

**A BILL  
entitled**

*AN ACT providing for Malta's accession to the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, and for the implementation of certain provisions of this Convention.*

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

**Short title and commencement**

**1. (1) This Act may be cited as the Carriage of Hazardous and Noxious Substances by Sea (Liability and Compensation) Act, 1997.**

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

**Interpretation**

**2. (1) In this Act unless the context otherwise requires -**

**“Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;**

**“HNS Fund” means the International Hazardous and Noxious Substances Fund established under the provisions of the Convention;**

**“Minister” means the Minister responsible for shipping;**

**“Registrar-General” means the Registrar-General of Shipping and Seamen appointed under section 363 of the Merchant Shipping Act [Cap. 234] and includes any person acting under his authority;**

**“Ships registered in Malta” means ships registered under section 3 of the Merchant Shipping Act [Cap. 234];**

**“territorial waters of Malta” shall have the same meaning as is assigned to the term in the Territorial Waters and Contiguous Zone Act [Cap. 226].**

**(2) Any reference in the Convention to “the territorial sea” shall, in each case, be read and construed as reference to the territorial waters of Malta.**

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

**(4) Unless the context otherwise requires words and expressions used in this Act shall have the same meaning assigned to them in the Convention.**

#### **Reference in the Convention to other international conventions and codes**

**3. In interpreting the definition of “hazardous and noxious substances” in paragraph 5, Article 1 of the Convention, any reference in that paragraph to a particular convention or code as amended shall be taken to be a reference to that convention or code as amended from time to time, whether before or after the commencement of this Act.**

#### **Ratification of Convention**

**4. For the purpose of any law thereto applicable the Government of Malta is hereby authorised to accede to the Convention.**

#### **Certain provisions of the Convention given force of law in Malta**

**5. (1) The provisions of Articles 1 to 22 and 35 to 42 of the Convention shall have the force of law in Malta.**

**(2) Any reference in the Convention to “the court” or to “the court or other competent authority” shall, in each case, be read and construed as reference to the First Hall of the Civil Court.**

**(3) Any action for compensation against the owner or other person providing financial security in accordance with the provisions of the Convention, shall be brought in Malta before the First Hall of the Civil Court by presenting a claim before such Court. Such a claim shall be instituted in accordance with Sub-title III of Title VIII of Part I of Book Second of the Code of Organization and Civil Procedure [Cap. 12].**

**(4) The HNS Fund shall also be entitled to intervene as a party to any proceedings instituted in accordance with the Convention before the First Hall of the Civil Court against the owner or the owner’s guarantor.**

**(5) The First Hall of the Civil Court shall determine the distribution of the fund constituted for the total sum representing the limit of liability of the owner in accordance with the provisions of the Convention, and where such fund is insufficient to satisfy the claims of those who are entitled to compensation, the amount of compensation of each claimant shall be reduced *pro rata*.**

**(6) The appropriate authority for the purpose of issuing a certificate of insurance in respect of ships registered in Malta, and of ships not registered in a State Party to the Convention that enter or leave any port in Malta, or arrive or leave an offshore facility within Malta’s territorial waters, shall be the Registrar-General. The Registrar-General shall, for the purposes of paragraph 6 of Article 12 of the Convention and of any regulations made under this Act, determine the conditions of issue and validity of the compulsory insurance certificate.**

#### **Actions brought by or against the HNS Fund in Malta**

**6. (1) Any person who in a calendar year has received contributing cargo so as to be liable to contribute to the HNS Fund pursuant to Articles 18 and 19 of the Convention shall, not later than the 1 March of the following year, inform the Minister of the quantity of such cargo received by him.**

**(2) The Minister shall, at a time and in the manner prescribed in the internal regulations of the HNS Fund, communicate the information mentioned in paragraph 2 of Article 21 of the Convention.**

**(3) Any person having received in a calendar year contributing cargo in ports or terminals in Malta shall pay contributions to the HNS Fund in accordance with Articles 18 to 21 of the Convention in the amount and by the date determined by the HNS Fund Assembly:**

