



IMO
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Wreck Removal Act

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) at the IMO International Maritime Law Institute

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EXPLANATORY NOTE

1. The Nairobi International Convention on the Removal of Wrecks

1.1. General

Adopted in Kenya, The Nairobi International Convention on the Removal of Wrecks¹, 2007 provides a strict liability and compensation regime in locating, marking and the removing of wrecks that may potentially endanger the marine environment, safety of lives, goods and property at sea or obstruct navigation.

For this reason the Convention introduced the requirement of compulsory insurance as a means of security for states to recover the expenses incurred in connection with the wreck. States would have to ensure that ships flying their flags do not operate without valid insurance coverage and no ship irrespective of flag enters their waters without a valid insurance certificate covering the liability for the expenses incurred in relation to the wreck. Ships would have to carry certificate attesting valid insurance coverage² or other valid financial security in order to be granted access to the waters under the jurisdiction of the State Party.

The Convention took a long time to come into existence due to the delicate nature of its application within the Exclusive Economic Zone (EEZ)³. Coastal State jurisdiction in the EEZ is limited to the exploitation of non-living and living natural resources on and above the seabed, the construction of artificial islands, marine scientific research, and pollution control (the protection and preservation of the marine environment)⁴. With the implementation of this Convention the coastal state would be able to exercise powers to remove wrecks in the EEZ or in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial

¹ From now on referred to as the Convention.

² From a member of the international group of Protection & Indemnity Club or other insurer.

³ Defined by the UN Convention on the Law of the Sea (UNCLOS).

⁴ Article 56 of the Law of the Sea Convention.

sea is measured. To this end Malta would be able to extend its powers in relation to wrecks to the Fishing zone created for the purposes of the Fisheries Conservation and Management Act⁵.

Another issue that created a lot of debate was whether the provisions of the Convention ought to be extended to the internal waters and territorial sea of the affected coastal state. The result was the inclusion of an “opt-in” provision in the Convention, which enables the coastal state to make a declaration that it would apply the relevant provisions of the Convention to wrecks in its territorial waters.

1.2. Setup of the Convention

The structure of the Convention is divided into eight parts.

- Preamble
- Definitions
- Objective and general principles
- Scope of application
- General Obligations
- Financial Liability and Insurance Provisions
- Amendment Provisions
- Final Provisions

The scope of application of the Convention is twofold:

- Geographical scope of application - EEZ, or corresponding maritime zone as defined, and where the state chooses so to the territorial waters of a state party. Convention applies to all wrecks located in that area.
- It applies to all ships flying the flag of a state party.

Once a maritime casualty has resulted in a wreck within the relevant area and such a wreck endangers the marine environment, safety of lives, goods and property at sea or

⁵ Article 3 of the Territorial and Contiguous Zone Act, Chapter 226.

obstruct navigation, the Convention imposes an obligation on master or operator of the ship to report such casualty to the Affected State. Once notified by the master or operator the Convention provides the Affected State with criteria on the basis of which it may assess the hazard, which the wreck imposes on navigation or marine environment, and with the measures to be taken in the removal of such hazard. Even though the registered owner remains responsible for the wreck, the Convention empowers the Affected State to take measures, which will facilitate the removal of the wreck.

Once the Affected State is made aware, such State would locate and mark the wreck and warn the relevant parties of the nature and location of such wreck. Once the wreck is determined to constitute a hazard, the registered owner is required to provide evidence of liability insurance or other financial security as required by the Convention. Furthermore the State would set a deadline for the removal of the wreck by the owner, inform the latter of the deadline. If the wreck is not removed within the deadline or it poses a particularly severe hazard to navigation or the environment requiring immediate action, the State is allowed to remove the wreck itself, in the latter case provided it informs the owner and the State of Registry of its intention to intervene.

Under the Convention the owner of said wreck is strictly liable for all costs in locating, marking and removing the wreck unless he can prove that the casualty that caused the wreck was a result of an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character or was wholly caused by an act or omission done with intent to cause damage by a third party or 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.

To note that the owner would also be able to exclude his liability under this Convention if such liability is in conflict with other liability regimes, which are applicable in that, Affected State Party:

- (a) *The International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;*
- (b) *The International Convention on Liability and Compensation for Damage in Connection with the Carriage by Sea of Hazardous and Noxious Substances, 1996, as amended;*
- (c) *The Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or in the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or under national law governing or prohibiting limitation of liability for nuclear damage; or*
- (d) *The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;*

Furthermore the registered owner has the right to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended. Under Maltese legislation, Articles 349 and 350, the owner is entitled to limit his liability incurred in connection with the raising, removing or destruction of any ship which is sunk, stranded or abandoned, or of anything on board such ship to an aggregate amount not exceeding an amount equivalent to three thousand one hundred gold francs for each ton of the ship's tonnage provided said occurrences take place without his actual fault or privity.

