

**IMO INTERNATIONAL MARITIME LAW INSTITUTE IN MALTA
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POLAND**

LEGISLATION DRAFTING PROJECT ENTITLED:

**IMPLEMENTATION OF THE 1996 INTERNATIONAL CONVENTION ON
LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION
WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES
BY SEA (HNS CONVENTION) INTO THE POLISH LEGAL SYSTEM**

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EXPLANATORY MEMORANDUM

Introduction

The great accidents at sea are always an impulse for the maritime community to take legal steps in order to solve the problem.¹ That was the case with a catastrophe of Torrey Canyon in 1967,² which led to adoption of the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (after amendments referred to as the 1992 CLC and 1992 Fund Conventions). Till now, fortunately, there has not been a spill of hazardous and noxious substances from a ship on catastrophic scale, but it is a common feeling, that current regulation of the carriage of hazardous and noxious substances by sea is piecemeal and anachronistic. The Legal Committee of International Maritime Organization (IMO) agreed that it would be undesirable to wait for a major disaster before taking action. Thus to be prepared for a prompt legal action, there is a need to fill the gap in the international compensation regime.

The text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention)³ was finally adopted by the IMO on 3 May 1996.⁴ The Convention fills a significant gap in the international regulation of marine pollution liability and is intended to add a vital component to the international regime for compensation for pollution damage at sea.⁵ HNS Convention is aimed at ensuring adequate, prompt, and effective compensation of persons who suffer damage caused by spills of hazardous and noxious substances, when carried by sea.

¹ The first was a catastrophe of Titanic, which led directly to the International Convention for the Safety of Life at Sea, which was adopted on the 1 November 1974 in London and then amended with the Protocol done in London on the 17 February 1978 (SOLAS).

² The 1967 disaster of Torrey Canyon was the first shock for the maritime community, especially because of the scale of oil spills. About 120.000 tons of crude oil were spilled into the sea and polluted also English and French coasts.

³ The text of the HNS Convention is hereby attached.

⁴ First efforts to adoption a HNS Convention was taken at a Diplomatic Conference in 1984, but due to lack of consensus on the basis of liability this conference failed to reach the agreement. J. Wren: "The Hazardous and Noxious Substances Convention 1996", Current Maritime Issue and the IMO, p. 336

⁵ There was a great public pressure for adoption of the HNS Convention. After two major oil pollution accidents: Braer in 1993 and Sea Empress in 1996 which affected UK 's coastline, the UK was one of the number of active supporters of the work to develop the HNS Convention. Ibidem: p. 337.

The HNS Convention is based on the model of the international oil pollution regime CLC/Fund and established two-tier system of compensation and provides for a Fund to pay claimants. The first tier is covered by the shipowner's liability and the second tier is covered by levies from the receivers of HNS cargo. The rule is a strict liability of the shipowner, the right to limit this liability, and to maintain compulsory insurance as a security for this liability. The claimants have a right to direct action against the insurer.

Definition of damage⁶

According to the Art 1 (6) "damage" is defined as including loss of life or personal injury on board or outside the ship and loss of and damage to the property outside the ship. So the scope of damage is wider as in the CLC because it covers also loss of life and personal injury on board the ship. Also damage to the environment is included (similarity to the CLC/Fund Conventions) and it means, that compensation is available for loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken and further the costs of preventive measures and further loss or damage caused by preventive measures.

During the works on this formula, there were no doubts as to the claims for death, personal injury⁷ and damage to property.⁸ These provisions are uncontroversial. But

⁶ Many problems arose in connection with the definition of pollution damage under CLC Convention. See: "Oil pollution and pure economic loss decided" *Landcatch v. Braer Corporation*. LMCLQ Part 1, Feb. 2000, p. 16-20. Also in *Alegrete Shipping Co Inc and another v. International Oil pollution Compensation Fund 1971 and others (The Sea Empress)* the oil pollution and damages for economic loss was decided. JIML 9 (2003) p. 224. See also: *Caribbean Petroleum Corporation and General Electric Capital Business Asset Funding Corporation v. Cristal Ltd (The Morris J. Berman)* JIML 6 (2003) p. 521.

