



**IMO**  
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# **A Law on the Incorporation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 into the Greek Legal System**

**A Legislation Drafting Project submitted in partial fulfillment of the requirements  
for the award of the Degree of Master of Laws (LL.M.) in International Maritime  
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To FC for their unending support

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## **Explanatory Note**

*“The sea, the great unifier, is man’s only hope. Now, as never before, the old phrase has a literal meaning: We are all in the same boat”.*

Jacques Yves Cousteau, Oceanographer

### **I. Introduction**

The purpose of this law is to provide for the accession of the Hellenic Republic to the International Convention for the Control and Management of Ships’ Ballast Water and Sediments,<sup>1</sup> adopted in a Diplomatic Conference of the International Maritime Organization<sup>2</sup> in 2004<sup>3</sup> and its incorporation into the Greek legal system. The Convention will enter into force twelve months pending the ratification or accession of at least 30 States that comprise not less than 35 per cent of the world’s gross tonnage.<sup>4</sup> It is in the vital interest of Greece, both as a member of the IMO and its Council, as well as a country actively involved in shipping, to accede to the Convention so as to impede the ever-increasing introduction of aquatic invasive species in her seas in an effort to preserve a marine environment of great diversity.

### **II. Background on Bioinvasion**

The rapid expansion of trade by air, land and sea during the 20<sup>th</sup> century, throughout the world has resulted in awareness being raised regarding environmental issues.<sup>5</sup> This is evident especially in respect of shipping considering that it carries on a global scale about 90 per cent of trade from all ends of the world and 3-5 billion tonnes of ballast water each year.<sup>6</sup> One of the most important vectors of marine pollution, which has been brought to the attention of the international community over the last 20 years, arises from the discharge of vessel’s ballast water near ports or coasts.

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<sup>1</sup> Hereinafter referred to as BWM Convention or the Convention.

<sup>2</sup> Hereinafter referred to as IMO.

<sup>3</sup> International Convention for the Control and Management of Ships’ Ballast Water and Sediments, London, 16 February 2004, 43 ratifications, IMO/BWM/CONF36.

<sup>4</sup> Article 18 BWM Convention.

<sup>5</sup> Ciesla, David; ”Developments in Vessel-Based Pollution: The International Maritime Organization’s Ballast Water Convention and the European Union’s Regulation to phase out Single-Hull oil Tankers”, Colorado Journal of International Environmental Law and Policy, (2003), p. 109.

<sup>6</sup> IMO, Global Ballast Management Programme, Ballast Water as a Vector, available at <http://globallast.imo.org/ballast-water-as-a-vector/>.

Ballasting is the process by which a vessel fills its dedicated ballast tanks with water in order to achieve a level of equilibrium and stability so that it may carry out its allotted tasks when not loaded up to its full capacity.<sup>7</sup> This is usually conducted while the ship is in a port after unloading due to shifts in the load of the vessel.<sup>8</sup> It is very likely that such water may contain microscopic aquatic organisms native to that coastal region. The issue is that these non-indigenous species (NIS), may survive in the vessel's ballast tanks and when discharged in another marine ecosystem they may cause severe, and in some cases irreparable ecological damage. The complete removal of invasive species once they are introduced in a foreign marine environment does not seem possible due to the huge costs associated with it, together with issues of demarcation in respect of the affected area.<sup>9</sup> As a result, the only way to combat bioinvasion is to adopt preventive mechanisms based on the precautionary principle.<sup>10</sup>

Bioinvasion is basically the entrance of invasive species in a foreign ecosystem resulting in its alteration. Such pathogens have been termed by biologists as Aquatic Nuisance Species (ANS).<sup>11</sup> Contrary to other types of pollution, bioinvasion has not received from international organizations, governments and researchers, the legal status required so that effective measures may be drawn up to combat its harmful effects, mainly because it is more difficult to discern compared to chemical pollution.<sup>12</sup> However, the increase of trade volume all over the world has led by analogy to an increasing at an alarming rate, influx of invasive species<sup>13</sup> with severe economic consequences. The Marine Environmental Protection Committee<sup>14</sup> in its 49<sup>th</sup> session voiced its concern that “the effects of [invasive species] in the waters of Australia, Canada and the United States as well as the Black Sea have been devastating.”<sup>15</sup>

It will naturally fall upon the State whose coastal waters and lakes have been contaminated with these organisms, to take appropriate action to clean them at their own expense. Certain experts claim that losses to the global economy attributed to bioinvasion range from \$55 billion to \$248 billion annually.

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<sup>7</sup> Ciesla, David; *loc. cit.* pp. 108-109.

<sup>8</sup> Bostrom, Suzanne; “Halting the Hitchhikers: Challenges and Opportunities for Controlling Ballast Water Discharges and Aquatic Invasive Species”, *Environmental Law*, Vol. 39, (2009), p. 871.

<sup>9</sup> Fonseca de Souza Rolim, Maria Helena; *The International Law on Ballast Water: Preventing Biopollution*, Martinus Nijhoff Publishers, Leiden, The Netherlands, 2008, pp. 19-20.

<sup>10</sup> IMO, *Alien Invaders - Putting a Stop to the Ballast Water Hitch-Hikers* (1999), at <http://www.imo.org/OurWork/Environment/BallastWaterManagement/Documents/LINK%2014.pdf>

<sup>11</sup> Browning, Amy; “The Current State of Ballast Water Regulations”, *Environmental & Energy Law & Policy Journal*, Vol. 2, (2007), p. 327.

<sup>12</sup> Fonseca de Souza Rolim, Maria Helena; *op. cit.* p.3.

<sup>13</sup> *Alien Invaders in Ballast Water - New Convention to be Adopted at IMO*, at [http://www.imo.org/blast/mainframe.asp?topic\\_id=848&doc\\_id=3455](http://www.imo.org/blast/mainframe.asp?topic_id=848&doc_id=3455)

<sup>14</sup> Hereinafter referred to as MEPC.

<sup>15</sup> International Maritime Organization, *Marine Environmental Protection Committee, 49<sup>th</sup> Session, 14-18 July 2003*, at [http://www.imo.org/blast/mainframe.asp?topic\\_id=109&doc\\_id=2798](http://www.imo.org/blast/mainframe.asp?topic_id=109&doc_id=2798)

For instance, in the 1980s, there was an invasion of *Mnemiopsis Leidyi*, a comb jelly fish native to the east coast of America, in the Black Sea that wiped out local fisheries, which were already in decline.<sup>16</sup> This was estimated to have cost the fisheries industry \$30 million a year affecting 2 million people who earned their livelihood from fishing.<sup>17</sup> Since then its expansion has not faltered; 2009 reports indicate that it was recorded in both the eastern and western parts of the Mediterranean, Marmara and the Caspian.<sup>18</sup> Consequently one can reasonably assess in an accurate manner what the ramifications will be in the event of such an alien entering a habitat not accustomed to its native environment both ecologically and financially.

### III. Background to the Adoption of the BWM Convention

The adoption of a legal framework for protecting the marine ecosystem has been at the forefront of IMO's agenda for many years, whatever the source of pollution. Drawing from Article 196 of the United Nations Convention on the Law of the Sea<sup>19</sup> of 1982 that expressly imposes an obligation on State parties to adopt preventive measures that will deter "... the intentional or accidental introduction of species alien or new ... which may cause significant and harmful changes" to the marine ecosystem under the jurisdiction of the State, the BWM Convention is illustrative of this obligation. Although this umbrella provision recognizes bioinvasion as a type of marine pollution, it has been framed in somewhat general terms and so does not provide specific information or a knowhow on remedies to deter the effects of such invaders. In addition to this, Article 211 of UNCLOS requires States to create legislation that will prevent operational pollution caused by ships. Impliedly this could be taken also to refer to pollution originating from ballast water.<sup>20</sup>

### IV. The Ballast Water Management Convention of 2004

IMO has recognized the discharge of ballast water carried on board merchant vessels as one of the four most significant threats to the world's oceans.<sup>21</sup> In 1991, the MEPC at its 31<sup>st</sup> session introduced the International Guidelines for preventing the introduction of unwanted Aquatic Organisms and Pathogens from Ships Ballast Water and Sediment Discharges that were adopted by Resolution 50(31)

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<sup>16</sup> Bright, Christopher; "Invasive Species: Pathogens of Globalization", Foreign Policy, No. 116, (1999), p. 52.

<sup>17</sup> Bostrom, Suzanne; *op. cit.*, p. 873.

<sup>18</sup> No. 22, Guidance on Port Biological Baseline Surveys (PBBS), Mr. Adnan Awad, Mr. Fredrik Haag, Dr. Anil Arga Chandrashekar, Dr. Ameer Abdulla, London: IMO, 2014. p. 1.

<sup>19</sup> United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, entered into force 16 November 1994, 167 ratifications, 1833 UNTS 396; 33 ILM 1309. Hereinafter referred to as UNCLOS.

<sup>20</sup> Bostrom, Suzanne; *op. cit.*, pp. 880-881.

<sup>21</sup> IMO, Global Ballast Management Programme, *The Problem*: "The other three are land-based sources of marine pollution, overexploitation of living marine resources and physical alteration/destruction of marine habitat."

of the MEPC.<sup>22</sup> These were then revised in 1993 by the IMO Assembly Resolution A.774(18).<sup>23</sup> However, it was determined that the framework provided therein was not sufficient to prevent completely the introduction of alien microorganisms and as a result in 1997 the IMO Assembly adopted by Resolution A.868(20), the Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens.<sup>24</sup>

The Guidelines contained provisions aimed at minimizing the expansion of alien species from discharges of ballast water and sediments.<sup>25</sup> Nevertheless, they were deemed also insufficient to combat the problem they had been created for, mainly due to the fact that IMO resolutions are soft-law instruments,<sup>26</sup> with which compliance is voluntary.<sup>27</sup> The result of the above arduous process was the adoption by consensus of the BWM Convention in 2004.

