation” means the installation of systems, equipment, insulation or other material on a ship after the date of application of this Regulation;

“operationally generated waste” means waste water and residues generated by the normal operation of ships subject to the requirements of the MARPOL Convention;

“Registrar-General” means the Registrar-General of Shipping and Seamen appointed under article 363 of the Act and includes any person acting under his authority;

“recognised organization” means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council (1);

“ready for recycling certificate” means a ship-specific certificate that is issued to ships flying the flag of a Member State in accordance with Article 10(9) and that is supplemented by an inventory of hazardous materials in accordance with Article 6(7) and the approved ship recycling plan in accordance with Article 6;

“ship” means a vessel of any type whatsoever operating or having operated in the marine environment, and includes submersibles, floating craft, floating platforms, self elevating platforms, Floating Storage Units (FSUs), and Floating Production Storage and Offloading Units (FPSOs), as well as a vessel stripped of equipment or being towed.

“ship recycling” means the activity of complete or partial dismantling of a ship at a ship recycling facility in order to recover components and materials for reprocessing, for preparation for re-use or for re-use, whilst ensuring the management of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or disposal in separate facilities;

“ship recycling facility” means a defined area that is a yard or facility located in a Member State or in a third country and used for the recycling of ships;

“ship recycling company” means, the owner of the ship recycling facility or any other organisation or person who has assumed the responsibility for the operation of the ship recycling activity from the owner of the ship recycling facility;

“ship owner” means the natural or legal person registered as the owner of the ship, including the natural or legal person owning the ship for a limited period pending its sale or handover to a ship recycling facility, or, in the absence of registration, the natural or legal person owning the ship or any other organisation 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 the legal person operating a state-owned ship;

“ship recycling plan” means a plan developed by the operator of the ship recycling facility for each specific ship to be recycled under its responsibility taking into account the relevant IMO guidelines and resolutions;

“ship recycling facility plan” means a plan prepared by the operator of the ship recycling facility and adopted by the board or the appropriate governing body of the ship recycling company that describes the operational processes and procedures involved in ship recycling at the ship recycling facility and that covers in particular workers’ safety and training, protection of human health and the environment, roles and responsibilities of personnel, emergency preparedness and response, and systems for monitoring, reporting and record-keeping, taking into account the relevant IMO guidelines and resolutions;

“safe-for-entry” means a space that meets all of the following criteria: (a) the oxygen content of the atmosphere and the concentration of flammable vapours are within safe limits; (b) any toxic materials in the atmosphere are within permissible concentrations; (c) any residues or materials associated with the work authorised by the competent person will not produce uncontrolled release of toxic materials or an unsafe concentration of flammable vapours under existing atmospheric conditions while maintained as directed;

“safe-for-hot work” means a space in which all of the following criteria are met: (a) safe, non-explosive conditions, including gas-free status, exist for the use of electric arc or gas welding equipment, cutting or burning equipment or other forms of naked flame, as well as heating, grinding, or spark-generating operations; (b) the safe-for-entry criteria set out in point 18 are met; (c) existing atmospheric conditions do not change as a result of the hot work; (d) all adjacent spaces have been cleaned, rendered inert or treated sufficiently to prevent the start or spread of fire;

“statement of completion” means a confirmatory statement issued by the operator of the ship recycling facility that the ship recycling has been completed in accordance with this Regulation;

“statement of compliance” means a ship-specific certificate that is issued to ships flying the flag of a third country and that is supplemented by an inventory of hazardous materials in accordance with Article 12;

“tanker” means an oil tanker as defined in Annex I to the Convention for the Prevention of Pollution from Ships (‘MARPOL Convention’) or a Noxious Liquid Substances (NLS) tanker as defined in Annex II to that Convention;

(2) Unless otherwise defined in the Act or in these regulations, or unless the context otherwise requires, words and expressions used in these regulations shall have the same meaning assigned to them in the EU Regulation.

Application

**3. (1)** These regulations shall apply to Maltese ships wherever they may be and to all other EU ships calling at a port in Malta:

Provided that, for the purposes of Article 12 of the EU Regulation, these regulations shall also apply to non-EU ships calling at a port or anchorage in Malta.