In addition the Convention follows other conventions like the *International Convention on Civil Liability for Oil Pollution Damage* (CLC) in requiring compulsory insurance to be provided by the owner. This will enable the Affected State to institute proceedings against the insurer in case the owner does not or is unable to compensate the State for any expenses incurred in connection with the wreck in question.

1.3. Entry into force, Ratification and Implementation and Denunciation.

The Convention has been open for signature from 19th November 2007 and it will remain open until 18th November 2008. Thereafter it will be open for ratification, accession or

acceptance. It will enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary General.

With regards the implementation of the Convention the drafters have adopted a flexible approach to cater for the possible diversity and exigencies of the different national legislatures. The Convention does not provide for any sanctions or enforcement procedures but leaves it to the individual state to enforce provisions such as compulsory insurance certification. Furthermore any State Party may denounce the Convention under Article 20 at any time after the expiry of one year from the date on which this Convention comes into force for that State. It shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General.

2. Benefits for Malta in adhering to this Convention

The reason why wrecks are currently dealt with in the Merchant Shipping Act⁶(Chapter 234) is a historical one. Due to the fact that our Act is an adaptation of the UK Merchant Shipping Act of 1894 and its subsequent amendments our legislature decided to cater for wrecks in an equivalent manner. Wrecks would have been better dealt with in the Malta Maritime Authority Act⁷ or its subsidiary legislation due to the fact that the MSA normally deals with flag related issues

Regardless of the underlying motivations the removal of wrecks in territorial sea is currently catered for in Part VIII of the MSA and in subsidiary legislations 352.01 of the MMAA when wrecks are situated in internal waters. In the latter case it is important to note that the procedure adopted in dealing with wrecks is also determined by the MSA since the MMAA is silent on such procedure.

⁶ Hereinafter referred to as MSA.

⁷ Hereinafter referred to as MMAA.

For the benefit of clarity and harmonization of existing instruments I will repeal the relevant provisions from the MSA and MMAA and incorporate them in the new Wreck Removal Act. The following amendments will also be affected to such clauses:

- Extend jurisdiction of the Maltese authorities to wrecks situated outside the territorial sea of Malta, which are within the Fishing Zone.
- Minister's power to cater for wrecks must be extended to wrecks, which do not necessarily obstruct navigation but pose a hazard to the environment.

2.1. Merchant Shipping Act

Presently wrecks are specifically dealt with in Articles 330 to 341⁸. The act defines wreck as including jetsam, flotsam, lagan and derelict found in or on the shores of the sea. In other words it provides a non-exhaustive list of what might be construed as a wreck for the purposes of the act. I will adopt the one given by the convention as I find it to be more detailed.

The Minister responsible for shipping is given a wide array of powers and in particular he is empowered to appoint a Receiver of Wrecks, which will deal with wrecks situated within the territorial jurisdiction of Malta.

331. (1) Where a vessel, whether Maltese or foreign, is wrecked, stranded or in distress on the coasts of Malta or at sea within the territorial jurisdiction of Malta, such person as the Minister may designate or appoint for that purpose (in this Act referred to as the "receiver of wreck") shall take such steps as he thinks fit for the preservation of the vessel and of the lives of the persons belonging to the vessel and of the cargo and apparel of the vessel.

(2) The receiver of wreck shall have such powers as the Minister may deem fit to assign to him according to circumstances, and, in addition to the expenses properly incurred by him in the performance of his duties, he may be paid such fees as the Minister directs.

⁸ Part VIII of the MSA.

Under Article 332 a person must notify the receiver of wrecks if he takes possession of wreck situated within the limits of Malta, or finds or takes possession of any wreck outside such limits and brings such wreck within the said limits. If he is not the owner he must deliver the wreck to the receiver. In addition the receiver must give notice by publishing in the Gazette a description of the wreck and of any marks by which it is distinguished, in his possession. *“The receiver of wreck may at any time sell any wreck in his custody, if in his opinion -*

(a) It is under the value of twenty liri; or

(b) It is so much damaged or of so perishable a nature that it cannot with advantage be kept;

(c) It is not of sufficient value to pay for warehousing;

and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities, as if the wreck had remained unsold⁹.”

In addition Article 338 of the MSA provides that *“The Government of Malta shall be entitled to all wreck found in Malta which remains unclaimed by the lawful owner for more than one year from the date of the notice given”*. What is important to note is the fact that this act not only empowers the Minister to remove wrecks, which are an obstruction to navigation but also the power to destroy such wreck:

339. *Where any vessel is sunk, stranded or abandoned on or near the coasts within the territorial jurisdiction of Malta in such manner as in the opinion of the Minister to be, or to be likely to become, an obstruction or danger to navigation, the Minister may -*

(a) Take possession of, and raise, remove or destroy the whole or any part of the vessel;

(b) Light or buoy any such vessel or part until the raising, removal or destruction thereof;

(c) Sell, in such manner as he thinks fit, any vessel or part so raised or removed, and also any property recovered in the exercise of the powers under this article, and out of the proceeds of the sale reimburse himself for the expenses incurred by him in relation

⁹ Article 337 of the MSA.

thereto under this article, and the Minister shall hold the surplus, if any, of the proceeds for the benefit of the persons entitled thereto.

