

DRAFT LEGISLATION FOR A MARINE
POLLUTION ACT INCORPORATING CIVIL
LIABILITY FOR OIL POLLUTION DAMAGE
FROM SHIPS AND EXPLANATORY NOTE

SUBMITTED IN PARTIAL FULFILMENT OF
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THE MARINE POLLUTION BILL, 1990

Explanatory Note

(These notes form no part of the Bill but are intended
only to indicate its general purport)

The main purpose of this Bill is to create a comprehensive and functional written law respecting marine pollution off the coasts of Trinidad and Tobago.

In addition several International Conventions to which Trinidad and Tobago is a party and which concern pollution are also implemented. These Conventions relate to pollution in the maritime zones of Trinidad and Tobago and to international obligations undertaken by Trinidad and Tobago to co-operate in the prevention and control of marine pollution wherever such pollution may occur. Thus the Bill for example imposes restrictions on the disposal of wastes at sea by dumping and regulates marine pollution by ships and compensation for oil pollution damage.

Part I of the Bill implements the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (the Intervention Convention) and the 1973 protocol thereto extending such casualties to substances other than oil. Under this Part the state may take measures as may be necessary on the High Seas as well as in any maritime zone of Trinidad and

Tobago to prevent, mitigate or eliminate grave and imminent danger to the coastline or related interests from pollution or the threat of pollution following on a maritime casualty which may reasonably be expected to result in harmful consequences. Provision is made for the procedures to be followed where a ship registered in a Convention State other than Trinidad and Tobago is involved in a casualty on the High Seas.

In Part II the Bill deals with restrictions on the disposal at sea of defined wastes from or of vessels, aircraft, platforms or other man-made structures at sea. Trinidad and Tobago will control the dumping of all wastes within its maritime zones and will control the dumping of all wastes from or of all vessels, aircraft, platforms or other man-made structures registered in Trinidad and Tobago or otherwise subject to the jurisdiction of the State. It is an offence to illegally dump waste in a maritime zone of Trinidad and Tobago or to leave a port in Trinidad and Tobago for the purposes of dumping without a permit.

Effect is given to the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft 1972 (the London Dumping Convention).

Part III deals with the prevention and control of deliberate pollution from ships. This Part implements the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL Convention) and the 1978 Protocol thereto. Provisions contained in the United Nations Convention on the Law of the Sea 1982 concerning marine pollution and coastal state jurisdiction are also taken into account. Detailed pollution standards are set out in five annexes viz. oil (Annex I), noxious liquid substances in bulk (Annex II), harmful substances carried by sea in package form (Annex III), sewage (Annex IV), and Garbage (Annex V).

Part IV implements the International Convention on Civil Liability on Oil Pollution Damage 1984 (1984 Civil Liability Convention). This Convention is an amalgam of the International Convention on Civil Liability for Oil Pollution 1969, a Protocol of 1976 and a Protocol of 1984 (from which the 1984 Convention gets its name). Under this Part the owner of a ship carrying more than 2,000 tons of oil in bulk as cargo is strictly liable, subject to certain exceptions, for any pollution damage in the area of Trinidad and Tobago (as defined) as the result of the discharge or escape of oil from the ship, howsoever caused. Compulsory insurance is required for such ships and the shipowner may limit his liability by constituting a fund for a specified amount based on the ship's tonnage. Reciprocity in respect of funds and claims in other Convention States is provided.

Part V deals with local standards and regulations relating to such matters not covered by the International Conventions such as pollution from non-persistent oils, other pollutants, offshore platforms and restricted and protected areas.

Part VI makes provision for the overall administration of the Act including rules of court, legal proceedings, regulations and the application of the International Conventions in relation to national legislation.

A detailed explanatory note on the provisions of each part is also provided.

PART IV**CIVIL LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE****(Explanatory Note)**

This Part deals with the implementation of the International Convention on Civil Liability for Oil Pollution Damage 1969 as amended by the 1976 and 1984 Protocols to that Convention (1984 Civil Liability Convention). The strict liability of shipowners is balanced by a limitation of liability based on the ship's gross tonnage. Compulsory insurance ensures the shipowner's ability to meet that liability. In this way, claims for oil pollution damage can be quickly met while the uncertainty to shipowners and consumers and consequent economic costs is reduced.