## V. Structure of the Convention

The BWM Convention constitutes a first attempt to provide a treaty regulating concisely the discharge of ballast water in order to prevent practices that may result in biopollution. The basic text of the Convention is comprised of twenty-two Articles, which deal with issues of implementation and application by flag registries and port State control of coastal States. It also contains an Annex, which is an integral component of the BWM Convention<sup>28</sup> dealing with technical aspects of ballast water management procedures. In addition to this, there are two Appendices containing samples regarding the recommended form of the International Ballast Water Management Certificate issued by the flag State and of the Ballast Water Record Book that needs to be on board the vessel at all time. Lastly, there are eighteen Guidelines adopted through MEPC resolutions that provide technical assistance for the correct implementation of the different procedures aimed at controlling the discharge of ballast water.

In the general obligations provision, the cooperation between State parties<sup>29</sup> and IMO<sup>30</sup> is encouraged in order to develop ballast water management standards, which are up to date with current practices. The Convention applies to both to “ships entitled to fly the flag of a party” and “ships not entitled to

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<sup>22</sup> Resolution MEPC.31/21, 4 July 1991.

<sup>23</sup> IMO Assembly, Resolution A.774(18), 4 November 1993.

<sup>24</sup> IMO Assembly, Resolution A.868(20), 27 November 1997.

<sup>25</sup> *Ibid.* Guidelines 3-4, paragraph 2.

<sup>26</sup> Fonseca de Souza Rolim, Maria Helena; *op. cit.*, pp. 80 and 84.

<sup>27</sup> Bostrom, Suzanne; *op. cit.*, pp. 882-883.

<sup>28</sup> Article 2(2) BWM Convention.

<sup>29</sup> Article 2(4)(5) BWM Convention.

<sup>30</sup> Article 2(9) BWM Convention.

fly the flag of a Party but which operate under the authority of a Party.”<sup>31</sup> It is of great importance to note that the requirements and obligations of the Convention are incumbent even upon ships that fly the flag of States non-parties to it when in waters of State parties<sup>32</sup> so as to prevent most favourable treatment being afforded to them.

Although this may seem to indicate that the Convention is part of customary law, this can hardly be regarded as the case. Looking at the MEPC Guidelines it is evident that there is no substantially consistent practice among flag and port States in relation to the control of vessel’s ballast water discharges.<sup>33</sup> It is a matter that has been largely left to the discretion of the State, which often follows the IMO Guidelines.<sup>34</sup> This relative approach is best suited to the regulation of ballast water discharges due to the fact that different States do not have identical geography which complicates matters of implementation and uniformity as we shall see below in relation to Greece.

The flag State has an obligation to require vessels entitled to fly its flag or operating under its authority to comply with the requirements of the Convention as well as the Annex that deals with technical aspects and may take “effective measures” to ensure implementation.<sup>35</sup> Ships’ ballast water is to be conducted through ballast water management in compliance with the Annex.<sup>36</sup> The standards for ballast water management<sup>37</sup> are based on the year the vessel was built together with the water capacity of its ballast tanks.<sup>38</sup> Depending on these criteria as amended by IMO’s latest Resolution A.1088(28) different vessels must meet different requirements in relation to renewal surveys and ballast water standards.<sup>39</sup>

Section B of the Annex makes explicit reference to the ballast water exchange method which basically allows ships to discharge ballast water when being “at least 200 nautical miles from the nearest land and in water at least 200 meters in depth”<sup>40</sup> subject to the technical standard requirements of the Annex<sup>41</sup> and in accordance with the MEPC guidelines.<sup>42</sup> It recognizes that where this standard cannot be met, a ship may conduct ballast water exchange at least 50 nautical miles from the nearest land

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<sup>31</sup> Article 3(1) BWM Convention.

<sup>32</sup> Article 3(3) BWM Convention.

<sup>33</sup> Fonseca de Souza Rolim, Maria Helena; *op. cit.*, p. 40.

<sup>34</sup> Browning, Amy, *op. cit.*, p. 330.

<sup>35</sup> Article 4(1) BWM Convention.

<sup>36</sup> Regulation A-2 Annex, BWM Convention.

<sup>37</sup> Section D Annex, BWM Convention.

<sup>38</sup> Regulation B-3 Annex, BWM Convention.

<sup>39</sup> Resolution MEPC. A.1088(28), Application of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004, 4 December 2013.

<sup>40</sup> Regulation B-4(1)(.1) Annex, BWM Convention.

<sup>41</sup> Regulation D-1 Annex, BWM Convention.

<sup>42</sup> Resolution MEPC.124(53), Guidelines for ballast water exchange (G6), 22 July 2005.



where the water column is at least 200 meters.<sup>43</sup> However, this procedure may not be suited to Greece as both the Aegean and the Ionian Seas are semi-enclosed Seas<sup>44</sup> containing numerous islands with rich marine diversity. Consequently, where both requirements cannot be met there is a third option empowering the port State to designate areas where a ship can carry out ballast water exchange<sup>45</sup> subject to the guidelines adopted by the MEPC.<sup>46</sup> The Annex specifies the number of viable organisms per cubic metre that may be discharged taking into account the existence of microbes<sup>47</sup> making it a *de facto* requirement that compliant with the Convention ballast water management systems have to be approved by the Administration.<sup>48</sup> Ballast water systems that use active chemical substances need to be approved by IMO guidelines<sup>49</sup> prior to being used within coastal State waters to treat ballast water.<sup>50</sup>

Also, to promote the performance of the Convention, the flag State has to develop ballast water management at a national level within its waters and ports.<sup>51</sup> It is specified that the vessel must follow a ballast water management plan that will be approved by the Administration of the State party having taken into account the IMO Guidelines.<sup>52</sup> It will basically specify the procedures the crew has to follow so that the ship may act in accordance with the Convention. Consequently, each registered vessel must keep a ballast water record book on board for a minimum period of two years and for further three years under the company's control.<sup>53</sup> The proposed form it should have is set out under Appendix II of the BWM Convention. It must record every operation regarding ballast water and be readily available for inspection by the authorities. Each entry has to be signed by an officer in charge and every completed page by the master.

Furthermore, it is incumbent upon the port State to ensure the existence of sediment reception facilities where ships may have their ballast tanks repaired or cleansed of sediments that will be then be disposed of in an environmentally sound way, without causing undue delay to the vessel as mentioned in Article 12 of the BWM Convention. The Annex goes one step further and requires ships to be

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<sup>43</sup> Regulation B-4(1)(2) Annex, BWM Convention.

<sup>44</sup> Article 122 of UNCLOS defines an "enclosed and semi-enclosed sea" as "a gulf or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."

<sup>45</sup> Regulation B-4(2) Annex, BWM Convention.

<sup>46</sup> Resolution MEPC.151(55), Guidelines on designation of areas for ballast water exchange (G14), 13 October 2006.

<sup>47</sup> Regulation D-2 Annex, BWM Convention.

<sup>48</sup> Regulation D-3(1) Annex, BWM Convention.

<sup>49</sup> Resolution MEPC.169(57), Procedure for approval of ballast water management systems that make use of Active Substances (G9), 4 April 2008.

<sup>50</sup> Regulation D-3(2) Annex, BWM Convention.

<sup>51</sup> Article 4(1) BWM Convention.

<sup>52</sup> Regulation B-1 Annex, BWM Convention.

<sup>53</sup> Regulation B-2 Annex, BWM Convention.

constructed in such a way so as to keep sediment reception to a minimum and allow safe extraction<sup>54</sup> in accordance with the IMO Guidelines.<sup>55</sup> State parties are encouraged to conduct scientific and technical research in respect of ballast water management by monitoring the waters under their jurisdiction.<sup>56</sup> The Convention goes one step further by instructing parties to make available such information to facilitate the fulfillment of its aims.<sup>57</sup> To ensure compliance of its ships with the BWM Convention, the flag State has to subject them to surveys and certification as specified under the Annex of the Convention.<sup>58</sup> Appendix I contains a sample form of the ballast water management certificate which has to be drawn up in the official language of the issuing party,<sup>59</sup> that is the Administration or any other organization that is duly authorised to do so. This certificate lasts for a period of five years and after the effluxion of time may be renewed subject to conditions.<sup>60</sup>

In the event of a violation of the Convention's obligations, the Administration having conducted an investigation and gathered sufficient evidence may impose sanctions upon the vessel based on its domestic law.<sup>61</sup> The port State may have officers duly authorised to board the vessel so as to inspect<sup>62</sup> the validity of the certificate, its water ballast record book and even carry out sampling of water within the ballast tanks consistently with the Guidelines.<sup>63</sup> Additionally to the imposition of sanctions steps may be taken to warn, detain or even exclude a ship.<sup>64</sup> If sampling shows that the water carried in the ballast tanks poses a threat to the environment then such a vessel may be prohibited from discharging it within the port State's waters.<sup>65</sup>

It is very important to note that the BWM Convention recognizes the need for technical assistance and cooperation among States that require help to effectively implement the Convention such as training of personnel, availability of infrastructure and scientific research.<sup>66</sup> A flag State has to notify to IMO and other State parties of its national policies<sup>67</sup> in relation to the implementation of the Convention, reception and sediment facilities and non-compliant vessels as specified under the Annex's provisions.

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<sup>54</sup> Regulation B-5 Annex, BWM Convention.

<sup>55</sup> Resolution MEPC.150.(55), Guidelines on design and construction to facilitate sediment control on ships (G12), 13 October 2006.

<sup>56</sup> Article 6(1) BWM Convention.

<sup>57</sup> Article 6(2) BWM Convention.

<sup>58</sup> Section E Annex, BWM Convention.

<sup>59</sup> Regulation E-4 Annex, BWM Convention.

<sup>60</sup> Regulation E-5 Annex, BWM Convention.

<sup>61</sup> Article 8 BWM Convention.