**Provided that where the quantity of a given type of contributing cargo received in Malta by any person in a calendar year when aggregated with the quantity of contributing cargo received in the same calendar year in Malta by any associated person or persons exceeds the limits specified in the Convention, such receiver shall pay contributions in respect of the actual quantity received by him.**

**(4) For the purposes of the previous subsection “associated person” means a company or other body corporate which in either case is another company’s subsidiary, associate or holding company, or is the manager of or managed by, or otherwise controls or is controlled by that body corporate or a subsidiary or associate of that body corporate’s holding company, and “associate of a body corporate” means a body corporate being the subsidiary of the same holding company.**

**(5) Where damage or damage by contamination of the environment resulting from an incident has been sustained in Malta, including the territorial waters of Malta and the area beyond and adjacent to the territorial waters of Malta extending up to 200 nautical miles from the baselines from which the breadth of the territorial waters are measured, or if measures have been taken to prevent or minimize such damage in those areas, any action against the HNS Fund for compensation under Articles 14 and 39 of the Convention shall be brought in Malta before the First Hall of the Civil Court.**

**(6) The notification to the HNS Fund under paragraph 7 of Article 39 of the Convention shall be made by means of a judicial act against the HNS Fund and notified in the office of the Minister.**

**(7) The HNS Fund shall be entitled to take action against defaulting contributors before the First Hall of the Civil Court.**

#### **Tax exemptions enjoyed by the HNS Fund**

**7. (1) The HNS Funds, its assets, income, including contributions, and other property necessary for the exercise of its functions shall enjoy exemption from all direct taxation in Malta.**

**(2) The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use.**

#### **Inapplicability of currency and transfer regulations to the HNS Fund**

**8. The transfer and payment of any contribution to the HNS Fund and any compensation paid by the HNS Fund shall, notwithstanding existing or future regulations concerning currency or transfers, be authorised without restriction.**

#### **Procedure**

**9. Notwithstanding the provisions of any other law -**

- (a) the First Hall of the Civil Court shall have jurisdiction to try and determine cases and actions that in accordance with this Act are to be brought before it;**
- (b) when a written pleading or other judicial act is to be filed against the HNS Fund it shall be sufficient if in such pleading or act there is designated the HNS Fund and it shall not be necessary in such pleading or act to name the office or the name of the person for the time being holding the office having, in accordance with the constitution of the HNS Fund, the judicial representation of that Fund;**
- (c) the pleadings and acts referred to in paragraph (b) of this section shall be notified at the office of the Minister who shall within five working days transmit the same to the headquarters of the HNS Fund through the Ministry responsible for foreign affairs;**
- (d) all judicial terms for the filing of any written pleadings or other acts by the HNS Fund shall be extended by five working days and no such times may be abridged to less than five working days.**

#### **Recognition and enforcement**

**10. Any judgment given by a foreign court, as provided in Article 38 of the Convention, shall be enforced in Malta in accordance with the provisions of Title V of Book Third of the Code of Organization and Civil Procedure [Cap. 12].**

#### **Exception**

**11. (1) The provisions of this Act shall not apply to ships which do not exceed 200 gross tonnage and which carry hazardous and noxious substances only in packaged form on voyages between ports or facilities within the territorial waters of Malta.**

**(2) For the purpose of this provision a declaration to this effect shall be made by the Minister at the time of ratification, approval or accession to the Convention, or at any time thereafter. The declaration shall be deposited with the Secretary-General of the International Maritime Organization.**

#### **Power to make regulations etc.**

**12. (1) The Minister may make regulations, rules or orders, or give instructions as are necessary for carrying into effect the provisions of the Convention.**

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

#### **Language of Schedules**

**13. The Schedules to this Act shall be in the English language only, and such text shall also apply to the Maltese text of this Act.**

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### **SCHEDULE**

**[SECTIONS 3, 5, 6, 10, 11 AND 12]**

**Text of Articles 1 to 22 and 35 to 42 of the 1996 International Convention on  
Liability and Compensation for Damage in Connection with the Carriage of  
Hazardous and Noxious Substances by Sea**