⁷ Compensation for damage for personal injury is uncontroversial, but without any great importance. As the practice of the IOPC Fund shows there were some cases of compensation for hospitalization of persons who took part in the cleaning action. In the case of *Braer* three persons claimed the compensation in regard with the personal injury. M. Jacobson, N. Trotz: "The Definition of Pollution Damage in the 1984 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention", JMLC Vol. 17, No 4, October 1986, p. 470-471.

as usually there were some unclear points as to the definition of damage to the environment. The problem was, that hazardous and noxious substances are often of a nature that can cause such harm to the environment, which is difficult to identify as damage. A spill of highly toxic substances could disperse in the sea rather than form an easily identifiable slick (like an oil), but nonetheless pollute the coastline, the seabed, wildlife and the coastal ecostructure over a long period.⁹ The point is that the damage to the environment could be substantial, but the compensation could be relatively low. And only restricted range of claimants, such as fishermen or hoteliers can establish a claim for “loss of profits” as a result of impairment to the environment.¹⁰

Liability

The HNS Convention provides for strict liability of the shipowner for damage caused by any hazardous and noxious substances in connection with the carriage by sea on board the ship. However the Convention does not specify a definition of hazardous and noxious substances, but make references to lists set out in existing international conventions and codes as amended. This can lead to the difficulties in identification HNS because this lists cover above 6.000 different substances.¹¹ This is a very wide and multi-sourced definition of hazardous and noxious substances and thus almost every ship afloat will be affected in some way by the HNS Convention.¹²

⁸ Loss or damage to property is the most common example of “damnum emergens”. The extent of compensation of such losses does not cause major interpretation problems, so in civil law as in common law countries. There is a common respect for the rule of “restitutio in integrum”, according to which the compensation is due as to the less value of the property and the costs of reinstatement. Second element of damage is “lucrum cessans”. The extent of “damage” according to the HNS Convention covers also “loss of profits” as a result of personal injury. See: P. Wetterstein: “Carriage of Hazardous Cargoes by Sea – The HNS Convention”, Georgia Journal of International and Comparative Law, Vol. 26, No 3, 1997. P. Wetterstein: A Proprietary or Possessory Interest: A Conditio Sine Qua Non for Claiming Damages for Environmental Impairment”, in: “Harm to the Environment: The Right to Compensation and Assessment of Damages”, 1997. See also: Z. Brodecki: “Liability for Damage Caused by the Escape of Dangerous Cargoes from the Ship”, Studia Iuridica Maritima, No 2, 1990.

⁹ G. Little: “The Hazardous and Noxious Substances Convention: a new horizon in the regulation of marine pollution”, LMCLQ, p. 564

¹⁰ Ibidem, p.563.

¹¹ The HNS Convention makes references to the IMO Codes which are regularly updated for the purpose of MARPOL and SOLAS Conventions.

¹² In this contests the problem of burden of proof arose. It is on the shipowner to show that this (or any other) exception of liability should apply, thus the shipowner should take all reasonable steps to determine whether or not the Convention will apply to their cargoes. See: G. Little: ibidem, p. 557.

Art 7.1 says that in case where the incident consists of a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first occurrence. The shipowner is also liable for death and personal injury. Similarly to the 1992 CLC Convention the liability of the shipowner is excluded if he can prove that the incident was caused by:

- a) an act of war or natural disaster;
- b) wholly by an act or omission of third party which was intended to cause damage;
- c) wholly due to the negligence or wrongful acts of government or other authority in respect of the maintenance of lights or navigational aids;
- d) the failure of the shipper to inform the owner of the hazardous and noxious nature of the substances .

But if the owner or its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances the right to exclude liability is lost. ¹³

According to Art. 9 owners are entitled to limit liability in respect of any one incident to an aggregate amount calculated as follows:

- a) 10 million SDR for a ship not exceeding 2,000 units of tonnage; and
- b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in a): for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 SDR and for each units in excess of 50,000 units of tonnage, 360 SDR provided, however, that this aggregate amount shall not in any event exceed 100 million units of account. ¹⁴

¹³ Art. 7.2 (a) – (d).

¹⁴ On 1 of November 2003 limits of liability under the CLC 1992 and the Fund 1992 raised. Under the CLC 1992 the limits are:

- a) for a ship not exceeding 5,000 units of tonnage – SDR 4,510,000 (about 6 millions US\$)
- b) for a ship with a tonnage between 5,000 and 140,000 units of tonnage – SDR 4,510,000 plus SDR 631 (858 US\$) for each additional unit of tonnage; and
- c) for a ship with of a 140,000 units of tonnage or over – SDR 89,770,000 (122 millions US\$)

The amendment to Fund 1992 brings the total compensation available to SDR 203 million (276 million US\$). This sum includes any compensation paid under CLC 1992. The response to the Erika and Prestige disasters was the 2003 Protocol to Fund 1992. According to the 2003 Protocol the Supplementary Fund is established as a third tier of compensation, raising the total compensation available to SDR 750 million (about 1 billion US\$).