Since the receiver of wrecks also deals with salvage under the MSA I will not delete them from the Act in their entirety but amend them to remain solely applicable to salvage. All sections dealing with wreck would have to be amended prior to their transposition into the Wreck Removal Act.

2.2. Why Adhere to the Convention?

Wrecks are catered for by the present legislation when these are found within the internal waters and territorial sea of Malta. Adhering to the Convention would be beneficial for Malta in 3 respects:

- The Convention empowers the coastal state to remove wrecks within the EEZ or any maritime area established by the State in accordance with international law.

Since Malta did not claim an EEZ but a Fishing Zone¹⁰, it would be able to extend its jurisdiction to remove wrecks situated within such zone.

- The compulsory insurance certificate imposed on the registered owner would render the recuperation of expenses incurred by the State in connection to wrecks less problematic in that the State may institute proceedings directly against the insurer or other person providing financial security for the registered owner's liability.
- Thirdly whereas our present national legislation empowers Minister responsible for shipping to remove wrecks, which are an obstruction or danger to navigation, the Convention would afford him the same powers when the wreck is a hazard to the environment.

¹⁰ Defined under Article 3 of TERRITORIAL WATERS AND CONTIGUOUS ZONE ACT, Chapter 226 of the Laws of Malta.

2.2.1. “Opt in” Clause

States are given the option to extend the application of the Convention to their territorial waters. This option or compromise was introduced because certain states like Holland wanted their effective wreck removal facilities to be able to operate within their territorial waters without any international restrictions.

However in the case of Malta I see no reason why the application should not be extended to the territorial waters since in my opinion the Convention is very much in line with the existing legislation on the removal of wrecks. As such, for the sake of uniformity and clarity it is better to have the Wreck Removal Act applicable both within the territorial waters and the Fishing. Furthermore even though removal of wrecks within internal waters, territorial sea and specifically when within ports is catered for by the existing legislation it does not afford all powers given by the Convention namely when wrecks pose a hazard to the environment and not only when wrecks pose an obstruction or hazard to navigation.

3. Implementation Of the Nairobi International Convention on the Removal of Wrecks into Maltese law

Maltese legal system adopts a dualist approach in that a separate act of Parliament (distinct from the act of Ratification) is required in order for a convention to be applicable domestically. Courts cannot enforce such convention without such act. This is provided for in the Ratification of Treaties Act¹¹: *“no provision of a treaty shall become or be enforceable as, part of the law of Malta except by or under an Act of Parliament”*.

Furthermore The MSA empowers the Minister responsible for shipping to promulgate the appropriate rules, regulations and orders to give force of law to the international conventions dealing with shipping matters and to implement the necessary procedures to implement them at national level.

¹¹ Article 3(3) of Chapter 304 of the Laws Of Malta.

374. (1) Without prejudice to the powers conferred by the foregoing provisions of this Act, the Minister may make regulations, rules or orders, or give instructions, for the carrying into operation of any of the provisions of this Act and for prescribing the fees to be paid for any service provided and any other thing done under or for the purposes of this Act, and in particular, but without prejudice to the generality of the foregoing, for prescribing anything that is required or authorized by this Act to be prescribed.

(2) Regulations, rules and orders made under the provisions of this Act shall include such requirements, in regard to the matters in respect of which the regulations, rules or orders are made, as appear to the Minister to implement the provisions in regard to those matters of international conventions or protocols ratified or acceded to by the Government of Malta.

(3) Any power conferred on the Minister by this Act to make regulations, rules or orders, or to give instructions, shall include power -

(a) to vary, alter or repeal any such regulation, rule, order or instruction, without prejudice to the making of a new regulation, rule or order, or the giving of a new instruction;

(b) Subject to such limitations or other express provision contained in this Act, to provide for fines (multa or ammenda) or imprisonment, or both, and for such other sanction, as the Minister may deem appropriate;

(c) To make such transitional or other incidental or supplementary provisions as may appear to the Minister to be appropriate.

(4) Regulations, rules and orders made under any of the provisions of this Act may be made in the English language only.

(5) Regulations, rules and orders made under this Act shall be laid on the Table of the House of Representatives as soon as may be after they are made and if, within the period

of twenty-eight days after they are so laid, the House resolves that they be annulled or amended, the same shall thereupon cease to have effect or shall be so amended, as the case may require, but without prejudice to the validity of anything previously done there under or to the making of new regulations, rules or orders.

(6) In reckoning for the purposes of sub article (5) any such period of twenty-eight days, no account shall be taken of any time during which the House of Representatives is not in session or during which it is adjourned for more than seven days.

375. (1) For the purposes of the Ratification of Treaties Act, the Government of Malta is hereby empowered to ratify, or accede to the treaties or conventions (including protocols, annexes and appendices thereto) referring to merchant shipping listed in sub article (2), and the Minister may upon the ratification or accession of any of the said treaties or conventions make regulations giving effect to the provisions thereof, and such power shall include the power to provide that any provision of this Act inconsistent with the provisions of any such treaty or convention shall no longer apply¹².