(2) These regulations shall not apply to:

- (a) any warships, naval auxiliary, or other ships owned or operated by a state and used, for the time being, only on government non-commercial service;
- (b) ships of less than 500 gross tonnage (GT);
- (c) Maltese ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of Malta.

Inventory certificate and ready for recycling certificate

**4.** A ship to which these regulations apply shall not enter or leave a port in Malta, nor, if the ship is a Maltese ship, any other port, unless a valid inventory certificate or a valid ready for recycling certificate issued in terms of Article 9 of the EU Regulation, is kept on board.

**5.** It shall be the duty of the registered owner of the ship to ensure that the ship is in compliance with the provisions of these regulations and the provisions of the EU Regulation.

**6.** The installation or use of hazardous materials referred to in Annex I on ships shall be prohibited or restricted as specified in Annex I, without prejudice to other requirements of relevant Union law which may require further measures.

(1) Each new ship shall have on board an inventory of hazardous materials, which shall identify at least the hazardous materials referred to in Annex II and contained in the structure or equipment of the ship, their location and approximate quantities.

(2) Existing ships shall comply, as far as practicable, with paragraph 1. In the case of ships going for recycling, they shall comply, as far as practicable, with paragraph 1 of this Article from the date of the publication of the European List of ship recycling facilities ('the European List') as set out in Article 16(2). When the inventory of hazardous materials is developed it shall identify, at least, the hazardous materials listed in Annex I.

(3) The inventory of hazardous materials shall: (a) be specific to each ship; (b) provide evidence that the ship complies with the prohibition or restrictions on installing or using hazardous materials in accordance with Article 4; (c) be compiled taking into account the relevant IMO guidelines; (d) be verified either by the administration or a recognised organisation authorised by it.

(4) In addition to paragraph 3, for existing ships a plan shall be prepared describing the visual or sampling check by which the inventory of hazardous materials is developed and taking into account the relevant IMO guidelines.

(5) The inventory of hazardous materials shall consist of three parts:

- (a) a list of hazardous materials referred to in Annexes I and II, in accordance with the provisions of paragraphs 1 and 2 of this Article, and contained in the structure or equipment of the ship, with an indication of their location and approximate quantities (Part I);
- (b) a list of the operationally generated waste present on board the ship (Part II);
- (c) a list of the stores present on board the ship (Part III).

(6) Part I of the inventory of hazardous materials shall be properly maintained and updated throughout the operational life of the ship, reflecting new installations containing any hazardous materials referred to in Annex II and relevant changes in the structure and equipment of the ship.

(7) Prior to recycling, and taking into account the relevant IMO guidelines, the inventory of hazardous materials shall, in addition to the properly maintained and updated Part I, incorporate Part II for operationally generated waste and Part III for stores, and be verified by the administration or a recognised organisation authorised by it.

General  
requirements  
for ship  
owners

**7. (1)** When preparing to send a ship for recycling, ship owners shall:

- (a) provide the operator of the ship recycling facility with all ship-relevant information, necessary for the development of the ship recycling plan set out in Article 6;
- (b) notify in writing the relevant administration, within a timeframe to be determined by that administration, of the intention to recycle the ship in a specified ship recycling facility or facilities. The notification shall include at least:
  - (i) the inventory of hazardous materials; and
  - (ii) all ship-relevant information provided under point (a).

- (2) Ship owners shall ensure that ships destined to be recycled:
  - (a) are only recycled at ship recycling facilities that are included in the European List;
  - (b) conduct operations in the period prior to entering the ship recycling facility in such a way as to minimise the amount of cargo residues, remaining fuel oil, and ship generated waste remaining on board;
  - (c) hold a ready for recycling certificate issued by the administration or a recognised organisation authorised by it prior to any recycling of the ship and after the receipt of the ship recycling plan approved in accordance with Article 6(7).

(3) Ship owners shall ensure that ships arrive at the ship recycling facility with cargo tanks and pump rooms in a condition ready for certification as safe-for-hot work.

(4) Ship owners shall provide the operator of the ship recycling facility with a copy of the ready for recycling certificate issued in accordance with Article 9.