The right to limitation is lost when the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result.¹⁵ After an incident the owner should establish the fund, which can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee acceptable under the law of the State Party where the fund is constituted. Bearing in mind the fact that the shipowner has to maintain the compulsory insurance, the fund in most cases will be established by the insurer. The insurer (usually P&I Clubs) is able to claim the same defences against liability as the shipowner. The shipowner's liability constitutes the first tier.

The second tier is the liability of the HNS Fund. This Fund provides additional compensation to victims who cannot obtain full compensation from the shipowner. The compensation will be paid by the HNS Fund where there is no shipowner liability for damage; when an owner is financially incapable of meeting obligations under the Convention in full; when financial security is excluded or insufficient to meet claims and when the extent of the damage is in excess of the owner's liability. This liability is also limited up to the 250 million SDR (including the amount paid by the shipowner). Annual contributions to the HNS Fund are payable by the receivers of the hazardous and noxious substances.¹⁶

Implementation

It is ten years after adoption of the HNS Convention and it is still not in force. There is a very big public pressure on the ratification of this Convention. However there seems to be some legal and technical problems. Comité Maritime International has been asked by the IMO Legal Committee to look at the problem of implementation.¹⁷

Some of the problems connected with implementation are:

- imposition of penal sanctions;

¹⁵ Art. 9.2.

¹⁶ In the meaning of the HNS Convention the "receiver" is the person responsible for customs clearance of the HNS, or where there are no customs controls, the person who physically receives the consignment. See: Art. 1.4.

¹⁷ The UK Government has sponsored a set of implementation guidance notes and has created a website to aid States battling with the technical and legal problems involved. Patrick J.S. Griggs: "Obstacles to Uniformity of Maritime Law", CMI Yearbook 2002, p. 164

- control authority;
- inspection procedures;
- HNS insurance for all cargo ships;
- cope of application of the Convention in regard with HNS cargo (6.000 substances).¹⁸

The effect of the implementation of the HNS Convention is that the charterers and receivers will pay more, ports and terminals face new liabilities, shipowners will need new insurance and documentation, P&I Clubs must set up new guarantees, authorities around the world will have more requirements to police and in any accident to almost any ship claimants for environmental damage will have new legal remedies to pursue. Yet there has been little preparation in most areas of shipping. But the main problems are those connected with the wide definition of hazardous and noxious substances because it is not clear who will pay to the HNS Fund and how much.

The implementation of the HNS Convention in the European Union

There is also a big pressure in the European Union on the implementation of the HNS Convention. The European Council in its Decision 2002/971/EC of 18 November 2002 authorised the Member States, in the interests of Community, to ratify or accede to the HNS Convention.¹⁹ As pointed out in the Preamble to the above mentioned Decision, the HNS Convention is particularly important, given the interests of the Community and its Member States, because it makes for improved victim protection under international rules on marine pollution liability (in keeping with the 1982 United Nation Convention on the Law of the Sea).

Worth mentioning is that some provisions of the Convention have an influence also on Community secondary legislation on jurisdiction and the recognition and enforcement of judgements.²⁰ These matters are covered by exclusive Community competence.

¹⁸ The problems are pointed out by Professor Erik Rosaeg on: www.folk.uio.no./erikro

¹⁹ OJ L 337/55

²⁰ See: Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 12/1.

Art. 38 of the Convention provides jurisdiction in respect of action against the owner. Actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of a States Parties where an accident has caused damage in the territory, including the territorial sea or in an Exclusive Economic Zone, of one or more States Parties, or preventive measures have been taken to prevent or minimise damage in such territory including the territorial sea or EEZ. When damage in the meaning of the Convention has been caused outside the territory of any State action against the owner or person providing the security may be brought only in the courts of:

- a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or
- b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or
- c) the State Party where a fund has been constituted in accordance with Art. 9 (3)

According to art. 39 any action for compensation against the HNS Fund shall be brought only before a court having jurisdiction under art 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable. And art 40 sets out the requirements for recognition and enforcement of judgements. If the judgment has been given by a court with jurisdiction in accordance with art 38, which is enforceable in the State of origin, shall be recognized in any State Party, except: where the judgement was obtained by fraud; or where the defendant was not given reasonable notice and a fair opportunity to present the case. Such judgement shall be enforceable in each State Party as soon as the formalities required in that State have been complied with.