In conclusion under Article 72(4) of the Constitution of Malta, the coming into force of any legislation or amending legislation must be preceded by publication in the Government Gazette:

Article 72 (4): When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

¹² Articles 374 and 375 of MSA, Chapter 234 of the Laws of Malta.

4. What legislation requires amendment

4.1. The Merchant Shipping Act has to be amended as follows:

- 4.1.1. The provisions dealing with wreck must be repealed and inserted after adequate amendments in the new Wreck Removal Act.
- 4.1.2. The compulsory insurance certificate made a requirement for registration under the Maltese Flag.
- 4.1.3. Since certain relevant MSA provisions also deal with salvage I will be amending the relevant provisions to be applicable solely to salvage.

Amendments to the Act must be made through another separate Act. They cannot be made through a legal notice due to the issue of hierarchy.

4.2. Subsidiary legislation 352.01

- 4.2.1. The relevant provisions will be repealed and introduced within the Wreck Removal Act.
- 4.2.2. Malta Maritime Authority is granted power to cater for wrecks which do not necessarily obstruct navigation but only pose a threat or hazard to the environment.

Amendments to subsidiary legislation can easily be affected by a legal notice, though a separate Act is preferable since the amendments done by legal notice are commonly left separate from the principal act until they are incorporated, and this usually takes considerable time.

CHAPTER _____
WRECK REMOVAL ACT

To provide for Malta's accession to the Nairobi International Convention on the Removal of Wrecks, 2007 and for the implementation of the provisions of this Convention.

_ December, 2008

1. (1) This Act may be cited as the Wreck Removal Act of 2008. Citation.

(2) This Act shall come into force on such date that the Minister may by notice in the Gazette appoint, and different dates may be so appointed for different provision and different purposes of this Act.

(3) A notice under subarticle (2) may make such transitional provisions as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought into force

2. (1) In this Act, unless the context otherwise requires: Interpretation.

“Authority” means the Malta Maritime Authority established by the Malta Maritime Authority Act; Cap. 352.

“Convention” means the Nairobi International Convention on the Removal of Wrecks, 2007;

“Fishing Zone” shall have the same meaning attributed under Article 3 of the Territorial Waters and Contiguous Zone Act; Cap 226.

“Hazard” means any condition or threat that poses a danger or impediment to navigation; or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States;

“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 its cargo;

“Minister” means the Minister responsible for Shipping and includes any person acting under his authority;

“Operator of the ship” 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 shipowner and who, on assuming such responsibility, has agreed to take over all duties and responsibilities imposed by the International Safety Management Code;

“Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, at the time of the maritime casualty. However in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company;

“Related interests” means the interests of the Republic of Malta directly affected or threatened by a wreck, such as:

- i. Maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- ii. Tourist attractions and other economic interests of the area concerned;
- iii. The health of the coastal population and the well being of the area concerned, including conservation of marine living resources and of wildlife; and
- iv. Offshore and underwater infrastructure.

“Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. The words “remove”, “removed” and “removing” shall be construed accordingly;

“Ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, and floating platforms except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources;

“State Parties” means states parties to the Convention ;

“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;

“Territorial Waters” shall have the same meaning attributed under Article 3 of the Territorial Waters and Contiguous Zone Act;

Cap. 226.

“Warship” means a warship as defined in Article 29 of the United Nations Convention on the Law of the Sea, 1982; and

“Wreck” means following upon a maritime casualty:

- i. A sunken or stranded ship; or
- ii. Any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- iii. Any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- iv. A ship that is about, or may reasonably be expected, to sink or to strand, where an act or activity to effectively assist the ship or any property in danger is not already underway.

(2) Unless otherwise defined in this Act or unless the context otherwise requires, words and expressions used herein shall have the same meaning assigned to them in the Convention.

(3) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese text, the English text shall prevail.

3. (1) The purpose of this Act is to establish the liability of the shipowners with respect to the removal of wrecks. It empowers the Minister to remove wrecks that pose a hazard to the safety of navigation or to the marine and coastal environments, or both.

Scope.

(2) This Act applies to all wreck located in internal waters and territorial sea of Malta and to the area beyond and adjacent to the territorial sea established by Malta in accordance with international law, such as the Fishing Zone.

PART I

General

4. (1) The Authority may take measures established under this Act in relation to the removal of wrecks posing a hazard.

Measures.

(2) Measures taken in accordance with subarticle (1) shall be proportionate to the hazard.

(3) Such measures shall not go beyond what is reasonably necessary to remove a wreck posing a hazard; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship’s registry, and of any persons, physical or corporate, concerned.

(4) The application of this Act shall not entitle the Republic of Malta to claim or exercise sovereignty or sovereign rights over any part of the high seas.