<sup>62</sup> Article 9 BWM Convention.

<sup>63</sup> Resolution MEPC.173(58), Guidelines for ballast water sampling (G2), 10 October 2008.

<sup>64</sup> Article 10(2) BWM convention.

<sup>65</sup> Article 10(3) BWM convention.

<sup>66</sup> Article 13 BWM Convention.

<sup>67</sup> Article 14 BWM Convention.

Dispute mechanisms such as negotiation, mediation, conciliation, arbitration and judicial settlement are recorded within the Convention.<sup>68</sup>

## VI. The Perspective of Greece

Greece has been characterised as a crossroad connecting two different parts of the world; the east and the west. Its very unique strategic position both in Europe and the Mediterranean makes it a ‘protagonist’ in the shipping “arena”. The fact that she attracts such a large number of merchant vessels both on the Aegean and the Ionian seas respectively makes it very important to prevent pollutants such as aquatic pathogens from invading and exterminating the local marine flora and fauna. The protection and the improvement of the marine ecosystem are considered to be the biggest challenges Greece is facing in a world of rapid changes both domestically and globally. Over the last years it has been brought to the attention of the public that protection of the marine environment constitutes an activity of strong social character vital for the economic and touristic development of Greece. The quality of the coastal environments of Greece represents her invaluable marine heritage, which should be both utilised and protected in a manner compliant with current environmental standards. The protection and safeguard of her coasts forms a constitutional mandate of the Greek State, which is striving to promote the country’s legacy under a framework of strategic and viable development.

The continuous attempts of the Ministry of Shipping, Maritime Affairs and the Aegean together with the Hellenic Coast Guard are aimed towards the intensification of activities for the prevention of pollution, improvement of the organizational infrastructure and the methods for controlling and deterring pollution. International consensus and practice has shown that pollution on the seas can only be eradicated by having an integrated scheme, which will attain uniformity upon the whole global spectrum. The BWM Convention can be said to be such system, which treats all signatories to the Convention in the same manner. This is evidence that prevention of biopollution should be construed as a supranational activity. Bearing in mind the importance of Greece as a maritime power both within the IMO and the world at large the adoption of the BWM Convention will have very important political effects internationally as a statement on the importance of preventing biopollution.<sup>69</sup>

The BWM Convention’s implementation into the Greek legal sphere is of utmost importance in terms of safeguarding Greece’s vital marine environmental interests. It will be overly beneficial nationally as

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<sup>68</sup> Article 15 BWM Convention.

<sup>69</sup> As mentioned in the introduction the purpose of this law is not only the accession of Greece to the treaty but to make it the text of its substantive provisions, Annex and Appendixes directly applicable into Greek law.

Greece's commercial activities are intrinsically linked with the sea. Tourism and fishing, the two main sources of national income, will be plagued irreparably if appropriate action is not taken by the State. Such invasions of aquatic pathogens in the Greek seas may have lasting effects. This is especially true for Mediterranean States more than other coastal countries because the Mediterranean is a semi-enclosed sea<sup>70</sup> with very sensitive ecology. For instance, reports of researchers have shown that in 2012 the eastern Mediterranean Sea had 775 non-native species.<sup>71</sup> The central Mediterranean Sea had 249 aquatic organisms added to the existing ones. They noted that the increase was dramatic as there were 48 new introductions since 2011, which mathematically can be taken as one new entry every two weeks. Although not all of these species may be invasive, their interaction with native species could have unknown and in some cases severe consequences to the ecosystem. A global assessment on the threat of ANS, records the Aegean Sea as one of the most invaded eco regions containing 31 species out of which 53 per cent are harmful, shipping being by 55 per cent the main pathway for their transfer.<sup>72</sup> As mentioned above, the accession to the Convention will introduce new standards of shipping within Greek waters by affording further protection to an already sensitive area.

## VII. Accession to the BWM Convention by the Hellenic Republic

The initiative to approve the BWM Convention will take place by means of a statutory law prepared by the Ministry of Reconstruction of Production, Environment and Energy and the Ministry of Shipping and the Aegean. Greece is a monist country and therefore before depositing the instrument of accession the Greek Parliament needs to approve Greece's acceptance to the Convention. In line with the Greek legislative drafting technique this law will be titled as a law on the approval of the BWM Convention by the Hellenic Republic.

Indeed Article 36(1) of the Greek Constitution states that “[c]onventions on trade, taxation, economic cooperation and participation in international organizations or unions” will only be binding under Greek law if approved by a statute which has to be signed by the President of the Democracy<sup>73</sup> and then voted by the Greek Parliament. According to Article 112 of the Standing Orders of the Hellenic Republic<sup>74</sup> the proposed law approving the treaty must receive the assent of Parliament, which will

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<sup>70</sup> Grbec, Mitja; *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas: A Mediterranean and Adriatic Perspective*, Routledge, Oxon, UK, 2014, p.6.

<sup>71</sup> Zenetos, A., Gofas, S., Morri, C. et al; “Alien species in the Mediterranean Sea by 2012. A contribution to the application of European Union's Marine Strategy Framework Directive (MSFD). Part 2. Introduction trends and pathways.” *Mediterranean Marine Science*, Vol. 13, No. 2, (2012), pp. 328.

<sup>72</sup> Molnar, Jennifer L., Gamboa, Rebecca L., Revenga, Carmen, Spalding, Mark D.; “Frontiers in Ecology and the Environment: Assessing the Global Threat of Invasive Species to Marine Biodiversity”, *The Ecological Society of America*, Vol. 6, (2008), p.6.

<sup>73</sup> Article 36 I Const.

<sup>74</sup> <http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/Kanonismos-tis-Voulis/>

have to vote in accordance with Article 108. Upon approval by Parliament, the Ministry of Foreign Affairs will deposit the Instrument of Accession with the depository.

The law will enter into force, in accordance with Article 28(1) the Constitution which provides that<sup>75</sup> “[t]he generally accepted rules of international law, as well as international treaties, as from their ratification by statute and from their coming into force under the conditions of each of them, shall constitute an integral part of domestic Greek law and shall prevail over any contrary statutory provision.”<sup>76</sup> Considering that the BWM Convention imposes rights and obligations on State parties, the purpose of this law is make its provisions binding under domestic law both for ships flying the Greek flag and foreign ships alike.

Having received assent of the Greek Parliament, the law will be published in the Government Gazette of the Hellenic Republic. Article one is the enacting provision, which basically incorporates the whole text of the BWM Convention, its Annex and Appendices into the law as originally drafted in English together with the Greek translation procured by public authorities. After Article one, the law towards the end includes further provisions, Article two and onwards, dealing with administrative matters to ensure proper implementation of the Convention into domestic legislation. The law will have to designate competent authorities to deal with matters pertaining to the application of the Convention such as inspections and surveys.

One of the most important aspects of the law is the creation of a provision on sanctions and appeals in case a violation occurs, in accordance with Greek domestic law due to the fact that Article 8 of the BWM Convention requires the Administration to establish sanctions under its national law. The law also specifies the method by which amendment to the Convention by the IMO or MEPC are to be adopted. The same provision also allows for the Convention, its Annex and Appendices to be codified into a single unified text in the nature of a code at a future date at the proposal of the Minister of Shipping and the Aegean. The language used in the provisions mirrors the drafting technique followed by other draft laws of Greece. More specifically, this law has been drafted in a manner akin to the law approving the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 created on the 4<sup>th</sup> of October 2005 due to the similarities both Conventions feature.

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<sup>75</sup> Kerameus, Konstantinos D., Kozyris, Phaedon J.; Introduction to Greek Law, 3<sup>rd</sup> Edition, Kluwer Law International, Alphen aan den Rijn, Netherlands, 2008, p. 25.

<sup>76</sup> This Article recognizes the importance of treaties under Greek law in accordance with the doctrine *pacta sunt servanda*.

Finally, the law shall enter into force on the date specified in its last Article when published in the Government Gazette of the Hellenic Republic or if left blank, it will be ten days after publication according to Article 104 of the Introductory Law of the Civil Code.



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# GOVERNMENT GAZETTE OF THE HELLENIC REPUBLIC

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Issue No. \_\_\_\_\_

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Law No. \_\_\_\_\_

*Approval of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004*

**THE PRESIDENT  
OF THE HELLENIC REPUBLIC**

Issues the following law enacted by Parliament

**Article one**

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, signed in London on the 16<sup>th</sup> of February 2004, is hereby approved and constitutes part of the domestic legislation as stipulated in Article 28 para. 1 of the Constitution. The Convention's original text in English and the respective translation in Greek is as follows:

**INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF  
SHIPS' BALLAST WATER AND SEDIMENTS, 2004**

**THE PARTIES TO THIS CONVENTION,**

**RECALLING** Article 196(1) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which provides that “States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto,”

**NOTING** the objectives of the 1992 Convention on Biological Diversity (CBD) and that the transfer and introduction of Harmful Aquatic Organisms and Pathogens via ships' ballast water threatens the conservation and sustainable use of biological diversity as well as decision IV/5 of the 1998 Conference of the Parties (COP 4) to the CBD concerning the conservation and sustainable use of marine and coastal ecosystems, as well as decision VI/23 of the 2002 Conference of the Parties (COP 6) to the CBD on alien species that threaten ecosystems, habitats or species, including guiding principles on invasive species,

**NOTING FURTHER** that the 1992 United Nations Conference on Environment and Development (UNCED) requested the International Maritime Organization (the Organization) to consider the adoption of appropriate rules on ballast water discharge,

**MINDFUL** of the precautionary approach set out in Principle 15 of the Rio Declaration on Environment and Development and referred to in resolution MEPC.67(37), adopted by the Organization's Marine Environment Protection Committee on 15 September 1995,

**ALSO MINDFUL** that the 2002 World Summit on Sustainable Development, in paragraph 34(b) of its Plan of Implementation, calls for action at all levels to accelerate the development of measures to address invasive alien species in ballast water,