As laid down in the Preamble to the Council Decision 2002/971/EC the Community has sole competence for the matters covered by Articles 38, 39 and 40 of the HNS Convention inasmuch as that Convention affects the rules from the Regulation (EC) No 44/2001.

According to the HNS Convention there is no possibility for the European Community to ratify or accede to the Convention, because only sovereign States may

be party to it. It is of utmost importance to ratify this Convention within all concerned Member States as soon as possible. A time bar for Member States to ratify or to accede to the HNS Convention is 30 June 2006.

Entry into force of the HNS Convention

At the end of April 2005, the HNS Convention had been ratified by eight States representing 5,38 % of world merchant shipping tonnage. For entry into force, it requires ratification by 12 States, four of which have not less than two millions units of gross tonnage, provided that persons in these States who would be responsible for paying contributions to the general account have received a total quantity of at least 40 millions tonnes of contributing cargo in the preceding calendar year.²¹ It is expected that the HNS Convention will enter into force in 2008.

Ratification of the HNS Convention by the Republic of Poland

The Polish Government took the decision on the ratification the HNS Convention especially due to the fact that the main point of the Polish maritime policy is the protection of the marine environment in its wide meaning. Also important is the European Council Decision 2002/971/EC, according to which Poland should implement the HNS Convention until 30 June 2006. The process of ratification started in September 2005. It is of the Parliament authority to ratify this Convention. Department of the Maritime and Inland Transport is preparing now all documents which are necessary for ratification. One of the tasks of the Department is also drafting the provisions by which the HNS Convention will be implemented into the Polish legal system.

There are two different ways of ratification of international agreements by Poland. Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns: peace, alliances, political or military treaties; freedoms, rights or obligations of citizens, as specified in the Constitution; the Republic of Poland's membership in

²¹ IMO News: Issue 2/2005, p. 17.

an international organization; considerable financial responsibilities imposed on the State; matters regulated by statute or those in respect of which the Constitution requires the form of a statute. The only one body entitled to issue statutes is Parliament. In the situation, when an international agreement does not concern above mentioned matters, there is no need for the prior consent of the Parliament. The President of Poland is entitled to ratify such agreements. The HNS Convention imposes financial obligations on Polish citizens, so it requires the form of the statute. Thus the consent for ratification should be done by the Parliament.

It is worth mentioning is that according to the Art 2 of the European Council Decision 2002/971/EC the Republic of Poland when ratifying the HNS Convention shall make the following declaration:

Judgments on matters covered by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, when given by a court of the Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and the Northern Ireland, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Slovenia, the Slovak Republic, be recognized and enforced in the Republic of Poland according to the relevant international Community rules on the subject.

After the ratification of the HNS Convention its provisions will have to be implemented into the Polish legal system. The provisions concerning protection of the marine environment are set out in The Polish Maritime Code. Chapter VII of the Code deals with “The Pollution from Ships”. Art 272 – 281 (Unit 2) provide for the implementation of the CLC 1992 and Fund 1992 Conventions. Provisions by which the HNS Convention would be implemented should follow this Unit. The method of the implementation of an international agreement into the Polish legal system is to provide that the liability for damage in connection with the carriage of hazardous and

noxious substances by sea and the claims against the HNS Fund shall be governed by the HNS Convention. And this is done by the Act with amendments to the Polish Maritime Code, to which the HNS Convention is attached as an Annex.

Chapter IX of the Maritime Code deals with procedural matters with regard to the liability for maritime claims and claims connected with pollution damage. Unit 2 of this Chapter deals specifically with the claims which arose under the CLC and Fund Conventions. Art 351 states that the only competent court for this procedure is the District Court in Gdansk. The following articles provides for the procedure before this court. After the ratification of the HNS Convention it seems to be reasonable, that this court would also deal with claims which could arise under the HNS Convention. Consequently the provisions of Unit 2 of Chapter IX should be amended with an addition that the District Court in Gdansk is also competent court in connection with the HNS Convention and the procedure for the claims under CLC/Fund Conventions is also respective procedure for the claims under HNS Convention. The provisions set out the requirements for the certificate of insurance are beyond the extent of the Polish Maritime Code, so there is a need to draft also the Government Regulation in this regard.²² It should be added, that the condition precedent for the coming into force of statutes and regulations is the promulgation thereof. After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement constitutes part of the domestic legal order and is be applied directly, unless its application depends on the enactment of a statute. An international agreement ratified upon prior consent granted by statute has precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.