(5) The Republic of Malta shall endeavour to cooperate with other States affected by the maritime casualty resulting in a wreck.

5. (1) This Act shall not apply to warship or other ship owned or operated by any State and used, for the time being, only on Government non-commercial service.

Warships.

6. (1) The Act shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

Cap. 351 and 412.

(2) The provisions contained in Article 11(1), (5), (7) and (8) shall not apply when the wreck is situated within the territorial sea and internal waters of Malta.

Exclusions.

7. (1) The master and the operator of a ship involved in a maritime casualty resulting in a wreck to which this Act applies shall report the casualty to the Authority without delay. To the extent that the master or the operator of the ship has fulfilled the reporting obligation under this Article, the other person shall not be obliged to report accordingly.

Report by the master or operator of ship to the Malta Maritime Authority.

Furthermore the master or operator of a ship registered in Malta involved in a maritime casualty resulting in a wreck shall report the casualty to the affected State Party without delay.

(2) Such reports shall include the name and the principal place of business of the registered owner and all the relevant information necessary for the State to determine whether the wreck poses a hazard in accordance with the factors in Article 8, including, inter alia:

- (a) The precise location of the wreck;
- (b) The size, type and construction of the wreck;
- (c) The nature of the damage to, and the condition of, the wreck;
- (d) The nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- (e) The amount and types of oil, including bunker oil and lubricating oil, on board.

And if any person fails, without reasonable cause, to comply with this Article he shall for each offence be liable to a fine (*multa*) not exceeding five hundred euros (€500).

Failure to report.

PART II
Determination and Removal of Hazard

8. In determining whether a wreck poses a hazard, the Authority will adopt the following factors, as appropriate, and without regard to the order in which they are presented:

Determination of hazard.

- (a) Size, type and construction of the wreck;
- (b) Depth of the water in the area;
- (c) Tidal range and currents in the area;
- (d) Particularly sensitive sea areas identified and, as appropriate, designated according to guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures were adopted pursuant to paragraph 6 of Article 211 of the United Nations Convention on the Law of the Sea 1982;
- (e) Proximity of shipping routes or established traffic lanes;
- (f) Traffic density and frequency;
- (g) Type of traffic;
- (h) Nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- (i) Vulnerability of port facilities;
- (j) Prevailing meteorological and hydrographical conditions;
- (k) Submarine topography of the area;
- (l) Height of the wreck above or below the surface of the water at lowest astronomical tide;
- (m) Acoustic and magnetic profiles of the wreck;
- (n) Proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) Any other circumstances that might necessitate the removal of a wreck.

9. (1) Upon becoming aware of a wreck the Authority shall use all practicable means, including the good offices of States and organizations, to urgently warn mariners and the coastal States concerned of the nature and location of the wreck.

Locating of wreck.

(2) If the Authority has reasonable cause to believe that a

wreck poses a hazard, it shall ensure that all reasonable steps are taken to establish the precise location of the wreck.

10. (1) If the Authority determines that a wreck constitutes a hazard, it shall immediately ensure that all reasonable steps are taken to mark the wreck.

Marking of wreck.

(2) In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.

(3) The Authority shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

11. (1) If the Authority determines that the wreck constitutes a hazard, it shall immediately:

Wreck constituting a hazard.

- (a) So inform the State of the ship's registry and the registered owner; and
- (b) Proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

(2) The registered owner shall remove a wreck determined to constitute a hazard.

(3) The registered owner, or another interested party, shall provide the Authority when the wreck has been determined to be a hazard, with evidence of insurance or other financial security as required by Article 14.

(4) The registered owner may contract with any salvor or other person to perform the removal of the wreck determined to constitute a hazard on the owner's behalf. Before such removal commences, the Authority may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with safety and environmental considerations.

(5) When such removal has commenced, the Authority may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with safety and environmental considerations.

(6) The Authority shall:

- (a) Set a reasonable deadline within which the registered owner must remove the wreck, taking

into account the nature of the hazard determined in accordance with Article 8;

- (b) Inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; or
- (c) Take immediate measures for the removal in circumstances where the hazard becomes particularly severe, in which case it shall inform the registered owner in writing that it intends to intervene immediately.

(7) If the registered owner does not remove the wreck within the deadline set under subarticle (6)(a) or the registered owner cannot be contacted by the Authority, the latter may undertake the removal of the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

(8) If, however, immediate action is required and the Authority has informed the State of the ship's registry and the registered owner accordingly, it may undertake the removal of the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

(9) The information identified in the reports referred to in Article 7(2) shall be provided by the Authority to the registered owner.

(10) If the registered owner fails, without reasonable cause, to comply with this Article he shall for each offence be liable to a fine (*multa*) not exceeding five hundred euros (€500).

PART III

Liability and Compulsory insurance provisions

12. (1) Subject to Article 13, the registered owner shall be liable for the costs of locating, marking and removing the wreck under Articles 9, 10 and 11 respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

- (a) Resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) Was wholly caused by an act or omission done with intent to cause damage by a third party; or
- (c) Was wholly caused by the negligence or other wrongful act of any Government or other

Liability of owner
for costs.

authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(2) Nothing in this Act shall affect the right of the registered owner to limit liability under the Merchant Shipping Act or an applicable international regime of limitation of liability.