(5) Ship owners shall be responsible for the ship and shall make arrangements to maintain that ship in compliance with the requirements of the administration of the Member State whose flag the ship is flying up until such time as the operator of the ship recycling facility accepts responsibility for that ship. The operator of the ship recycling facility may decline to accept the ship for recycling if the condition of the ship does not correspond substantially with the particulars of the inventory certificate, including where Part I of the inventory of hazardous materials has not been properly maintained and updated, reflecting changes in the ship's structure and equipment. In such circumstances, the ship owner shall retain responsibility for that ship and shall inform the administration thereof without delay.

Ship  
recycling  
plan

**8.** (1) A ship-specific ship recycling plan shall be developed prior to any recycling of a ship. The ship recycling plan shall address any ship-specific considerations that are not covered in the ship recycling facility plan or that require special procedures.

(2) The ship recycling plan shall:

(a) be developed by the operator of the ship recycling facility in accordance with the relevant provisions of the Hong Kong Convention and taking into account the relevant IMO guidelines and the ship-relevant information provided by the ship owner in accordance with Article 7(1)(a)

(b) clarify whether and to what extent any preparatory work, such as pre-treatment, identification of potential hazards and removal of stores, is to take place at a location other than the ship recycling facility identified in the ship recycling plan. The ship recycling plan should include the location where the ship will be placed during recycling operations and a



concise plan for the arrival and safe placement of the specific ship to be recycled;

- (c) include information concerning the establishment, maintenance and monitoring of the safe-for-entry and safe-for-hot work conditions for the specific ship, taking into account features such as its structure, configuration and previous cargo, and other necessary information on how the ship recycling plan is to be implemented;
- (d) include information on the type and amount of hazardous materials and of waste to be generated by the recycling of the specific ship, including the materials and the waste identified in the inventory of hazardous materials, and on how they will be managed and stored in the ship recycling facility as well as in subsequent facilities; and
- (e) be prepared separately, in principle, for each ship recycling facility involved where more than one ship recycling facility is to be used, and identify the order of use and the authorised activities that will occur at those facilities.

(3) The ship recycling plan shall be tacitly or explicitly approved by the competent authority in accordance with the requirements of the state where the ship recycling facility is located, where applicable. Explicit approval shall be given when the competent authority sends a written notification of its decision on the ship recycling plan to the operator of the ship recycling facility, the ship owner and the administration. Tacit approval shall be deemed given, if no written objection to the ship recycling plan is communicated by the competent authority to the operator of the ship recycling facility, the ship owner and the administration within a review period laid down in accordance with the requirements of the state where the ship recycling facility is located, where applicable, and notified in accordance with Article 15(2).

(4) The administration may send to the competent authority of the state where the ship recycling facility is located the information provided by the ship owner pursuant to Article 7(1)(b) and the following details:

- (i) the date on which the ship was registered within the State whose flag it flies;
- (ii) the ship's identification number (IMO number);
- (iii) the hull number on new-building delivery;
- (iv) the name and type of the ship;
- (v) the port at which the ship is registered;
- (vi) the name and address of the ship owner as well as the IMO registered owner identification number;
- (vii) the name and address of the company;
- (viii) the name of any classification societies with which the ship is classed;
- (ix) the ship's main particulars (Length overall (LOA), Breadth (Moulded), Depth (Moulded), LDT, Gross and Net tonnage, and engine type and rating).

#### Surveys

**9. (1)** Surveys of ships shall be carried out by officers of the administration, or of a recognised organisation authorised by it, taking into account the relevant IMO guidelines.

(2) Where the administration uses recognised organisations to conduct surveys, as described in paragraph 1, it shall, as a minimum, empower such recognised organisations to: — require a ship that they survey to comply with this Regulation; and — carry out surveys if requested by the appropriate authorities of a Member State.

- (3) Ships shall be subject to the following surveys:
- (a) an initial survey;
  - (b) a renewal survey;
  - (c) an additional survey;
  - (d) a final survey.

(4) The initial survey of a new ship shall be conducted before the ship is put in service, or before the inventory certificate is issued. For existing ships, an initial survey shall be conducted by 31 December 2020. The survey shall verify that Part I of the inventory of hazardous materials complies with the requirements of this Regulation.