²² Regulations are issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act. An organ authorized to issue a regulation cannot delegate its competence in this matter to another organ.

PROJECT
entitled

An Act amending the Act “The Maritime Code” in connection with the implementation of the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

Art 1.

In the Act “The Maritime Code” after Art 281 shall be added as follows:

“Art 281(1) The liability for damage in connection with the carriage of hazardous and noxious substances by sea and the claims against HNS Fund shall be governed by the provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, done in London 3rd of May 1996, hereinafter referred to as the “HNS Convention”, together with any amendments, that may at any time be adopted by the Republic of Poland, when officially published.

Art. 281(2) For the purposes of this Act:

§1 “ship”, “person”, “owner”, “receiver”, “hazardous and noxious substances”, “damage”, “carriage by sea”, “contributing cargo”, “the HNS Fund”, “terminal”, have the meaning as in the HNS Convention.

§2 “Associated person” means a company or other body corporate which in either case is another company’s subsidiary, associate or holding company, or is the manager of or managed by, or otherwise controls or is controlled by that body corporate or a subsidiary or associate of that body corporate’s holding company.

§3 “Associate of body corporate” means body corporate being the subsidiary of the same holding company.

Art. 281(3)

§1 The owner of the ship of the Polish nationality, and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial

security to cover liability for damage according to the provisions of the HNS Convention.

§2 The certificate as to referred in § 1 is issued by the Director of the Maritime Office. The issuance and certification of the certificate is due to the charge.

Art 281(4)

§1 The ship, as to referred in Art 281(3) §1, shall not be used in navigation, unless it has a certificate issued according to the provisions of Art 281(3) §2.

§2 The certificate shall be carried on board the ship.

Art 281(5)

§1 The ship carrying hazardous and noxious substances shall not enter into the Polish port, or leave the Polish port, or use the port facilities on the territory of Poland unless the ship has certificate which is accepted and substantially conformed with the certificate mentioned in Art 12.2 of the HNS Convention.

§2 The certificate mentioned in §1 shall be carried on board the ship.

Art. 281(6) The Director of the Maritime Office may certify financial security to cover liability for damage to the owner of the ship registered in the State not Party to the HNS Convention if the owner can prove the financial ability to cover liability for damage

Art 281 (7) The Minister responsible for maritime affairs sets out, in the way of Regulation, the conditions and requirements for issuance and certification of the certificate, the model form of certificate and the level of charges, bearing in mind the international agreements binding for Poland in this matter.

Art 281(8) The authority to control the application of provisions in connection with the financial security for liability for damage is on the Director of the Maritime Office.

Art. 281(9)

§1 The HNS Fund shall be recognized as a legal person capable under Polish law to assume rights and obligations and to be a party in a legal proceedings before the competent court.

§2 The Director of the HNS Fund is a legal representative of this Fund.

Art. 281 (10) The claim against the HNS Fund can be brought by any person suffering damage if such person has been unable to obtain full and adequate compensation from the owner for damage under the terms of Chapter II of the HNS Convention:

- 1) because no liability for the damage arises under Chapter II of the HNS Convention;
- 2) because the owner liable for the damage under Chapter II of the HNS Convention is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under Chapter II of the HNS Convention does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under Chapter II of the HNS Convention after having taken all reasonable steps to pursue the available legal remedies;
- 3) because the damage exceeds the owner's liability under the terms of Chapter II of the HNS Convention.

Art. 281 (11)

§1 Any person who in a calendar year has received contributing cargo in Poland so as to be liable to contribute to the HNS Fund according to the Art. 18 and 19 of the HNS Convention shall, not later than the 1 May of the following year, inform the Minister responsible for maritime affairs of the quantity of such cargo received.

§2 The Minister shall, at a time and in the manner prescribed in the internal regulations of the HNS Fund, communicate the information mentioned in Art 21 §2 of the HNS Convention.