(3) Nothing in this Article shall prejudice any right of recourse against third parties.

13. (1) The registered owner shall not be liable under this Act for the costs mentioned in Article 12(1), if, and to the extent that, liability for such costs would be in conflict with:

Exemption of owner from costs.

- (a) The International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
- (b) The International Convention on Liability and Compensation for Damage in Connection with the Carriage by Sea of Hazardous and Noxious Substances, 1996, as amended;
- (c) The Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or in the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or under national law governing or prohibiting limitation of liability for nuclear damage; or
- (d) The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended; provided that the relevant convention is applicable and in force.

(2) To the extent that measures under this Act are considered to be salvage under the Laws of Malta, such law shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Act.

14. (1) The registered owner of any ship of 300 gross tonnage and above shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Act in an amount at least equal to the amount calculated in accordance with Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

Insurance or other financial security.

(2) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Act shall be issued to each ship registered in Malta of 300 gross tonnage or above by the Authority after determining that the requirements of subarticle (1) have been complied

with.

(3) With respect to a foreign ship flying the flag of a state, which is not a Party to the Convention, such certificate may be issued or certified by the Authority following an application by the registered owner of that ship.

(4) The certificate referred to in subarticles (2) and (3) shall contain the following particulars:

- (a) Name of the ship, distinctive number or letters and port of registry;
- (b) Gross Tonnage of Ship
- (c) Name and principal place of business of the registered owner;
- (d) IMO ship identification number;
- (e) Type and duration of security;
- (f) Name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (g) Period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

(5) The Authority shall withdraw the certificate issued in accordance with subarticles (2) or (3) if the conditions under which it has been issued are not maintained.

(6) The certificates referred to in subarticles (2) and (3) shall be issued in the English language.

(7) The certificate shall be carried on board any ship registered under the Maltese Flag and a copy shall be deposited with the Registry of Ships established under the Merchant Shipping Act.

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(8) An insurance or other financial security shall not satisfy the requirements of this Article 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 subarticle (2), before three months have elapsed from the date on which notice of its termination is given to the Authority unless the certificate has been surrendered to the Authority or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this Article.

(9) The Minister, subject to the provisions of this Article and having regard to any guidelines adopted by the Organization

on the financial responsibility of the registered owners, shall determine the conditions of issue and validity of the certificate.

(10) Nothing in this Act shall be construed as preventing the Authority from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Act. In such cases, the Authority relying on such information is not relieved of its responsibility as the authority issuing the certificate.

(11) Certificates issued and certified under the authority of any State Party shall be accepted for the purposes of this Act and shall be regarded as having the same force as certificates issued or certified by the Authority, even if issued or certified in respect of a ship not registered in a State Party. The Authority may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by the Act.

(12) Any claim for costs arising under this Act may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability.

Furthermore, even if the registered owner is not entitled to limit liability the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with subarticle (1). Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the owner himself, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

(13) Subject to provisions of this Act no ship to which this Article applies may be registered in Malta unless a certificate has been issued under subarticles (2) or (14).

(14) Subject to the provisions of this Article, any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port of Malta, or arriving at or leaving from an offshore facility in the territorial sea of Malta that does not carry on board a certificate attesting that insurance or other

security to the extent required by paragraph 1 is in force in respect of that ship, shall be detained by the competent port authorities until an equivalent security is given to the Authority in pursuance of this Act.

(15) Notwithstanding the provisions of subarticles (5) and (12), a ship shall not be required to carry on board or to produce the certificate required by subarticle (1), if the authority which issued such certificate in respect of that ship maintains records in an electronic format, accessible to the Authority, attesting the existence of the certificate.

(16) If insurance or other financial security is not maintained in respect of a ship owned by the Government of Malta, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate ministry of the Government of Malta stating that it is owned by the Government of Malta and that the ship's liability is covered within the limits prescribed in, subarticle (1). Such a certificate shall follow as closely as possible the model prescribed by subarticle (3).

PART IV Receiver of Wrecks

15. (1) Where a wreck is on the coasts or within the internal waters, territorial sea or fishing zone of Malta such person as the Minister may designate or appoint for that purpose (in this Act referred to as the "receiver of wreck") shall take such steps as he thinks fit for the preservation of the wreck and of any cargo and apparel of such wreck.

Receiver of wrecks.

(2) The receiver of wreck shall have such powers as the Minister may deem fit to assign to him according to circumstances and, in addition to the expenses properly incurred by him in the performance of his duties, he may be paid such fees as the Minister directs.

16. Where any person finds or takes possession of any wreck within the limits of Malta, or finds or takes possession of any wreck outside such limits and brings such wreck within the said limits, he shall:

Wrecks found by third parties.