**CONSCIOUS** that the uncontrolled discharge of Ballast Water and Sediments from ships has led to the transfer of Harmful Aquatic Organisms and Pathogens, causing injury or damage to the environment, human health, property and resources,

**RECOGNIZING** the importance placed on this issue by the Organization through Assembly resolutions A.774(18) in 1993 and A.868(20) in 1997, adopted for the purpose of addressing the transfer of Harmful Aquatic Organisms and Pathogens,

**RECOGNIZING FURTHER** that several States have taken individual action with a view to prevent, minimize and ultimately eliminate the risks of introduction of Harmful Aquatic Organisms and Pathogens through ships entering their ports, and also that this issue, being of worldwide concern, demands action based on globally applicable regulations together with guidelines for their effective implementation and uniform interpretation,

**DESIRING** to continue the development of safer and more effective Ballast Water Management options that will result in continued prevention, minimization and ultimate elimination of the transfer of Harmful Aquatic Organisms and Pathogens,



**RESOLVED** to prevent, minimize and ultimately eliminate the risks to the environment, human health, property and resources arising from the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments, as well as to avoid unwanted side-effects from that control and to encourage developments in related knowledge and technology,

**CONSIDERING** that these objectives may best be achieved by the conclusion of an International Convention for the Control and Management of Ships' Ballast Water and Sediments,

**HAVE AGREED** as follows:

**Article 1**      *Definitions*

For the purpose of this Convention, unless expressly provided otherwise:

1            "Administration" means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of any State, the Administration is the Government of that State. With respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal State exercises sovereign rights for the purposes of exploration and exploitation of its natural resources, including Floating Storage Units (FSUs) and Floating Production Storage and Offloading Units (FPSOs), the Administration is the Government of the coastal State concerned.

2            "Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.

3            "Ballast Water Management" means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.

4            "Certificate" means the International Ballast Water Management Certificate.

5            "Committee" means the Marine Environment Protection Committee of the Organization.

6            "Convention" means the International Convention for the Control and Management of Ships' Ballast Water and Sediments.

7            "Gross tonnage" means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention.

8            "Harmful Aquatic Organisms and Pathogens" means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.

9            "Organization" means the International Maritime Organization.

10          "Secretary-General" means the Secretary-General of the Organization.

11          "Sediments" means matter settled out of Ballast Water within a ship.

**12** “Ship” means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs.

## **Article 2**      *General Obligations*

**1** Parties undertake to give full and complete effect to the provisions of this Convention and the Annex thereto in order to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships’ Ballast Water and Sediments.

**2** The Annex forms an integral part of this Convention. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Annex.

**3** Nothing in this Convention shall be interpreted as preventing a Party from taking, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships’ Ballast Water and Sediments, consistent with international law.

**4** Parties shall endeavour to co-operate for the purpose of effective implementation, compliance and enforcement of this Convention.

**5** Parties undertake to encourage the continued development of Ballast Water Management and standards to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships’ Ballast Water and Sediments.

**6** Parties taking action pursuant to this Convention shall endeavour not to impair or damage their environment, human health, property or resources, or those of other States.

**7** Parties should ensure that Ballast Water Management practices used to comply with this Convention do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

**8** Parties shall encourage ships entitled to fly their flag, and to which this Convention applies, to avoid, as far as practicable, the uptake of Ballast Water with potentially Harmful Aquatic Organisms and Pathogens, as well as Sediments that may contain such organisms, including promoting the adequate implementation of recommendations developed by the Organization.

**9** Parties shall endeavour to co-operate under the auspices of the Organization to address threats and risks to sensitive, vulnerable or threatened marine ecosystems and biodiversity in areas beyond the limits of national jurisdiction in relation to Ballast Water Management.

## **Article 3**      *Application*

**1** Except as expressly provided otherwise in this Convention, this Convention shall apply to:

- (a)** ships entitled to fly the flag of a Party; and
- (b)** ships not entitled to fly the flag of a Party but which operate under the authority of a Party.

2 This Convention shall not apply to:

- (a) ships not designed or constructed to carry Ballast Water;
- (b) ships of a Party which only operate in waters under the jurisdiction of that Party, unless the Party determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States;
- (c) ships of a Party which only operate in waters under the jurisdiction of another Party, subject to the authorization of the latter Party for such exclusion. No Party shall grant such authorization if doing so would impair or damage their environment, human health, property or resources, or those of adjacent or other States. Any Party not granting such authorization shall notify the Administration of the ship concerned that this Convention applies to such ship;
- (d) ships which only operate in waters under the jurisdiction of one Party and on the high seas, except for ships not granted an authorization pursuant to sub-paragraph (c), unless such Party determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent of other States;
- (e) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention; and
- (f) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.

3 With respect to ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

**Article 4** *Control of the Transfer of Harmful Aquatic Organisms and Pathogens Through Ships' Ballast Water and Sediments*

1 Each Party shall require that ships to which this Convention applies and which are entitled to fly its flag or operating under its authority comply with the requirements set forth in this Convention, including the applicable standards and requirements in the Annex, and shall take effective measures to ensure that those ships comply with those requirements.

2 Each Party shall, with due regard to its particular conditions and capabilities, develop national policies, strategies or programmes for Ballast Water Management in its ports and waters under its jurisdiction that accord with, and promote the attainment of the objectives of this Convention.

## **Article 5**     *Sediment Reception Facilities*

**1**        Each Party undertakes to ensure that, in ports and terminals designated by that Party where cleaning or repair of ballast tanks occurs, adequate facilities are provided for the reception of Sediments, taking into account the Guidelines developed by the Organization. Such reception facilities shall operate without causing undue delay to ships and shall provide for the safe disposal of such Sediments that does not impair or damage their environment, human health, property or resources or those of other States.

**2**        Each Party shall notify the Organization for transmission to the other Parties concerned of all cases where the facilities provided under paragraph 1 are alleged to be inadequate.

## **Article 6**     *Scientific and Technical Research and Monitoring*

**1**        Parties shall endeavour, individually or jointly, to:

- (a)**     promote and facilitate scientific and technical research on Ballast Water Management; and
- (b)**     monitor the effects of Ballast Water Management in waters under their jurisdiction.

Such research and monitoring should include observation, measurement, sampling, evaluation and analysis of the effectiveness and adverse impacts of any technology or methodology as well as any adverse impacts caused by such organisms and pathogens that have been identified to have been transferred through ships' Ballast Water.

**2**        Each Party shall, to further the objectives of this Convention, promote the availability of relevant information to other Parties who request it on:

- (a)**     scientific and technology programmes and technical measures undertaken with respect to Ballast Water Management; and
- (b)**     the effectiveness of Ballast Water Management deduced from any monitoring and assessment programmes.

## **Article 7**     *Survey and certification*

**1**        Each Party shall ensure that ships flying its flag or operating under its authority and subject to survey and certification are so surveyed and certified in accordance with the regulations in the Annex.

**2**        A Party implementing measures pursuant to Article 2.3 and Section C of the Annex shall not require additional survey and certification of a ship of another Party, nor shall the Administration of the ship be obligated to survey and certify additional measures imposed by another Party. Verification of such additional measures shall be the responsibility of the Party implementing such measures and shall not cause undue delay to the ship.

## **Article 8**      *Violations*

**1** Any violation of the requirements of this Convention shall be prohibited and sanctions shall be established under the law of the Administration of the ship concerned, wherever the violation occurs. If the Administration is informed of such a violation, it shall investigate the matter and may request the reporting Party to furnish additional evidence of the alleged violation. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The Administration shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If the Administration has not taken any action within 1 year after receiving the information, it shall so inform the Party which reported the alleged violation.

**2** Any violation of the requirements of this Convention within the jurisdiction of any Party shall be prohibited and sanctions shall be established under the law of that Party. Whenever such a violation occurs, that Party shall either:

- (a) cause proceedings to be taken in accordance with its law; or
- (b) furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.

**3** The sanctions provided for by the laws of a Party pursuant to this Article shall be adequate in severity to discourage violations of this Convention wherever they occur.

## **Article 9**      *Inspection of Ships*

**1** A ship to which this Convention applies may, in any port or offshore terminal of another Party, be subject to inspection by officers duly authorized by that Party for the purpose of determining whether the ship is in compliance with this Convention. Except as provided in paragraph 2 of this Article, any such inspection is limited to:

- (a) verifying that there is onboard a valid Certificate, which, if valid shall be accepted; and
- (b) inspection of the Ballast Water record book, and/or
- (c) a sampling of the ship's Ballast Water, carried out in accordance with the guidelines to be developed by the Organization. However, the time required to analyse the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

**2** Where a ship does not carry a valid Certificate or there are clear grounds for believing that:

- (a) the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate; or
- (b) the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures;

a detailed inspection may be carried out.

**3** In the circumstances given in paragraph 2 of this Article, the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

#### **Article 10** *Detection of Violations and Control of Ships*

**1** Parties shall co-operate in the detection of violations and the enforcement of the provisions of this Convention.

**2** If a ship is detected to have violated this Convention, the Party whose flag the ship is entitled to fly, and/or the Party in whose port or offshore terminal the ship is operating, may, in addition to any sanctions described in Article 8 or any action described in Article 9, take steps to warn, detain, or exclude the ship. The Party in whose port or offshore terminal the ship is operating, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.

**3** If the sampling described in Article 9.1(c) leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the Party in whose waters the ship is operating shall prohibit such ship from discharging Ballast Water until the threat is removed.

**4** A Party may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Convention. The report of such investigation shall be sent to the Party requesting it and to the competent authority of the Administration of the ship concerned so that appropriate action may be taken.

#### **Article 11** *Notification of Control Actions*

**1** If an inspection conducted pursuant to Article 9 or 10 indicates a violation of this Convention, the ship shall be notified. A report shall be forwarded to the Administration, including any evidence of the violation.