(5) The renewal survey shall be conducted at intervals specified by the administration, which shall not exceed five years. The renewal survey shall verify that Part I of the inventory of hazardous materials complies with the requirements of this Regulation.

(6) The additional survey, either general or partial depending on the circumstances, shall be conducted if requested by the ship owner after a change, replacement or significant repair of the structure, equipment, systems, fittings, arrangements and material, which has an impact on the inventory of hazardous materials. The survey shall be such as to ensure that any change, replacement, or significant repair has been made in a manner that ensures that the ship continues to comply with the requirements of this Regulation, and that Part I of the inventory of hazardous materials is amended as necessary.

(7) The final survey shall be conducted prior to the ship being taken out of service and before the recycling of the ship has started. That survey shall verify that: (a) the inventory of hazardous materials complies with the requirements of Article 5; (b) the ship recycling plan properly reflects the information contained in the inventory of hazardous materials and complies with the requirements of Article 7; (c) the ship recycling facility where the ship is to be recycled is included in the European List.

(8) For existing ships intended for ship recycling, the initial survey and the final survey may be conducted at the same time.

Issuance and  
endorsement  
of certificates

**10.** (1) After successful completion of an initial or renewal survey, the administration or a recognised organisation authorised by it shall issue an inventory certificate. That certificate shall be supplemented by Part I of the inventory of hazardous materials, referred to in Article 6(5)(a).

Where the initial survey and the final survey are conducted at the same time as provided for in Article 9(8), only the ready for recycling certificate referred to in paragraph 9 of this Article shall be issued.

The Ministry shall adopt implementing acts to establish the format of the inventory certificate to ensure it is consistent with Appendix 3 to the Hong Kong Convention. Those implementing acts shall be adopted in accordance with the examination procedure

(2) An inventory certificate shall be endorsed at the request of the ship owner either by the Administration or by a recognised organisation authorised by it after successful completion of an additional survey conducted in accordance with Article 9(6).

(3) Subject to paragraph 4, the Administration or recognised organisation authorised by it shall issue or endorse, as appropriate, an inventory certificate, where the renewal survey is successfully completed:

- (a) in the three month period before the expiry date of the existing inventory certificate, and the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing one;
- (b) after the expiry date of the existing inventory certificate, and the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing one;
- (c) more than three months before the expiry date of the existing inventory certificate, and the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

(4) Where a renewal survey has been successfully completed and a new inventory certificate cannot be issued or placed on board before the expiry date of the existing certificate, the administration or recognised organisation authorised by it shall endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed five months from the date of expiry.

(5) In case of an inventory certificate issued for a period of less than five years, the Administration or the recognised organisation authorised by it may extend the validity of the existing certificate for a further period which shall not exceed five years.

(6) In special circumstances as determined by the Administration, a new inventory certificate need not be dated from the date of expiry of the existing certificate as required by sub para (a) and (b) of paragraph 3 and paragraphs 7 and 8. In those circumstances, the new certificate shall be valid for a period not exceeding five years from the date of completion of the renewal survey.

(7) Where a ship is not at the port or anchorage where it is to be surveyed when the inventory certificate expires, the Administration may, if it is proper to do so, extend the period of validity of the inventory certificate for a period not exceeding three months to enable the ship to complete its voyage to the port in which it is to be surveyed. Any such extension granted shall be conditional on the survey being completed at that port before the ship leaves. A ship to which an extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled, by virtue of such extension, to leave the port without having a new certificate. When the renewal survey is completed, the new inventory certificate shall be valid for a period not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

(8) An inventory certificate for a ship engaged on short voyages and which has not been extended under the conditions referred to in paragraph 7 may be extended by the administration for a period of grace of up to one month from its expiry. When the renewal survey is completed, the new inventory certificate shall be valid for a period not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

(9) After successful completion of a final survey in accordance with Article 9(7), the Administration or a recognised organisation authorised by it shall issue a ready for recycling certificate. That certificate shall be supplemented by the inventory of hazardous materials and the ship recycling plan.

The Ministry shall adopt implementing acts to establish the format of the ready for recycling certificate to ensure it is consistent with Appendix 4 to the Hong Kong Convention. Those implementing acts shall be adopted in accordance with the examination procedure. A ready for recycling certificate issued after a final survey in accordance with the first sub paragraph of this paragraph shall be accepted by the other Member States and regarded for the purposes of this Regulation as having the same validity as a ready for recycling certificate issued by them.