- (a) If he is the owner thereof, give notice to the Authority that he has found or taken possession of the same, and describing the marks by which the same may be recognized;
- (b) If he is not the owner thereof, as soon as possible, deliver the same to the receiver of wreck;

And if any person fails, without reasonable cause, to comply

with this Article he shall for each offence be liable to a fine (*multa*) not exceeding five hundred euros (€500) and shall, in addition, forfeit any claim to salvage.

17. (1) Where a wreck is on the coasts of Malta or within the internal waters, the territorial sea or fishing zone of Malta any cargo or other articles belonging to or separated from the ship, which may be washed on shore or otherwise lost or taken from the ship, shall be delivered to the receiver of wreck.

Penalty for taking wreck at time of casualty.

(2) If any person, whether the owner or not, secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver of wreck or any person authorized by him to demand the same, that person shall for each offence be liable to a fine (*multa*) not exceeding five hundred euros (€500).

18. If any person takes into any foreign port any wreck found on the coast or within the internal waters or territorial sea or fishing zone of Malta and there sells the same, that person shall be liable to imprisonment for a period of not less than three years and not exceeding five years.

Taking wreck to foreign port.

19. Where the receiver of wreck takes possession of any wreck, he shall as soon as convenient cause to be published in the Gazette a description of the wreck and of any marks by which it is distinguished.

Notice in the Government Gazette.

20. (1) The registered owner of any wreck in the possession of the receiver of wreck, upon establishing his claim to the satisfaction of the receiver or through a decision of the competent court, shall, if the claim is made within one year from the date of the notice given in accordance with Article 19, and upon paying the salvage, fees and other expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him.

Claims of owners to wreck.

(2) Upon delivery of a wreck or payment of the proceeds of sale of a wreck by the receiver of wreck in pursuance of the provisions of this Part of this Act, the receiver of wreck shall be discharged from all liability in respect thereof, but the delivery or payment as aforesaid shall not prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck.

21. The receiver of wreck may at any time sell any wreck in his custody, if in his opinion:

Immediate sale of wreck in certain cases.

- (a) It is under the value of forty-six euros and fifty-nine cents (€46.59); or
- (b) It is so much damaged or of so perishable a nature that it cannot with advantage be kept;
- (c) It is not of sufficient value to pay for warehousing; and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities, as if the wreck had remained unsold.

22. Where any wreck is on or near the coasts or within the internal waters or territorial sea of Malta in such manner as in the opinion of the receiver of wrecks to be, or to be likely to become a hazard the receiver may:

Sale of wreck.

- (a) Take possession of, and raise, remove or destroy the whole or any part of the ship;
- (b) Light or buoy any such ship or part until the raising, removal or destruction thereof;

In the case described under subarticle (1) and in the cases referred to under Articles 11(6)(c), 11(7) and 11(8) of this Act, the wreck receiver shall sell the wreck, in such manner as he thinks fit, or any part of the wreck so raised or removed, and also any property recovered in the exercise of the powers under the said provisions, and out of the proceeds of the sale reimburse himself for the expenses incurred by him in relation thereto, and the receiver shall hold the surplus, if any, of the proceeds for the benefit of the persons entitled thereto:

Provided that a sale shall not (except in the case of property which is of a perishable nature, or which would deteriorate in value by delay) be made under this Article unless at least seven clear days' notice of the intended sale has been given by advertisement in at least two local newspapers:

Provided further that at any time before any property is sold under this Article, the owner thereof shall be entitled to have the same delivered to him on payment to the receiver of wrecks of the fair market value thereof to be ascertained by agreement between the receiver and the registered owner, or failing such agreement by some person to be named for the purpose by agreement between the receiver and the owner or by the Civil Court, First Hall, on an application by the receiver or the owner, and the sum paid to the receiver as the value of the property under this provision shall, for the purposes of this Article, be deemed to be the proceeds of sale of that property.

23. (1) Within forty-eight hours of wreck coming to lie in any port its master, owner or operator shall notify the Authority of the exact position and give all details and such other information as the Authority may require in connection with such wreck.

Wreck lying in port.

(2) Without prejudice to the other provisions of this Act the master, owner, or operator shall inform the Authority of the intentions and programme for the removal of the wreck within fifteen days of the wreck coming to lie in any port but such time limit may be extended by the Authority after receiving a written application from the owner, master or agent.

(3) Without prejudice to the other provisions of this Act the Authority may levy rent in respect of any wreck lying in any port. Such rent shall not exceed twelve cents per gross registered ton per day or part thereof for the first thirty days in which such wreck shall have been lying in any port; not more than forty cents per gross registered ton per day or part thereof for the next thirty days, and not more than seventy-five cents per gross registered ton per day or part thereof for any subsequent period:

Provided that when in the opinion of the Authority a wreck constitutes a serious hazard, the Authority may levy a rent of not more than seventy-five cents per gross registered ton per day or part thereof as from the date on which such hazard arises.