The Convention on which this Part is based is complemented by the International Convention on the Establishment of an International Fund for Compensation 1971 (Fund Convention 1971) which establishes an international fund to provide compensation for claims in excess of the limits set by the Civil Liability Convention. Contributions to this Fund are based on a State's annual imports of oil although the contributions are paid by the importers of oil and not the State itself. As Trinidad and Tobago is a major importer of crude oil for refining and re-export, this matter is at present under review to determine the potential costs of joining the Convention.

Notes on Part IV:

Section 62 specifies the scope of application of this Part. Pollution

damage occurring outside the "area" of a Contracting State is not covered under this Part unless such damage results from preventive measures wherever taken in order to prevent or minimize pollution damage in the area of a Contracting State.

Section 63 provides for the owner's strict liability for oil pollution damage subject to three exceptions. The contributory negligence of a claimant may also relieve the owner wholly or partially of liability. The servants of agents of the owner, including the crew, are protected from suit as is any ship's pilot, charterer, manager, or operator of the ship, a salvor and any person taking preventive measures. Such persons are not exempt from liability if the pollution damage has resulted from their own intentional or reckless acts or omissions and with knowledge that such damage would probably result.

Section 65 sets the limit of the owner's liability based on the ship's tonnage up to a maximum of 59.7 million SDRs. The owner is not entitled to limit his liability until he has constituted a fund representing the limit of his liability determined by the court. An insurer or other person who has provided financial security for the owner's liability may also constitute the fund (s.65(5)) even if the owner is not entitled to limit his liability due to his intentional or reckless act or omission in causing the pollution damage (s.65(2)).

Section 66 provides for the distribution of the fund among claimants. Subrogation by several named classes of persons is permitted provided no distribution has yet taken place.

Section 67 directs the court to order the release of the ship or any other assets of the owner which have been arrested, provided that the fund has been

constituted. All claimants must proceed against the fund and no other assets of the owner.

Section 68 provides that any actions other than against the fund constituted by the owner shall be stayed except in relation to costs.

Section 69 provides for the application of sections 67 and 68 (Restriction on Claims and Concurrent Liabilities respectively) where a limitation fund has been properly constituted in a Contracting State other than Trinidad and Tobago.

Sections 70 and 71 provide for the compulsory insurance of ships carrying more than 2,000 tons of oil in bulk as cargo and for the issue by the Director of Maritime Services of a Certificate attesting the adequacy of such insurance in respect of the limits set out in section 65, together with certain other particulars set out in section 72. Penalties are provided for failing to have such a certificate in force when entering or leaving a port or terminal in the territorial sea of Trinidad and Tobago or failing to produce such a certificate.

Section 76 provides a limitation period for the bringing of an action of three years from the date that the cause of action arose and in any event a limitation period of six years after the first occurrence of the pollution damage incident.

Section 77 establishes the jurisdiction of the High Court (Admiralty Division) to hear claims under this Part. In keeping with the Convention the Court has no jurisdiction to entertain claims arising solely in the area of a Contracting State other than Trinidad and Tobago. Provision is made for the enforcement in Trinidad and Tobago of judgements given in other Contracting

States.

Section 79 gives immunity from suit to any warship or other ship used for non-commercial purposes and owned by any State. In the case of a liability incurred by a commercial ship owned by a state, such a state is deemed to have submitted to the jurisdiction of the Court and there is no immunity of suit. However, insurance cover is not compulsory provided that a certificate issued by the state is carried by the ship stating that the ship's liability will be covered to the prescribed limits. Further, although proceedings may be commenced and carried on against a commercial ship owned by a state, execution of any judgement obtained may not issue.

Section 80 provides for the Minister to declare by Order a list of Contracting States to the Civil Liability Convention which shall be conclusive evidence for the purposes of this Part.