Art. 281 (12)

§1 Any person having received in a calendar year contributing cargo in ports or terminals in Poland shall pay contributions to the HNS Fund in accordance with Art. 18 to 21 of the HNS Convention in the amount and by the date determined by the HNS Fund.

§2 Where the quantity of a given type of contributing cargo received in ports and terminals in Poland by any person in a calendar year when aggregated with the quantity of contributing cargo received in the same calendar year in Poland by any associated person or persons exceeds the limits specified in the Convention, such receiver shall pay contributions in respect of the actual quantity of cargo received by him.

Art 281 (13) In case of damage the Director of the Maritime Office, on the victims' request, shall make available to the victim all documents regarding these damage.

Art. 2

In Chapter IX Unit 2 the following Article shall be added:

Art. 354(1) The provisions of this Unit are applicable respectively to all claims arisen under the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.

Art. 3

This Act shall come into force 14 days after its publication in the Official Journal.

Project of the
Regulation of Ministry of Transport and Construction
adopted on the

**on certificates of insurance or other financial security in respect of liability
for damage caused by hazardous and noxious substances (HNS)**

According to the Art. 281(3) §2 of the Maritime Code Act adopted on 18 September 2001 (Dz. U. Nr 138, poz. 1545, z 2002 r. Nr 41, poz. 365, z 2003 r. Nr 229, poz. 2277; 2004 r. Nr 93, poz. 895) the following is adopted:

§ 1. This Regulation sets out:

- 1) requirements and the method of issuing and certifying the certificate of insurance or other financial security in respect of liability for damage caused by hazardous and noxious substances hereby called "certificate";
- 2) form of certificate as in Annex;
- 3) the level of the payment for issuing or certifying the certificate.

§ 2. 1. The certificate confirms that the owner of the ship has the insurance or other financial security in respect of liability for damage caused by hazardous and noxious substances according to the provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 together with amendments published in a proper way.

2. Certificate is issued for a ship of the polish nationality, and for a foreign ship in case provided in art. of the 12 (2) HNS Convention.

§ 3. 1. The application for the certificate should contain:

- 1) name of ship, port of registry, name of the authority of registry;
- 2) name and full number of the principal place of business of the owner,
- 3) IMO ship identification number;
- 4) type and duration of security;

- 5) name and address of the insurer and guarantor, where appropriate, place of business where the insurance or security is established;
- 6) period of validity of security;

2. To this application it should be attached: document of insurance or of other financial security in respect of liability issued by the insurer or the bank, which has its seat in the territory of Poland or other Member State of the European Union, or certified copy of one of such documents;

§ 4. 1. The certificate should contain:

- 1) name of ship, port of registry, name of the authority of registry;
- 2) name and full number of the principal place of business of the owner,
- 3) IMO ship identification number;
- 4) type and duration of security;
- 5) name and address of the insurer and guarantor, where appropriate, place of business where the insurance or security is established;
- 6) period of validity of certificate;

2. Certificate is issued in Polish and English.

3. The form of the certificate is attached hereby in an Annex.

4. The copy of the certificate is sent by the Director of the Maritime Office to the authority of the registrar.

§ 5. The certificate can be certify if it fulfills all requirements according to the § 4 sub.1

§ 6. The Director of the Maritime Office is entitled to the charges:

- 1) for the issue of the certificate: - 0,1 of the tariff unit for every unit of tonnage of the ship;
- 2) for the certifying of the certificate – 1/10 of the sum mentioned in sec. 1

§ 7. This Act shall come into force 14 days after its publication in the Official Journal.

ANNEX

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN
RESPECT OF LIABILITY FOR DAMAGE CAUSED BY HAZARDOUS AND
NOXIOUS SUBSTANCES (HNS)**

Issued in accordance with the provisions of Article 12 of the International Convention
on Liability and Compensation for Damage in Connection with the Carriage of
Hazardous and Noxious Substances by Sea, 1996

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the owner

This is to certify that there is in force in respect of the above named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996,

Type of security

.....

Duration of security

.....

Name and address of the insurer and guarantor

.....

Name:

.....

Address

.....

This certificate is valid until:

.....

Issued or certified by the Government of:

.....

.....

(Full designation of State)

At.....

(Place)

on.....

(Date)

.....

(Signature and title of issuing or certifying official)

Explanatory notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry 'Duration of the Security' must stipulate the date on which such security takes effect.
5. The entry 'Address of the insurer(s) and/or guarantor(s)' must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.