(4) If the gross registered tonnage of a wreck is not known or cannot be established the Authority may appoint one or more surveyors at the expense of the master, owner or agent of the wreck to give an estimated gross registered tonnage of the wreck.

(5) A certificate by a surveyor appointed by the Authority under this regulation shall be conclusive evidence of the gross registered tonnage for the purposes of this regulation.

(6) The rent due under this provision shall be paid by the master, operator or registered owner on the demand of the Authority.

24. The Government of Malta shall be entitled to all wreck found in Malta, including its territorial sea and its fishing zone, which remains unclaimed by the lawful owner for more than one year from the date of the notice given in accordance with Article 19.

Unclaimed wreck.

PART VI
Time limits

25. Rights to recover costs under this Act shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Act. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

Recovery of costs.

PART VII
Minister's Powers

26. (1) The Minister may make regulations as appear necessary from time to time to give effect to any provision of the Convention.

Powers granted to the Minister.

(2) The power of the Minister to make regulations in furtherance of these provisions shall be by reference in whole or in part to the requirements of the Convention.

PART VIII
Sanctions

27. (1) No access to any port in Malta shall be granted to a ship failing his obligation under Article 14 of this Act.

Valid Insurance coverage.

(2) In the case of deficiencies under Article 14 the Authority shall order the ship to be detained, or shall order the deficiencies to be rectified without undue delay.

(3) Where the ship is not in possession of valid insurance certification, the registered owner shall be liable to a fine (multa) not exceeding five thousand euros (€5,000) per day until valid insurance coverage is provided.

I assent

EDWARD FENECH ADAMI
President

_____, 2008

ACT No. __ of 2008

AN ACT to amend the Merchant Shipping Act, Cap. 234.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and commencement.

1. (1) The short title of this Act is the Merchant Shipping (Amendment) Act, 2008, and this Act shall be read and construed as one with the Merchant Shipping Act, hereinafter referred to as "the principal Act".

(2) This Act shall come into force on such date as the Minister responsible for shipping and ports may, by notice in the Government Gazette, appoint, and different dates may be so appointed for the different provisions and different purposes of this Act.

Amendment of article 13 of the principal Act.

2. The following Subparagraph marked as subparagraph (d) shall be added to paragraph 2 of Article 13:

(d) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of Article 14 of The Wreck Removal Act.

Amendment of article 330 of the principal Act.

3. Article 330 shall be read as follows:

In this Part of this Act, unless the context otherwise requires-

"Salvage" includes all expenses properly incurred by the salvor in the performance of the salvage services.

Amendment of Article 331 of the principal Act.

4. Article 331 shall read as follows:

(1) Where a vessel, whether Maltese or foreign, is stranded or in distress on the coasts of Malta or at sea within the territorial jurisdiction of Malta, such person as the Minister may designate or appoint for that purpose (in this Act referred to as the "receiver of wreck") shall

take such steps as he thinks fit for the preservation of the vessel and of the lives of the persons belonging to the vessel and of the cargo and apparel of the vessel.

(2) The receiver of wreck shall have such powers as the Minister may deem fit to assign to him according to circumstances, and, in addition to the expenses properly incurred by him in the performance of his duties, he may be paid such fees as the Minister directs.

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| Repeal of article 333 of the principal Act. | 5. Article 333 shall be repealed. |
| Repeal of Article 334 of the principal Act. | 6. Article 334 shall be repealed. |
| Repeal of Article 335 of the principal Act. | 7. Article 335 shall be repealed. |
| Repeal of Article 336 of the principal Act. | 8. Article 336 shall be repealed. |
| Repeal of Article 337 of the principal Act. | 9. Article 337 shall be repealed. |
| Repeal of Article 338 of the principal Act. | 10. Article 338 shall be repealed. |
| Repeal of Article 339 of the principal Act. | 11. Article 339 shall be repealed. |
| Repeal of Article 340 of the principal Act. | 12. Article 340 shall be repealed. |
| Repeal of Article 341 of the principal Act. | 13. Article 341 shall be repealed. |

Passed by the House of Representatives at Sitting No. ___ of __ ____, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

L.N. ___ of 2008

**MALTA MARITIME AUTHORITY ACT
(CAP. 352)**

Ports (Amendment) Regulations, 2008

IN exercise of the powers conferred by article 28 of the Malta Maritime Authority Act, the Minister for Competitiveness and Communications, in consultation with the Malta Maritime Authority, has made the following regulations:

Citation.

L.N. 43 of 1966.

1. (1) These regulations may be cited as the Ports (Amendment) Regulations, 2008, and shall be read and construed as one with the Ports Regulations, 1966 hereinafter referred to as “the principal regulations”.

(2) These regulations shall come into force on such date as the Minister responsible for shipping and ports may, by notice in the Government Gazette, appoint, and different dates may be so appointed for the different provisions and different purposes of these regulations.

Repeal of regulation 31 of the principal regulations.

2. Regulation 31 shall be repealed.

Repeal of regulation 32 of the principal regulations.

3. Regulation 32 shall be repealed.