MARINE POLLUTION ACT 1990

An Act to make provision with respect to Marine Pollution and to give effect to certain related International Conventions.

1. This Act may be cited as the Marine Pollution Act;
2. This Act shall come into force on such day as the President by Order appoints, and different days may be so appointed for different provisions of this Act.

PART I

INTERVENTION IN CASES OF OIL POLLUTION CASUALTIES

PART II

DUMPING AT SEA

PART III

MEASURES TO PREVENT AND CONTROL POLLUTION

PART IV

CIVIL LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

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PART V

LOCAL REQUIREMENTS

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PART VI

MISCELLANEOUS

Definitions 61. In this Part -

"area" means -

- (i) the territory, including the archipelagic waters and territorial sea, of a Contracting State; and
- (ii) the exclusive economic zone of a Contracting State, established in accordance with international law or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

"Contracting State" means a State party to the Convention;

"Convention" means the International Convention of Civil Liability for Oil Pollution Damage 1984 (1984 Liability Convention);

"Director" means the Director of Maritime Services as referred to in section 403(2) (a) of the Shipping Act 1987 and includes any person lawfully acting under the instructions or on behalf of the Director;

"Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or

creates a grave and imminent threat of causing such damage;

"Minister" means the Minister to whom the responsibility for shipping is assigned;

"Oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship;

"Owner" means -

- (a) in the case of a registered ship, the registered owner;
or
- (b) in the case of any other ship except as provided in (c), the beneficial owner; or
- (c) in the case of a ship owned by a State and operated by a company which is registered in that State as the ship's operator, that company;

"person" means any individual or partnership or any public or private body, whether corporate or not, including a State;

"Pollution damage" means -

- (a) loss or damage outside the ship caused by contamination resulting from the escape or discharge of oil from the ship, wherever such discharge on escape may occur, provided that compensation for impairment of the environment other than loss of profit from such

impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

- (b) the costs of preventive measures and further loss or damage caused by preventive measures;

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

"ship" means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk on board.

"Special drawing right" means the special drawing right of the International Monetary Fund as defined in the Finance Act Chapter __, Number ___.

Application62. This Part shall apply exclusively to pollution damage -

- (a) caused in the area of a Contracting State,
- (b) resulting from preventive measures, wherever taken, to prevent or minimize such damage in the area of a Contracting State.

Liability for pollution damage 2 and 3, 63. (1) Save as provided in subsections 2 and 3, the owner of the ship at the time of an incident, or where the incident consists of a series of occurrences at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

(2) No liability for pollution damage shall attach to the owner if he proves that the damage -

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause damage by a third party; or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other like navigational aids in the exercise of that function.

(3) If the owner proves that the pollution damage resulted wholly or partially from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be either wholly or partially relieved from his liability

to such person.

(4) Subject to section 78 no claim for compensation for pollution damage shall be made against -

(a) the servants or agents of the owner or the members of the crew;

(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;

(c) any charterer (howsoever described including a bare boat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(e) any person taking preventive measures;

(f) all servants or agents of persons mentioned in paragraphs (c), (d) and (e) herein;

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Two or more 64. Where oil has escaped or has been discharged **ships**

from two or more ships and -

(a) liability is incurred under section 63 by the owner of each of them; but

(b) the pollution damage for which each of the owners would be liable cannot reasonably be separated from that for which the others or others would be liable;

each of the owners shall be jointly and severally liable for all such damage.

**Limitation of
Liability**

65. (1) The owner of a ship shall be entitled to limit his liability under this Part in respect of any one incident to an aggregate amount calculated as follows:

(a) in relation to a ship not exceeding 5,000 tons, 3 million special drawing rights;

(b) in relation to a ship exceeding 5,000 tons, 3 million special drawing rights together with an additional 420 special drawings rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 million special drawing rights;

but the Minister may by Order make such amendments of
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(2) The owner shall not be entitled to limit his liability under this Part if it is proved that the pollution damage resulted from his personal act or omission committed with the intention to cause such damage, or recklessly and with knowledge that such damage would probably result.