**2** In the event that any action is taken pursuant to Article 9.3, 10.2 or 10.3, the officer carrying out such action shall forthwith inform, in writing, the Administration of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary. In addition, the recognized organization responsible for the issue of certificates shall be notified.

**3** The port State authority concerned shall, in addition to parties mentioned in paragraph 2, notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in Article 9.3, 10.2 or 10.3 or if the ship has been allowed to proceed to the next port of call.

**Article 12**     *Undue Delay to Ships*

**1**     All possible efforts shall be made to avoid a ship being unduly detained or delayed under Article 7.2, 8, 9 or 10.

**2**     When a ship is unduly detained or delayed under Article 7.2, 8, 9 or 10, it shall be entitled to compensation for any loss or damage suffered.

**Article 13**     *Technical Assistance, Co-operation and Regional Co-operation*

**1**     Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the control and management of ships' Ballast Water and Sediments, to provide support for those Parties which request technical assistance:

- (a)     to train personnel;
- (b)     to ensure the availability of relevant technology, equipment and facilities;
- (c)     to initiate joint research and development programmes; and
- (d)     to undertake other action aimed at the effective implementation of this Convention and of guidance developed by the Organization related thereto.

**2**     Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of the control and management of ships' Ballast Water and Sediments.

**3**     In order to further the objectives of this Convention, Parties with common interests to protect the environment, human health, property and resources in a given geographical area, in particular, those Parties bordering enclosed and semi-enclosed seas, shall endeavour, taking into account characteristic regional features, to enhance regional co-operation, including through the conclusion of regional agreements consistent with this Convention. Parties shall seek to co-operate with the Parties to regional agreements to develop harmonized procedures.

**Article 14**     *Communication of information*

**1**     Each Party shall report to the Organization and, where appropriate, make available to other Parties the following information:

- (a)     any requirements and procedures relating to Ballast Water Management, including its laws, regulations, and guidelines for implementation of this Convention;
- (b)     the availability and location of any reception facilities for the environmentally safe disposal of Ballast Water and Sediments; and
- (c)     any requirements for information from a ship which is unable to comply with the provisions of this Convention for reasons specified in regulations A-3 and B-4 of the Annex.

**2**     The Organization shall notify Parties of the receipt of any communications under the present Article and circulate to all Parties any information communicated to it under subparagraphs 1(b) and (c) of this Article.

**Article 15**     *Dispute Settlement*

Parties shall settle any dispute between them concerning the interpretation or application of this Convention by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

**Article 16**     *Relationship to International Law and Other Agreements*

Nothing in this Convention shall prejudice the rights and obligations of any State under customary international law as reflected in the United Nations Convention on the Law of the Sea.

**Article 17**     *Signature, Ratification, Acceptance, Approval and Accession*

**1**     This Convention shall be open for signature by any State at the Headquarters of the Organization from 1 June 2004 to 31 May 2005 and shall thereafter remain open for accession by any State.

**2**     States may become Parties to the Convention by:

- (a)     signature not subject to ratification, acceptance, or approval; or
- (b)     signature subject to ratification, acceptance, or approval, followed by ratification, acceptance or approval; or
- (c)     accession.

**3**     Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

**4**     If a State comprises two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval, or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

**5**     Any such declaration shall be notified to the Depositary in writing and shall state expressly the territorial unit or units to which this Convention applies.

**Article 18**     *Entry into Force*

**1**     This Convention shall enter into force twelve months after the date on which not less than thirty States, the combined merchant fleets of which constitute not less than thirty-five percent of the gross tonnage of the world's merchant shipping, have either signed it without reservation as to ratification, acceptance or approval, or have deposited the requisite instrument of ratification, acceptance, approval or accession in accordance with Article 17.

**2**     For States which have deposited an instrument of ratification, acceptance, approval or accession in respect of this Convention after the requirements for entry into force thereof have been met, but prior to the date of entry in force, the ratification, acceptance, approval or accession shall take effect on the date of entry into force of this Convention or three months after the date of deposit of instrument, whichever is the later date.



**3** Any instrument of ratification, acceptance, approval or accession deposited after the date on which this Convention enters into force shall take effect three months after the date of deposit.

**4** After the date on which an amendment to this Convention is deemed to have been accepted under Article 19, any instrument of ratification, acceptance, approval or accession deposited shall apply to this Convention as amended.

## **Article 19** *Amendments*

**1** This Convention may be amended by either of the procedures specified in the following paragraphs.

**2** Amendments after consideration within the Organization:

- (a)** Any Party may propose an amendment to this Convention. A proposed amendment shall be submitted to the Secretary-General, who shall then circulate it to the Parties and Members of the Organization at least six months prior to its consideration.
- (b)** An amendment proposed and circulated as above shall be referred to the Committee for consideration. Parties, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Committee for consideration and adoption of the amendment.
- (c)** Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Committee, on condition that at least one-third of the Parties shall be present at the time of voting.
- (d)** Amendments adopted in accordance with subparagraph (c) shall be communicated by the Secretary-General to the Parties for acceptance.
- (e)** An amendment shall be deemed to have been accepted in the following circumstances:

  - (i)** An amendment to an article of this Convention shall be deemed to have been accepted on the date on which two-thirds of the Parties have notified the Secretary-General of their acceptance of it.
  - (ii)** An amendment to the Annex shall be deemed to have been accepted at the end of twelve months after the date of adoption or such other date as determined by the Committee. However, if by that date more than one-third of the Parties notify the Secretary-General that they object to the amendment, it shall be deemed not to have been accepted.
- (f)** An amendment shall enter into force under the following conditions:

  - (i)** An amendment to an article of this Convention shall enter into force for those Parties that have declared that they have accepted it six months after the date on which it is deemed to have been accepted in accordance with subparagraph (e)(i).
  - (ii)** An amendment to the Annex shall enter into force with respect to all Parties six months after the date on which it is deemed to have been accepted, except for any Party that has:

- (1) notified its objection to the amendment in accordance with subparagraph (e)(ii) and that has not withdrawn such objection; or
  - (2) notified the Secretary-General, prior to the entry into force of such amendment, that the amendment shall enter into force for it only after a subsequent notification of its acceptance.
- (g) (i) A Party that has notified an objection under subparagraph (f)(ii)(1) may subsequently notify the Secretary-General that it accepts the amendment. Such amendment shall enter into force for such Party six months after the date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.
- (ii) If a Party that has made a notification referred to in subparagraph (f)(ii)(2) notifies the Secretary-General of its acceptance with respect to an amendment, such amendment shall enter into force for such Party six months after the date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.

**3** Amendment by a Conference:

- (a) Upon the request of a Party concurred in by at least one-third of the Parties, the Organization shall convene a Conference of Parties to consider amendments to this Convention.
- (b) An amendment adopted by such a Conference by a two-thirds majority of the Parties present and voting shall be communicated by the Secretary-General to all Parties for acceptance.
- (c) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraphs 2(e) and (f) respectively.

**4** Any Party that has declined to accept an amendment to the Annex shall be treated as a non-Party only for the purpose of application of that amendment.

**5** Any notification under this Article shall be made in writing to the Secretary-General.

**6** The Secretary-General shall inform the Parties and Members of the Organization of:

- (a) any amendment that enters into force and the date of its entry into force generally and for each Party; and
- (b) any notification made under this Article.

**Article 20** *Denunciation*

**1** This Convention may be denounced by any Party at any time after the expiry of two years from the date on which this Convention enters into force for that Party.

**2** Denunciation shall be effected by written notification to the Depositary, to take effect one year after receipt or such longer period as may be specified in that notification.

**Article 21**     *Depositary*

**1**     This Convention shall be deposited with the Secretary-General, who shall transmit certified copies of this Convention to all States which have signed this Convention or acceded thereto.

**2**     In addition to the functions specified elsewhere in this Convention, the Secretary-General shall:

- (a)**     inform all States that have signed this Convention, or acceded thereto, of:
  - (i)**     each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
  - (ii)**    the date of entry into force of this Convention; and
  - (iii)**   the deposit of any instrument of denunciation from the Convention, together with the date on which it was received and the date on which the denunciation takes effect; and
- (b)**     as soon as this Convention enters into force, transmit the text thereof to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

**Article 22**     *Languages*

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this thirteenth day of February, two thousand and four.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Convention.

# ANNEX

## *Regulations for the control and management of ships' ballast water and sediments*

### SECTION A - GENERAL PROVISIONS

#### **Regulation A-1**      *Definitions*

For the purposes of this Annex:

- 1      “Anniversary date” means the day and the month of each year corresponding to the date of expiry of the Certificate.
- 2      “Ballast Water Capacity” means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging Ballast Water, including any multi-use tank, space or compartment designed to allow carriage of Ballast Water.
- 3      “Company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code<sup>1</sup>.
- 4      “Constructed” in respect of a ship means a stage of construction where:
  - .1      the keel is laid; or
  - .2      construction identifiable with the specific ship begins;
  - .3      assembly of the ship has commenced comprising at least 50 tonnes or 1 percent of the estimated mass of all structural material, whichever is less; or
  - .4      the ship undergoes a major conversion.
- 5      “Major conversion” means a conversion of a ship:
  - .1      which changes its ballast water carrying capacity by 15 percent or greater, or
  - .2      which changes the ship type, or
  - .3      which, in the opinion of the Administration, is projected to prolong its life by ten years or more, or
  - .4      which results in modifications to its ballast water system other than component replacement-in-kind. Conversion of a ship to meet the provisions of regulation D-1 shall not be deemed to constitute a major conversion for the purpose of this Annex.

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<sup>1</sup> Refer to the ISM Code adopted by the Organization by resolution A.741(18), as amended.