Duration  
and validity  
of  
certificates

**11.(1)** Subject to Article 9, an inventory certificate shall be issued for a period specified by the Administration, which shall not exceed five years.

(2) An inventory certificate issued or endorsed under Article 9 shall cease to be valid in any of the following cases: (a) if the condition of the ship does not correspond substantially with the

particulars of that inventory certificate, including where Part I of the inventory of hazardous materials has not been properly maintained and updated, reflecting changes in ship structure and equipment, taking into account the relevant IMO guidelines; (b) where the renewal survey is not completed within the intervals specified in Article 8(5).

(3) A ready for recycling certificate shall be issued by the administration or by a recognised organisation authorised by it for a period not exceeding three months.

(4) A ready for recycling certificate issued under Article 9(9) shall cease to be valid where the condition of the ship does not correspond substantially with the particulars of the inventory certificate.

(5) By way of derogation from paragraph 3, the ready for recycling certificate may be extended by the administration or by a recognised organisation authorised by it for a single point to point voyage to the ship recycling facility.

Port State  
control

**12.** Any national law inconsistent with this Subsidiary Legislation shall cease to be operative.

Requirements  
for ships flying  
the flag of a  
third country

**13.(1)** When calling at a port or anchorage of a Malta State, a ship flying the flag of a third country shall have on board an inventory of hazardous materials that complies with Article 5(2).

Notwithstanding the first subparagraph, access to a specific port or anchorage may be permitted by the administration in the event of force majeure or overriding safety considerations, or to reduce or minimise the risk of pollution or to have deficiencies rectified, provided that adequate measures to the satisfaction of the administration have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

(2) The installation of hazardous materials referred to in Annex I on ships flying the flag of a third country, whilst in a port or anchorage of Malta, shall be prohibited or restricted as specified in Annex I. The use of hazardous materials referred to in Annex I on ships flying the flag of a third country, whilst in a port or anchorage of Malta, shall be prohibited or restricted as specified in Annex I, without prejudice to the exemptions and transitional arrangements applicable to those materials under international law.

(3) The inventory of hazardous materials shall be specific to each ship, be compiled taking into account the relevant IMO guidelines and serve to clarify that the ship complies with paragraph 2 of this Article. When the inventory of hazardous materials is developed it shall identify, at least, the hazardous materials listed in Annex I. A plan shall be established by the ship flying the flag of a third country describing the visual/ sampling check by which the inventory of hazardous materials is developed taking into account the relevant IMO guidelines.

(4) The inventory of hazardous materials shall be properly maintained and updated throughout the operational life of the ship, reflecting new installations containing any hazardous materials referred to in Annex II and relevant changes in the structure and equipment of the ship, taking into account the exemptions and transitional arrangements applicable to those materials under international law.

(5) A ship flying the flag of a third country may be warned, detained, dismissed or excluded from the ports or offshore terminals under the jurisdiction of Malta in the event that it fails to submit to the administration a copy of the statement of compliance in accordance with paragraphs 6 and 7 of this Article, together with the inventory of hazardous materials, as appropriate and on request from the administration. The administration shall immediately take action and shall immediately inform the relevant authorities of the third country whose flag the ship concerned is flying. Failure to update the inventory of hazardous materials shall not constitute a detainable deficiency, but any inconsistencies in the inventory of hazardous materials shall be reported to the relevant authorities of the third country whose flag that ship is flying.

(6) The statement of compliance shall be issued after verification of the inventory of hazardous materials by the relevant authorities of the third country whose flag the ship is flying or an organisation authorised by them, in accordance with the national requirements. The statement of compliance may be modelled on the basis of Appendix 3 to the Hong Kong Convention.

(7) The statement of compliance and the inventory of hazardous materials shall be drawn up in an official language of the issuing relevant authorities of the third country whose flag the ship is flying and where the language used is not English, French or Spanish, the text shall include a translation into one of those languages.

(8) Ships flying the flag of a third country applying to be registered under the flag of a Member State shall ensure that an inventory of hazardous materials, as provided for in Article 5(2), is kept on board or is established within six months of the registration under the flag of that Member State or during any of the next surveys under Article 8(3), whichever comes first.