(3) The owner shall not be entitled to the benefit of limitation provided in subsection (1) unless and until the court has determined that he is entitled to limit his liability and he has complied with any order of the court to constitute a fund in accordance with subsection (4).

(4) Such Fund shall be constituted by a deposit into court or production of a guarantee acceptable under the laws of Trinidad and Tobago of a sum determined by the court to represent the limit of the owner's liability under subsection (1).

(5) Any insurer or other person who has provided

financial security for the owner's liability for pollution damage shall be entitled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under subsection (2), the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

(6) The amounts mentioned in subsection (1) shall be converted into Trinidad and Tobago dollars as of the date of the constitution of the fund and on the basis of the conversion rate stated in the relevant Central Bank Notice published in the Trinidad and Tobago Gazette or by affidavit sworn by or under the authority of the Governor of the Central Bank of Trinidad and Tobago.

(7) For the purposes of this section the tonnage of a ship shall be the gross tonnage calculated in accordance with The Shipping (Tonnage) Regulations 1988.

Subrogation 66 (1) Where the owner has constituted a fund in
and accordance with section 65, the court shall -

Distribution

(a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and

(b) direct the distribution of the amount paid into court or guaranteed (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(2) Where, prior to distribution, the owner or any of his servants or agents or any person who is liable to the owner under a contract of insurance or other financial security has as a result of the incident in question paid compensation for pollution damage such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part.

(3) The right of subrogation provided for in subsection (2) may be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted by law.

(4) Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation under subsections (2) and (3) had the compensation been paid before the sum was distributed, the court may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

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

Restriction on claims 67. Where the court has found that a person who has incurred a liability for pollution damage as a result of an incident is entitled to limit that liability and such person has constituted a fund under section 65 -

(a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such arrest; and

(b) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;

provided that the fund or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available if the proper steps in the proceedings under this Part had been taken.

Concurrent 68. Where as a result of pollution damage any **Liability** person incurs a liability under this Part, then if under section 65(3) -

(a) the court has determined that the person is entitled to limit his liability; and

(b) the person has constituted a fund in an amount determined by the court;

no proceedings shall be taken against the person in respect of his liability under this Part, other than in accordance with this Part and if any such proceedings were commenced before the person constituted the fund, no further steps may be taken in such proceedings except in relation to costs.

Establishment 69. Where the events resulting in the liability **of limitation** of any person under section 63 also resulted in a **fund outside** corresponding liability under the law of another **Trinidad and** Contracting State, sections 67 and 68 shall apply **Tobago** as if the references to sections 63 and 66 included references to the corresponding provisions of that law and the references to constituting a fund included references to constituting a fund under those provisions in respect of the liability.

Compulsory 70. The owner of a ship registered in or present **insurance** within the jurisdiction of Trinidad and Tobago and carrying more than 2,000 tons of oil in bulk as cargo shall maintain insurance or other financial security in the sums fixed by applying the limits of liability set out in section 65(1) to cover his liability for pollution damage under this Part.

Penalties

71 (1) A ship to which section 70 applies shall not enter or leave a port in Trinidad and Tobago or arrive at or leave a terminal in the territorial sea of Trinidad and Tobago nor, if the ship is registered in Trinidad and Tobago, a port in any other country or a terminal in any other country, unless there is in force a certificate complying with the provisions of section 72 in respect of the ship.

(2) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs, marine officer and, if the ship is registered in Trinidad and Tobago, to any consular office of Trinidad and Tobago where the ship is outside the jurisdiction of Trinidad and Tobago.

(3) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave a terminal in contravention of subsection (1), the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding \$ 200,000.

(4) If a ship fails to carry, or the master of a ship fails to produce a certificate as required by subsection (2),

the master shall be liable on summary conviction to a fine not exceeding \$ 2,500.

(5) If a ship attempts to leave a port or terminal in contravention of this section, the ship may be detained.