- 6 “From the nearest land” means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, for the purposes of the Convention, “from the nearest land” off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in

latitude 11°00′ S, longitude 142°08′ E  
to a point in latitude 10°35′ S, longitude 141°55′ E  
thence to a point latitude 10°00′ S, longitude 142°00′ E  
thence to a point latitude 9°10′ S, longitude 143°52′ E  
thence to a point latitude 9°00′ S, longitude 144°30′ E  
thence to a point latitude 10°41′ S, longitude 145°00′ E  
thence to a point latitude 13°00′ S, longitude 145°00′ E  
thence to a point latitude 15°00′ S, longitude 146°00′ E  
thence to a point latitude 17°30′ S, longitude 147°00′ E  
thence to a point latitude 21°00′ S, longitude 152°55′ E  
thence to a point latitude 24°30′ S, longitude 154°00′ E  
thence to a point on the coast of Australia  
in latitude 24°42′ S, longitude 153°15′ E.

- 7 “Active Substance” means a substance or organism, including a virus or a fungus, that has a general or specific action on or against Harmful Aquatic Organisms and Pathogens.

**Regulation A-2**      *General Applicability*

Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management in accordance with the provisions of this Annex.

**Regulation A-3**      *Exceptions*

The requirements of regulation B-3, or any measures adopted by a Party pursuant to Article 2.3 and Section C, shall not apply to:

- 1 the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or
- 2 the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:
  - .1 provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
  - .2 unless the owner, Company or officer in charge wilfully or recklessly caused damage; or
- 3 the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or

- 4 the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or
- 5 the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Annex.

#### **Regulation A-4**      *Exemptions*

1 A Party or Parties, in waters under their jurisdiction, may grant exemptions to any requirements to apply regulations B-3 or C-1, in addition to those exemptions contained elsewhere in this Convention, but only when they are:

- .1 granted to a ship or ships on a voyage or voyages between specified ports or locations; or to a ship which operates exclusively between specified ports or locations;
- .2 effective for a period of no more than five years subject to intermediate review;
- .3 granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in paragraph 1.1; and
- .4 granted based on the Guidelines on risk assessment developed by the Organization.

2 Exemptions granted pursuant to paragraph 1 shall not be effective until after communication to the Organization and circulation of relevant information to the Parties.

3 Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that the Party determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.

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

#### **Regulation A-5**      *Equivalent compliance*

Equivalent compliance with this Annex for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres, shall be determined by the Administration taking into account Guidelines developed by the Organization.

## **SECTION B – MANAGEMENT AND CONTROL REQUIREMENTS FOR SHIPS**

### **Regulation B-1**      *Ballast Water Management Plan*

Each ship shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Administration taking into account Guidelines developed by the Organization. The Ballast Water Management plan shall be specific to each ship and shall at least:

- 1 detail safety procedures for the ship and the crew associated with Ballast Water Management as required by this Convention;
- 2 provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set forth in this Convention;
- 3 detail the procedures for the disposal of Sediments:
  - .1 at sea; and
  - .2 to shore;
- 4 include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;
- 5 designate the officer on board in charge of ensuring that the plan is properly implemented;
- 6 contain the reporting requirements for ships provided for under this Convention; and
- 7 be written in the working language of the ship. If the language used is not English, French or Spanish, a translation into one of these languages shall be included.

### **Regulation B-2**      *Ballast Water Record Book*

1 Each ship shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and, which shall at least contain the information specified in Appendix II.

2 Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.

3 In the event of the discharge of Ballast Water pursuant to regulations A-3, A-4 or B-3.6 or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by this Convention, an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.

4 The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

5 Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master. The entries in the Ballast Water record book shall be in a working language of the ship. If that language is not English, French or Spanish the entries shall contain a translation into one of those languages. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.

6 Officers duly authorized by a Party may inspect the Ballast Water record book on board any ship to which this regulation applies while the ship is in its port or offshore terminal, and may make a copy of any entry, and require the master to certify that the copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

### **Regulation B-3**      *Ballast Water Management for Ships*

1 A ship constructed before 2009:

- .1 with a Ballast Water Capacity of between 1,500 and 5,000 cubic metres, inclusive, shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2014, after which time it shall at least meet the standard described in regulation D-2;
- .2 with a Ballast Water Capacity of less than 1,500 or greater than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2016, after which time it shall at least meet the standard described in regulation D-2.

2 A ship to which paragraph 1 applies shall comply with paragraph 1 not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.

3 A ship constructed in or after 2009 with a Ballast Water Capacity of less than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.

4 A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5,000 cubic metres or more shall conduct Ballast Water Management in accordance with paragraph 1.2.

5 A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.



6 The requirements of this regulation do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the Organization for such facilities.

7 Other methods of Ballast Water Management may also be accepted as alternatives to the requirements described in paragraphs 1 to 5, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by the Committee.

#### **Regulation B-4**      *Ballast Water Exchange*

1 A ship conducting Ballast Water exchange to meet the standard in regulation D-1 shall:

- .1 whenever possible, conduct such Ballast Water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the Guidelines developed by the Organization;
- .2 in cases where the ship is unable to conduct Ballast Water exchange in accordance with paragraph 1.1, such Ballast Water exchange shall be conducted taking into account the Guidelines described in paragraph 1.1 and as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

2 In sea areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph 1.1 or 1.2, the port State may designate areas, in consultation with adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in paragraph 1.1.

3 A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of paragraph 1.

4 A ship conducting Ballast Water exchange shall not be required to comply with paragraphs 1 or 2, as appropriate, if the master reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.

5 When a ship is required to conduct Ballast Water exchange and does not do so in accordance with this regulation, the reasons shall be entered in the Ballast Water record book.

#### **Regulation B-5**      *Sediment Management for Ships*

1 All ships shall remove and dispose of Sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship's Ballast Water Management plan.

2 Ships described in regulation B-3.3 to B-3.5 should, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and undesirable entrapment of Sediments, facilitate removal of Sediments, and provide safe access to allow for Sediment removal and sampling, taking into account guidelines developed by the Organization. Ships described in regulation B-3.1 should, to the extent practicable, comply with this paragraph.

**Regulation B-6** *Duties of Officers and Crew*

Officers and crew shall be familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

**SECTION C – SPECIAL REQUIREMENTS IN CERTAIN AREAS**

**Regulation C-1** *Additional Measures*

1 If a Party, individually or jointly with other Parties, determines that measures in addition to those in Section B are necessary to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments, such Party or Parties may, consistent with international law, require ships to meet a specified standard or requirement.

2 Prior to establishing standards or requirements under paragraph 1, a Party or Parties should consult with adjacent or other States that may be affected by such standards or requirements.

3 A Party or Parties intending to introduce additional measures in accordance with paragraph 1 shall:

- .1 take into account the Guidelines developed by the Organization.
- .2 communicate their intention to establish additional measure(s) to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). Such communication shall include:
  - .1 the precise co-ordinates where additional measure(s) is/are applicable;
  - .2 the need and reasoning for the application of the additional measure(s), including, whenever possible, benefits;
  - .3 a description of the additional measure(s); and
  - .4 any arrangements that may be provided to facilitate ships' compliance with the additional measure(s).

- .3 to the extent required by customary international law as reflected in the United Nations Convention on the Law of the Sea, as appropriate, obtain the approval of the Organization.

4 A Party or Parties, in introducing such additional measures, shall endeavour to make available all appropriate services, which may include but are not limited to notification to mariners of areas, available and alternative routes or ports, as far as practicable, in order to ease the burden on the ship.

5 Any additional measures adopted by a Party or Parties shall not compromise the safety and security of the ship and in any circumstances not conflict with any other convention with which the ship must comply.

6 A Party or Parties introducing additional measures may waive these measures for a period of time or in specific circumstances as they deem fit.

**Regulation C-2**      *Warnings Concerning Ballast Water Uptake in Certain Areas and Related Flag State Measures*

1 A Party shall endeavour to notify mariners of areas under their jurisdiction where ships should not uptake Ballast Water due to known conditions. The Party shall include in such notices the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. Warnings may be issued for areas:

- .1 known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (e.g., toxic algal blooms) which are likely to be of relevance to Ballast Water uptake or discharge;
- .2 near sewage outfalls; or
- .3 where tidal flushing is poor or times during which a tidal stream is known to be more turbid.

2 In addition to notifying mariners of areas in accordance with the provisions of paragraph 1, a Party shall notify the Organization and any potentially affected coastal States of any areas identified in paragraph 1 and the time period such warning is likely to be in effect. The notice to the Organization and any potentially affected coastal States shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. The notice shall include advice to ships needing to uptake Ballast Water in the area, describing arrangements made for alternative supplies. The Party shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

**Regulation C-3**      *Communication of Information*

The Organization shall make available, through any appropriate means, information communicated to it under regulations C-1 and C-2.

## **SECTION D - STANDARDS FOR BALLAST WATER MANAGEMENT**

### **Regulation D-1**      *Ballast Water Exchange Standard*

**1**      Ships performing Ballast Water exchange in accordance with this regulation shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.

**2**      For ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in paragraph 1. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

### **Regulation D-2**      *Ballast Water Performance Standard*

**1**      Ships conducting Ballast Water Management in accordance with this regulation shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension and less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations described in paragraph 2.

**2**      Indicator microbes, as a human health standard, shall include:

- .1**      Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples ;
- .2**      *Escherichia coli* less than 250 cfu per 100 millilitres;
- .3**      Intestinal Enterococci less than 100 cfu per 100 milliliters.

### **Regulation D-3**      *Approval requirements for Ballast Water Management systems*

**1**      Except as specified in paragraph 2, Ballast Water Management systems used to comply with this Convention must be approved by the Administration taking into account Guidelines developed by the Organization.

**2**      Ballast Water Management systems which make use of Active Substances or preparations containing one or more Active Substances to comply with this Convention shall be approved by the Organization, based on a procedure developed by the Organization. This procedure shall describe the approval and withdrawal of approval of Active Substances and their proposed manner of application. At withdrawal of approval, the use of the relevant Active Substance or Substances shall be prohibited within 1 year after the date of such withdrawal.