Requirements  
necessary for  
ship recycling  
facilities to be  
included in the  
European List

**14.(1)** In order to be included in the European List, a ship recycling facility shall comply with the following requirements, in accordance with the relevant provisions of the Hong Kong Convention and taking into account the relevant guidelines of the IMO, the ILO, the Basel Convention and of the Stockholm Convention on Persistent Organic Pollutants and of other international guidelines:

- (a) it is authorised by its competent authorities to conduct ship recycling operations;
- (b) it is designed, constructed and operated in a safe and environmentally sound manner;
- (c) it operates from built structures;
- (d) it establishes management and monitoring systems, procedures and techniques which have the purpose of preventing, reducing, minimising and to the extent practicable eliminating:
  - (i) health risks to the workers concerned and to the population in the vicinity of the ship recycling facility, and
  - (ii) adverse effects on the environment caused by ship recycling;
- (e) it prepares a ship recycling facility plan;
- (f) it prevents adverse effects on human health and the environment, including the demonstration of the control of any leakage, in particular in intertidal zones;
- (g) it ensures safe and environmentally sound management and storage of hazardous materials and waste, including:



- (i) the containment of all hazardous materials present on board during the entire ship recycling process so as to prevent any release of those materials into the environment; and in addition, the handling of hazardous materials, and of waste generated during the ship recycling process, only on impermeable floors with effective drainage systems;
    - (ii) that all waste generated from the ship recycling activity and their quantities are documented and are only transferred to waste management facilities, including waste recycling facilities, authorised to deal with their treatment without endangering human health and in an environmentally sound manner;
  - (h) it establishes and maintains an emergency preparedness and response plan; ensures rapid access for emergency response equipment, such as fire-fighting equipment and vehicles, ambulances and cranes, to the ship and all areas of the ship recycling facility;
  - (i) it provides for worker safety and training, including ensuring the use of personal protective equipment for operations requiring such use;
  - (j) it establishes records on incidents, accidents, occupational diseases and chronic effects and, if requested by its competent authorities, reports any incidents, accidents, occupational diseases or chronic effects causing, or with the potential for causing, risks to workers' safety, human health and the environment;
  - (k) it agrees to comply with the requirements of paragraph 2.
- (2) The operator of a ship recycling facility shall:
- (a) send the ship recycling plan, once approved in accordance with Article 7 (3) to the ship owner and

the administration or a recognised organisation authorised by it;

- (b) report to the administration that the ship recycling facility is ready in every respect to start the recycling of the ship;
- (c) when the total or partial recycling of a ship is completed in accordance with this Subsidiary Legislation, within 14 days of the date of the total or partial recycling in accordance with the ship recycling plan, send a statement of completion to the administration which issued the ready for recycling certificate for the ship. The statement of completion shall include a report on incidents and accidents damaging human health and/or the environment, if any.

(3) The Administration shall adopt implementing acts to establish the format of:

- (a) the report required by point (b) of paragraph 2 of this Article to ensure it is consistent with Appendix 6 to the Hong Kong Convention; and
- (b) the statement required by point (c) of paragraph 2 of this Article to ensure it is consistent with Appendix 7 to the Hong Kong Convention. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25 of this Regulation.

Authorisation of ship recycling facilities located in a Member State

**15 (1)** Without prejudice to other relevant provisions of laws of Malta, the Administration shall authorise ship recycling facilities located in Malta that comply with the requirements set out in Article 13 to conduct ship recycling. That authorisation may be granted to the respective ship recycling facilities for a maximum period of five years and renewed accordingly. Provided that the requirements of this Regulation are complied with, any permit produced pursuant to other relevant national or Union law provisions may be combined with the authorisation under this Article to form a single permit, where such a format obviates the unnecessary duplication of information and the duplication of work by the operator of the ship recycling facility or the ship recycling company or the competent authority. In those cases the authorisation may be extended in accordance with the permit regime referred to in the first subparagraph, but not exceeding a maximum period of five years.

(2) The Administration shall establish and update a list of the ship recycling facilities that they have authorised in accordance with paragraph 1.