Particulars 72. A certificate referred to in this part shall-**of**

Certificate (a) attest that insurance or other financial security is in force in accordance with the limits of liability set out in section 65(1) to cover the owner's liability for pollution damage under section 63;

(b) contain the following particulars -

(i) the name of the ship and port of registration;

(ii) the name and principal place of business of the owner;

(iii) type of security;

(iv) Name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;

(v) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

(c) be issued -

(i) by the Director if the ship is registered in Trinidad and Tobago;

(ii) if the ship is registered in a contracting state other than Trinidad and Tobago by or under the authority of the Government of the other Contracting State;

(iii) if the ship is registered in a non-Contracting State, by the Director or by or under the authority of the Government of any Contracting State other than Trinidad and Tobago.

Issue of

73 (1) Subject to subsection (2) if the **Certificate** Director is satisfied, on an application for such a certificate as is mentioned in section 71 in respect of a ship registered in Trinidad and Tobago or any non-Contracting State, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of this Part, the Director shall issue such a certificate to the owner.

(2) If the Director is of the opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 63 in all circumstances, he may refuse the certificate.

(3) The Director shall send a copy of any certificate issued by him under this section in respect of a ship registered in Trinidad and Tobago to the Registrar of Ships and the Registrar shall make a copy available for public inspection.

Certificate 74. (1) The Minister may make regulations -

Regulations

(a) determining the conditions of issue and validity of any certificate; and

(b) prescribing the fee to be paid on an application for a certificate to be issued under this Part; and

(c) providing for the cancellation and delivery up of such a certificate in such circumstances as may be prescribed by the regulations;

(2) if a person required by regulations made under subsection 1(c) to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding \$ 2,000.

A.VII**Third Party** 75

(1) Where it is alleged that the owner of a **Rights** ship has incurred a liability under section 63(1) **Against** as a result of pollution damage occurring while **Insurers** there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 71 relates, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as the insurer).

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the pollution damage was due to the wilful conduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so even if the owner is not entitled to limit his liability under section 65(2).

(4) Where the owner and the insurer each apply to the court for the limitation of his liability, any sum paid into

court in pursuance of either application shall be treated as paid also in pursuance of the other. Any such sums shall be available solely for the satisfaction of claims under this part.

Extinguishment**Claims**

76. No action to enforce a claim in respect of a liability incurred under this Part shall

be entertained by any court in Trinidad and Tobago unless the action is commenced, not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences which caused the pollution damage.

Jurisdiction 77 (1) Subject to subsection (2) the High Court **of**
Trinidad (Admiralty Division) shall have jurisdiction to
and Tobago hear any claim in respect of a liability incurred
Courts under this Act.

(2) Where a person incurs a liability for pollution
under this Part -

(a) for an incident in the area of a
Contracting State other than Trinidad and
Tobago; and

(b) the incident has not resulted in any
pollution damage or preventive measures to
prevent or minimize pollution damage in the area
of Trinidad and Tobago;

no court in Trinidad and Tobago shall entertain an action
(whether in rem or in personam) to enforce any claim for
pollution damage in respect of the said incident.

(3) The Foreign Judgements Reciprocity Act shall apply
to any judgement given by a court in a Contracting State to

enforce a claim in respect of a liability incurred under any provision corresponding to section 63 of this Part.

Saving for 78. Nothing in this Part shall prejudice any **Recourse**
claim, or the enforcement of any claim, a person
Actions incurring a liability under this Part may have against another
person in respect of that liability.

Government 79

(1) Nothing in the preceding provisions of **ships**

this Part applies in relation to any warship or any ship being used for the time being by the Government of any State for non-commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with section 71(1) if there is in force a certificate issued by the Government of that State and showing that the ship is owned by that State and that any liability for pollution damage will be met up to the limit prescribed by section 65(1).

(3) Every Contracting State shall, for the purposes of any proceedings brought in a court in Trinidad and Tobago to enforce a claim in respect of a liability for pollution damage under this Part, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorize the issue of execution against the property of any state.

List of Contracting States 80. The Minister shall by Order declare that any State specified in the Order is a Contracting **States** State and the Order shall, while in force, be conclusive evidence that that State is a Contracting State.

PART V

LOCAL REQUIREMENTS