**3**      Ballast Water Management systems used to comply with this Convention must be safe in terms of the ship, its equipment and the crew.

#### **Regulation D-4**      *Prototype Ballast Water Treatment Technologies*

1      For any ship that, prior to the date that the standard in regulation D-2 would otherwise become effective for it, participates in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies, the standard in regulation D-2 shall not apply to that ship until five years from the date on which the ship would otherwise be required to comply with such standard.

2      For any ship that, after the date on which the standard in regulation D-2 has become effective for it, participates in a programme approved by the Administration, taking into account Guidelines developed by the Organization, to test and evaluate promising Ballast Water technologies with the potential to result in treatment technologies achieving a standard higher than that in regulation D-2, the standard in regulation D-2 shall cease to apply to that ship for five years from the date of installation of such technology.

3      In establishing and carrying out any programme to test and evaluate promising Ballast Water technologies, Parties shall:

- .1      take into account Guidelines developed by the Organization, and
- .2      allow participation only by the minimum number of ships necessary to effectively test such technologies.

4      Throughout the test and evaluation period, the treatment system must be operated consistently and as designed.

#### **Regulation D-5**      *Review of Standards by the Organization*

1      At a meeting of the Committee held no later than three years before the earliest effective date of the standard set forth in regulation D-2, the Committee shall undertake a review which includes a determination of whether appropriate technologies are available to achieve the standard, an assessment of the criteria in paragraph 2, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States. The Committee shall also undertake periodic reviews, as appropriate, to examine the applicable requirements for ships described in regulation B-3.1 as well as any other aspect of Ballast Water Management addressed in this Annex, including any Guidelines developed by the Organization.

2      Such reviews of appropriate technologies shall also take into account:

- .1      safety considerations relating to the ship and the crew;
- .2      environmental acceptability, i.e., not causing more or greater environmental impacts than they solve;
- .3      practicability, i.e., compatibility with ship design and operations;
- .4      cost effectiveness, i.e., economics; and

- .5 biological effectiveness in terms of removing, or otherwise rendering not viable, Harmful Aquatic Organisms and Pathogens in Ballast Water.

3 The Committee may form a group or groups to conduct the review(s) described in paragraph 1. The Committee shall determine the composition, terms of reference and specific issues to be addressed by any such group formed. Such groups may develop and recommend proposals for amendment of this Annex for consideration by the Parties. Only Parties may participate in the formulation of recommendations and amendment decisions taken by the Committee.

4 If, based on the reviews described in this regulation, the Parties decide to adopt amendments to this Annex, such amendments shall be adopted and enter into force in accordance with the procedures contained in Article 19 of this Convention.

## **SECTION E - SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER MANAGEMENT**

### **Regulation E-1**      *Surveys*

1 Ships of 400 gross tonnage and above to which this Convention applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys specified below:

- .1 An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Convention.
- .2 A renewal survey at intervals specified by the Administration, but not exceeding five years, except where regulation E-5.2, E-5.5, E-5.6, or E-5.7 is applicable. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of this Convention.
- .3 An intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Annex and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.
- .4 An annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by regulation B-1 to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service

for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

- .5 An additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Convention. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of this Convention. Such surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

2 The Administration shall establish appropriate measures for ships that are not subject to the provisions of paragraph 1 in order to ensure that the applicable provisions of this Convention are complied with.

3 Surveys of ships for the purpose of enforcement of the provisions of this Convention shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it.

4 An Administration nominating surveyors or recognizing organizations to conduct surveys, as described in paragraph 3 shall, as a minimum, empower such nominated surveyors or recognized organizations<sup>2</sup> to:

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

5 The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties for the information of their officers.

6 When the Administration, a nominated surveyor, or a recognized organization determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under regulation E-2 or E-3 or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources such surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of the port State shall be notified immediately. When an officer of the Administration, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation, including any action described in Article 9.

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<sup>2</sup> Refer to the guidelines adopted by the Organization by resolution A.739(18), as may be amended by the Organization, and the specifications adopted by the Organization by resolution A.789(19), as may be amended by the Organization.

7 Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Convention, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Administration, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by paragraph 1 is necessary. If the ship is in a port of another Party, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

8 In every case, the Administration concerned shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

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

10 After any survey of the ship under paragraph 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by regulation B-1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.

#### **Regulation E-2** *Issuance or Endorsement of a Certificate*

1 The Administration shall ensure that a ship to which regulation E-1 applies is issued a Certificate after successful completion of a survey conducted in accordance with regulation E-1. A Certificate issued under the authority of a Party shall be accepted by the other Parties and regarded for all purposes covered by this Convention as having the same validity as a Certificate issued by them.

2 Certificates shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate.

#### **Regulation E-3** *Issuance or Endorsement of a Certificate by Another Party*

1 At the request of the Administration, another Party may cause a ship to be surveyed and, if satisfied that the provisions of this Convention are complied with, shall issue or authorize the issuance of a Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with this Annex.

2 A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

3 A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a Certificate issued by the Administration.



**4** No Certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party.

**Regulation E-4** *Form of the Certificate*

The Certificate shall be drawn up in the official language of the issuing Party, in the form set forth in Appendix I. If the language used is neither English, French nor Spanish, the text shall include a translation into one of these languages.

**Regulation E-5** *Duration and Validity of the Certificate*

**1** A Certificate shall be issued for a period specified by the Administration that shall not exceed five years.

**2** For renewal surveys:

**.1** Notwithstanding the requirements of paragraph 1, when the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

**.2** When the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

**.3** When the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

**3** If a Certificate is issued for a period of less than five years, the Administration may extend the validity of the Certificate beyond the expiry date to the maximum period specified in paragraph 1, provided that the surveys referred to in regulation E-1.1.3 applicable when a Certificate is issued for a period of five years are carried out as appropriate.

**4** If a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the person or organization authorized by the Administration may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

**5** If a ship at the time when the Certificate expires is not in a port in which it is to be surveyed, the Administration may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When

the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

6 A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by the Administration for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

7 In special circumstances, as determined by the Administration, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by paragraph 2.2, 5 or 6 of this regulation. In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

8 If an annual survey is completed before the period specified in regulation E-1, then:

- .1 the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;
- .2 the subsequent annual or intermediate survey required by regulation E-1 shall be completed at the intervals prescribed by that regulation using the new Anniversary date;
- .3 the expiry date may remain unchanged provided one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation E-1 are not exceeded.

9 A Certificate issued under regulation E-2 or E-3 shall cease to be valid in any of the following cases:

- .1 if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with this Convention is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this Annex;
- .2 upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with the requirements of regulation E-1. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration copies of the Certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;
- .3 if the relevant surveys are not completed within the periods specified under regulation E-1.1; or
- .4 if the Certificate is not endorsed in accordance with regulation E-1.1

# APPENDIX I

## FORM OF INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

Issued under the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (hereinafter referred to as "the Convention") under the authority of the Government of

.....

*(full designation of the country)*

by .....

*(full designation of the competent person or organization authorized  
under the provisions of the Convention)*

### ***Particulars of ship\****

Name of ship.....

Distinctive number or letters.....

Port of registry.....

Gross Tonnage.....

IMO number<sup>†</sup>.....

Date of Construction.....

Ballast Water Capacity (in cubic metres) .....

### ***Details of Ballast Water Management Method(s) Used***

Method of ballast water Management used.....

Date installed (if applicable).....

Name of manufacturer (if applicable).....

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\* Alternatively, the particulars of the ship may be placed horizontally in boxes.

† IMO Ship Identification Number Scheme adopted by the Organization by resolution A.600(15).

The principal Ballast Water Management method(s) employed on this ship is/are:

- in accordance with regulation D-1
- in accordance with regulation D-2  
(describe) .....
- the ship is subject to regulation D-4

THIS IS TO CERTIFY:

1 That the ship has been surveyed in accordance with regulation E-1 of the Annex to the Convention; and

2 That the survey shows that Ballast Water Management on the ship complies with the Annex to the Convention.

This certificate is valid until ..... subject to surveys in accordance with regulation E-1 of the Annex to the Convention.

Completion date of the survey on which this certificate is based: dd/mm/yyyy

Issued at .....  
*(Place of issue of certificate)*

.....  
*(Date of issue)*

.....  
*(Signature of authorized official issuing the certificate)*

*(Seal or stamp of the authority as appropriate)*

**ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEY(S)**

THIS IS TO CERTIFY that a survey required by regulation E-1 of the Annex to the Convention the ship was found to comply with the relevant provisions of the Convention:

Annual survey: Signed .....  
(Signature of duly authorized official)

Place .....

Date .....

*(Seal or stamp of the authority, as appropriate)*

Annual\*/Intermediate survey\*: Signed .....  
(Signature of duly authorized official)

Place .....

Date .....

*(Seal or stamp of the authority, as appropriate)*

Annual\*/Intermediate survey\*: Signed .....  
(Signature of duly authorized official)

Place .....

Date .....

*(Seal or stamp of the authority, as appropriate)*

Annual survey: Signed .....  
(Signature of duly authorized official)

Place .....

Date .....

*(Seal or stamp of the authority, as appropriate)*

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\* Delete as appropriate.

**ANNUAL/INTERMEDIATE SURVEY  
IN ACCORDANCE WITH REGULATION E-5.8.3**

THIS IS TO CERTIFY that, at an annual/intermediate\* survey in accordance with regulation E-5.8.3 of the Annex to the Convention, the ship was found to comply with the relevant provisions of the Convention:

Signed.....  
*(Signature of authorized official)*

Place .....

Date.....

*(Seal or stamp of the authority, as appropriate)*

**ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALID  
FOR LESS THAN 5 YEARS WHERE REGULATION E-5.3 APPLIES**

The ship complies with the relevant provisions of the Convention, and this Certificate shall, in accordance with regulation E-5.3 of the Annex to the Convention, be accepted as valid until.....