(3) The list referred to in paragraph 2 shall be communicated to the Commission without delay on the entry into force of this legal notice and every 5 years from entry into force of the legal notice.

(4) Where a ship recycling facility ceases to comply with the requirements set out in Article 13, the administration shall suspend or withdraw the authorisation given to it or require corrective actions by the ship recycling company concerned and shall inform the Commission thereof without delay.

(5) Where a ship recycling facility has been authorised in accordance with paragraph 1, the administration shall inform the Commission thereof without delay.

Language

**16** (1) The ship recycling plan referred to in Article 8 shall be developed in a language accepted by Malta. Where the language used is not English, the ship recycling plan shall be translated into one of those languages, except where the Administration is satisfied that that is unnecessary.

(2) The inventory certificate and the ready for recycling certificate issued pursuant to Article 9 shall be drawn up in English. Where the language used is not English, the text shall include a translation into English.

Designation of competent authorities and administrations

**17** (1) Transport Malta shall be the designate competent authority and Administration responsible for the application of this subsidiary legislation and shall notify the Commission of those designations. The Administration shall notify the Commission of any changes in such information.

Designation of contact

**18** (1) The Administration shall designate a contact person who shall inform or advise natural or legal persons making enquiries. The contact person of the Commission shall forward to the contact persons of the Member States any questions received which concern the latter, and vice versa.

(2) The Administration shall notify the Commission of the designation of contact persons. The Administration shall immediately notify the Commission of any changes to that information.

Reports by the  
Administration

**19 (1)** The Administration shall send to the Commission a report containing the following:

- (a) a list of the ships flying its flag to which a ready for recycling certificate has been issued, and the name of the ship recycling company and the location of the ship recycling facility as shown in the ready for recycling certificate;
- (b) a list of the ships flying its flag for which a statement of completion has been received;
- (c) information regarding illegal ship recycling, penalties and follow-up actions undertaken by the Administration.

Penalties

**20 (1)** Failure by the ship captain or any other person to comply with the provisions of these regulations shall constitute an offence, and upon conviction shall:

- (a) where there is a contravention of article 6 (1), a fine (multa) not exceeding three thousand units (3,000);
- (b) where there is a contravention of article 6 (2), a fine (multa) not exceeding nine thousand units; (9,000);
- (c) where there is a contravention of article 7, a fine (multa) not exceeding four thousand five hundred units; (4,500)
- (d) where there is a contravention of article 8, a fine (multa) not exceeding three thousand units; In case of larger vessels such fine is incremental with tonnage. Such increment shall be 3,000 units per 1000 tons.
- (e) where there is a contravention of article 9, a fine (multa) not exceeding eight thousand units; (8,000)
- (f) where there is a contravention of article 10, a fine (multa) not exceeding five hundred units; (500)
- (g) where there is a contravention of article 11, a fine (multa) not exceeding six hundred units; (600)

- (h) where there is a contravention of article 12, a fine (multa) not exceeding nine thousand units; (9,000)
- (i) where there is a contravention of article 15, a fine (multa) not exceeding twenty thousand units; (20,000)
- (j) where there is a contravention of article 16, a fine (multa) not exceeding five hundred units; (500)

International  
cooperation

**21** (1) The Ministry together with the Administration shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of potential circumvention and breach of this Regulation.

(2) The Ministry together with the Administration shall designate those members of their permanent staff responsible for the cooperation referred to in paragraph 2. That information shall be sent to the Commission, which shall distribute to those members a compiled list.

(3) The Ministry together with the Administration shall inform the commission of the relevant provision relating to enforcement of this law and the applicable penalties.

Power to  
inspect and  
detain.

**22** (1) The Registrar-General, or an appropriate inspector, may inspect any ship to which these regulations apply, having regard to the provisions of Article 11 of this Subsidiary Legislation.

(2) If satisfied that the ship is not in compliance with the provisions of these regulations and the applicable requirements of this Subsidiary legislation the Registrar-General shall take such steps as are considered necessary to ensure that the ship shall not sail until it can be ensured that the ship is in compliance with the provisions of these regulations and the applicable requirements of the Subsidiary Legislation, including warn, detain, dismiss or exclude the said ship from Maltese ports.