Signed .....  
*(Signature of authorized official)*

Place .....

Date.....

*(Seal or stamp of the authority, as appropriate)*

**ENDORSEMENT WHERE THE RENEWAL SURVEY HAS BEEN COMPLETED AND REGULATION E-5.4 APPLIES**

The ship complies with the relevant provisions of the Convention and this Certificate shall, in accordance with regulation E-5.4 of the Annex to the Convention, be accepted as valid until .....

Signed .....  
*(Signature of authorized official)*

Place .....

Date.....

*(Seal or stamp of the authority, as appropriate)*

**ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE UNTIL REACHING THE PORT OF SURVEY OR FOR A PERIOD OF GRACE WHERE REGULATION E-5.5 OR E-5.6 APPLIES**

This Certificate shall, in accordance with regulation E-5.5 or E-5.6\* of the Annex to the Convention, be accepted as valid until .....

Signed .....  
*(Signature of authorized official)*

Place .....

Date .....

*(Seal or stamp of the authority, as appropriate)*

---

\* Delete as appropriate

**ENDORSEMENT FOR ADVANCEMENT OF ANNIVERSARY DATE  
WHERE REGULATION E-5.8 APPLIES**

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is  
.....

Signed .....  
*(Signature of authorized official)*

Place .....

Date .....

*(Seal or stamp of the authority, as appropriate)*

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is  
.....

Signed .....  
*(Signature of duly authorized official)*

Place .....

Date .....

*(Seal or stamp of the authority, as appropriate)*

---



## APPENDIX II

### Form of ballast water record book

#### INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

Period from: ..... To: .....

Name of Ship .....

IMO number .....

Gross tonnage .....

Flag .....

Total Ballast Water capacity (in cubic metres) .....

The ship is provided with a Ballast Water Management plan

Diagram of ship indicating ballast tanks:



## **1 Introduction**

In accordance with regulation B-2 of the Annex to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, a record is to be kept of each Ballast Water operation. This includes discharges at sea and to reception facilities.

## **2 Ballast Water and Ballast Water Management**

“Ballast Water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship. Management of Ballast Water shall be in accordance with an approved Ballast Water Management plan and taking into account Guidelines<sup>3</sup> developed by the Organization.

## **3 Entries in the Ballast Water Record Book**

Entries in the Ballast Water record book shall be made on each of the following occasions:

### **3.1 When Ballast Water is taken on board:**

- .1 Date, time and location port or facility of uptake (port or lat/long), depth if outside port
- .2 Estimated volume of uptake in cubic metres
- .3 Signature of the officer in charge of the operation.

### **3.2 Whenever Ballast Water is circulated or treated for Ballast Water Management purposes:**

- .1 Date and time of operation
- .2 Estimated volume circulated or treated (in cubic metres)
- .3 Whether conducted in accordance with the Ballast Water Management plan
- .4 Signature of the officer in charge of the operation

### **3.3 When Ballast Water is discharged into the sea:**

- .1 Date, time and location port or facility of discharge (port or lat/long)
- .2 Estimated volume discharged in cubic metres plus remaining volume in cubic metres
- .3 Whether approved Ballast Water Management plan had been implemented prior to discharge
- .4 Signature of the officer in charge of the operation.

\* Refer to the Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens adopted by the Organization by resolution A.868(20).

- 3.4 When Ballast Water is discharged to a reception facility:
- .1 Date, time, and location of uptake
  - .2 Date, time, and location of discharge
  - .3 Port or facility
  - .4 Estimated volume discharged or taken up, in cubic metres
  - .5 Whether approved Ballast Water Management plan had been implemented prior to discharge
  - .6 Signature of officer in charge of the operation
- 3.5 Accidental or other exceptional uptake or discharges of Ballast Water:
- .1 Date and time of occurrence
  - .2 Port or position of the ship at time of occurrence
  - .3 Estimated volume of Ballast Water discharged
  - .4 Circumstances of uptake, discharge, escape or loss, the reason therefore and general remarks.
  - .5 Whether approved Ballast Water Management plan had been implemented prior to discharge
  - .6 Signature of officer in charge of the operation
- 3.6 Additional operational procedure and general remarks

#### ***4 Volume of Ballast water***

The volume of Ballast Water onboard should be estimated in cubic metres. The Ballast Water record book contains many references to estimated volume of Ballast Water. It is recognized that the accuracy of estimating volumes of ballast is left to interpretation

**RECORD OF BALLAST WATER OPERATIONS**

SAMPLE BALLAST WATER RECORD BOOK PAGE

Name of Ship: .....

Distinctive number or letters .....

Date	Item (number)	Record of operations/signature of officers in charge

Signature of master .....

## **Article two Application**

The provisions of this law, the Convention, its Annex and any Presidential or Ministerial Decrees for its implementation shall apply to:

- (a) Greek ships whenever they are.
- (b) Foreign ships, which operate under the authority of Greece.
- (c) Other ships when in Greek waters.
- (d) Ballast water and sediment reception facilities that operate within Greece.

## **Article three Competent Authorities**

1. Competent authorities for the application of the provisions of this law, the Convention, its Annex and the Presidential and Ministerial Decrees issued for its implementation shall be:

- (a) In Greece, the Mercantile Marine Inspectorate of the Ministry of Shipping and the Aegean and the Hellenic Coast Guard.
- (b) Abroad, the Officers of the Hellenic Coast Guard who serve in Greek Embassies and Consulates and exercise specific maritime tasks or in circumstances of absence, the Greek Consulate itself.

2. Surveys and certification of Greek ships of 400 gross tonnage and above shall be carried out in accordance with the provisions of the Convention, its Annex and by classification societies which have been recognized by the European Union and authorized by the Ministry of Shipping and the Aegean pursuant to Council Directive 94/57/EC which was adopted by Presidential Decree 32/1997 (FEK 35 A).

## **Article four Exemptions**

The Mercantile Marine Inspectorate of the Ministry of Shipping and the Aegean or a Recognized Organization may grant an exemption certificate, which will be effective for a period of no more than five years subject to an intermediate review to:

- (a) Ships that operate exclusively during voyages between specified ports or locations within Greek waters.
- (b) Ships that do not mix ballast water or sediments during voyages between ports or locations within Greek waters or abroad.

## **Article five Certification**

The ballast water management certificate and the ballast water record book referred in the Convention shall be issued to Greek ships, both in Greek and English if engaged in international voyages.

## **Article six Inspections**

The Hellenic Coast Guard shall inspect any ship in any port or offshore terminal in Greece or abroad to:

- (a) Verify that there is on board a valid ballast water management certificate.
- (b) Inspect the ballast water record book.
- (c) Sample the ship's ballast water for the purpose of determining whether the ship is in compliance with this law, the Convention and its Annex.

## **Article seven Sanctions – Appeals**

**1.** With reference to Articles 13 and 14 of Law No. 743/1977, as codified by Presidential Decree No. 55/1998 "Protection of the Marine Environment" (FEK 58 A):

(a) In case of violation of any of the provisions of this law or any Presidential or Ministerial Decree issued for its implementation, the competent authorities may after a reasoned decision, impose a fine of up to 90,000 euro on any offender, without prejudice to any criminal or disciplinary proceedings which may be commenced.

(b) In case of a violation, a ship may be detained from the date the decision imposing the fine has been notified, until the fine has been paid or a letter of credit of an equivalent amount has been filed to a bank in Greece.

(c) An alleged offender may seek leave to appeal against the decision imposing the fine in accordance with the provisions of the Civil Procedure Code Law No. 2717/1999 (FEK 97 A) which does not however suspend the execution of the decision.

**2.** The maximum limit of the fine may be increased by a Presidential Decree issued at the proposal of the Minister of Shipping and the Aegean.

**3.** The fines imposed in accordance with these articles shall be collected subject to the provisions of Article 18 of Law No. 743/1977, as codified by Presidential Decree No. 55/1998 (FEK 58 A).

**Article eight**  
**Acceptance of amendments and Guidelines**  
**to the Convention, its Annex**  
**and Appendices – Codification**

1. Any amendments to the Convention, its Annex and Appendices shall be adopted by Presidential or Ministerial Decrees issued at the proposal of the Minister of Foreign Affairs and the Minister of Shipping and the Aegean.
2. Any amendments decided by the Marine Environmental Protection Committee of the International Maritime Organization (IMO) that refer to technical details in close connection to the Annex of the Convention and its Appendices shall be adopted by Joint Ministerial Decrees of the Minister of Foreign Affairs and the Minister of Shipping and the Aegean.
3. The provisions of the Convention, its Annex, Appendices and any amendments to them may be codified in a uniform text by Presidential Decree issued at the proposal of the Minister of Shipping and the Aegean.

**Article nine**  
**Suspension**

The Minister of Shipping and the Aegean may issue a Ministerial Decree to suspend the application of the Convention wholly or partly in times of war.

**Article ten**  
**Entry into force**

This law enters into force upon the date of its publication in the Government Gazette of the Hellenic Republic and in accordance with Article 18 of the Convention.

We order the publication of the law hereof in the Government Gazette and its execution as a law of the State.

Athens, 4 May 2015

THE PRESIDENT OF THE DEMOCRACY  
**PROKOPIS B. PAVLOPOULOS**

THE MINISTERS OF

FINANCE  
**Y. VAROUFAKIS**

FOREIGN AFFAIRS  
**N. KOTZIAS**

RECONSTRUCTION OF  
PRODUCTION, ENVIRONMENT  
& ENERGY  
**P. LAFAZANIS**

JUSTICE  
**N. PARASKEVOPOULOS**

SHIPPING AND THE AEGEAN  
**T. Dritsas**

Certified and sealed by the Great Seal of the State.

Athens, 4 May 2015

The Minister of Justice

**N. PARASKEVOPOULOS**

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