(3) In the case of a non-Maltese ship, if the Registrar-General takes such steps as specified in sub-article (2), the Registrar-General shall forthwith notify the competent Authority ship's flag State or consular or diplomatic representative of the flag State of the ship.

(4) For the purposes of this regulation, the provisions of article 154(2) and (3) of the Merchant Shipping Act shall apply mutatis mutandis to the Registrar-General and to appropriate inspectors.

Repeal

**23** (1) Upon the coming into force of this subsidiary legislation, Legal Notice 442 of 2018 is hereby repealed.

(2) Any licences, permits, certificates, penalties, power to inspect and detain, ensuring compliance and any other order or activity issued under Legal Notice 442 of 2018 shall continue to be regulated by the provisions of this Subsidiary Legislation until their date of expiry.

ANNEX I  
CONTROL OF HAZARDOUS MATERIALS

<b>Hazardous Material</b>	<b>Definitions</b>	<b>Control measures</b>
Asbestos	Materials containing asbestos	For all ships, new installation of materials which contain asbestos shall be prohibited.
Ozone-depleting substances	<p>Controlled substances defined in Article 1(4) of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in Annexes A,B,C or E to that Protocol in force at the time of application or interpretation of this Annex.</p> <p>Ozone-depleting substances that may be found on board ships include, but are not limited to:</p> <p>Halon 1211 Bromochlorodifluoromethane</p> <p>Halon 1301 Bromotrifluoromethane</p> <p>Halon 2402 1,2-Dibromo-1,1,2,2-tetrafluoroethane (also known as Halon 114B2)</p> <p>CFC-11 Trichlorofluoromethane</p> <p>CFC-12 Dichlorodifluoromethane</p> <p>CFC-113 1,1,2-Trichloro-1,2,2-trifluoroethane</p> <p>CFC-114 1,2-Dichloro-1,1,2,2-tetrafluoroethane</p>	New installations which contain ozone depleting substances shall be prohibited on all ships.

	<p>CFC-115 Chloropentafluoroethane</p> <p>HCFC-22</p> <p>Chlorodifluoromethane</p>	
Polychlorinated biphenyls (PCB)	<p>‘Polychlorinated biphenyls’ means aromatic compounds formed in such a manner that the hydrogen atoms on the biphenyl molecule (two benzene rings bonded together by a single carbon-carbon bond) may be replaced by up to ten chlorine atoms</p>	<p>For all ships, new installation of materials which contain Polychlorinated biphenyls shall be prohibited.</p>
Perfluorooctane sulfonic acid (PFOS) (1)	<p>‘perfluorooctane sulfonic acid’ (PFOS) means perfluorooctane sulfonic acid and its derivatives</p>	<p>New installations which contain perfluorooctane sulfonic acid (PFOS) and its derivatives shall be prohibited in accordance with Regulation (EC) No 850/2004 of the European Parliament and of the Council (2).</p>
Anti-fouling compounds and systems	<p>Anti-fouling compounds and systems regulated under Annex I to the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS Convention) in force at the time of application or interpretation of this Annex.</p>	<p>1. No ship may apply anti-fouling systems containing organotin compounds as a biocide or any other anti-fouling system whose application or use is prohibited by the AFS Convention.</p>



		25 2. No new ship or new installations on ships shall apply or employ antifouling compounds or systems in a manner inconsistent with the AFS Convention.
<p>(1) Not applicable for ships flying the flag of a third country.</p> <p>(2) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7).</p>		

ANNEX II  
LIST OF ITEMS FOR THE INVENTORY OF HAZARDOUS  
MATERIALS.

1. Any hazardous materials listed in Annex I
2. Cadmium and Cadmium Compounds
3. Hexavalent Chromium and Hexavalent Chromium Compounds
4. Lead and Lead Compounds
5. Mercury and Mercury Compounds
6. Polybrominated Biphenyl (PBBs)
7. Polybrominated Diphenyl Ethers (PBDEs)
8. Polychlorinated Naphthalenes (more than 3 chlorine atoms)
9. Radioactive Substances
10. Certain Shortchain Chlorinated Paraffins (Alkanes, C10-C13, chloro)
11. Brominated Flame Retardant (HBCDD)