**Chapter I  
GENERAL PROVISIONS**

**Definitions**

**Article 1**

**For the purposes of this Convention:**

- 1. “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever.**
- 2. “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.**
- 3. “Owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “owner” shall mean such company.**
- 4. “Receiver” means either:**
  - (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or**
  - (b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to national law is substantially the same as that which would have been received under (a).**
- 5. “Hazardous and noxious substances” (HNS) means:**
  - (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:**

**(i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;**

**(ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;**

**(iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;**

**(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;**

**(v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;**

**(vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed cup test);**

**(vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and**

**(b) residues from previous carriage in bulk of substances referred to in (a) (i) to (iii) and (v) to (vii) above.**

**6. “Damage” means:**



- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;**
- (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;**
- (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and**
- (d) the costs of preventive measures and further loss or damage caused by preventive measures.**

**Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.**

**In this paragraph, “caused by those substances” means caused by the hazardous or noxious nature of the substances.**

**7. “Preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.**

**8. “Incident” means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.**

**9. “Carriage by sea” means the period from the time when the hazardous and noxious substances enter any part of the ship’s equipment, on loading, to the time they cease to be present in any part of the ship’s equipment, on discharge. If no ship’s equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship’s rail.**

**10. “Contributing cargo” means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final**

**discharge shall be considered as contributing cargo in respect of receipt at the final destination.**

**11. The “HNS Fund” means the International Hazardous and Noxious Substances Fund established under article 13.**

**12. “Unit of account” means the Special Drawing Rights as defined by the International Monetary Fund.**

**13. “State of the ship’s registry” means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.**

**14. “Terminal” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.**

**15. “Director” means the Director of the HNS Fund.**

**16. “Organization” means the International Maritime Organization.**

**17. “Secretary-General” means the Secretary-General of the Organization.**

## **Annexes**

### **Article 2**

**The Annexes to this Convention shall constitute an integral part of the Convention.**

## **Scope of application**

### **Article 3**

**This Convention shall apply exclusively:**

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;**
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a**

**State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;**

**(c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and**

**(d) to preventive measures, wherever taken.**

#### **Article 4**

**1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.**

**2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.**

**3. This Convention shall not apply:**

**(a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and**

**(b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.**

**4. Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.**

**5. A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.**

**6. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdiction set forth in article 38 and shall waive all defences based on its status as a sovereign State.**

#### **Article 5**

**1. A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:**

**(a) which do not exceed 200 gross tonnage; and**

**(b) which carry hazardous and noxious substances only in packaged form; and**

**(c) while they are engaged on voyages between ports or facilities of that State.**

**2. Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1 (a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.**

**3. Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.**

**4. A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.**

**5. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered cargo for the purpose of application of articles 18, 20, article 21, paragraph 5 and article 43.**

**6. The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:**

**(a) the damage as defined in article 1, paragraph 6 (a), (b) or (c) was caused in:**

- (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
  - (ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (I);
- (b) the damage includes measures taken to prevent or minimize such damage.

## **Duties of State Parties**

### **Article 6**

**Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.**

## **Chapter II LIABILITY**

### **Liability of the owner**

#### **Article 7**

**1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board a ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.**

**2. No liability shall attach to the owner if the owner proves that:**

- (a) the danger resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
  - (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or**
- (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either**
  - (i) has caused damage, wholly or partly; or**
  - (ii) has led the owner not to obtain insurance in accordance with article 12;**

**provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.**

**3. If the owner proves that the damage resulted wholly or partly either 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 exonerated wholly or partially from liability to such person.**

**4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.**

**5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:**

- (a) 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 bareboat 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; and**
- (f) the servants or agents of persons mentioned in (c), (d) and (e);**

unless the damage caused 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.

6. Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

### **Incidents involving two or more ships**

#### **Article 8**

1. Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

2. However, owners shall be entitled to the limits of liability applicable to each of them under article 9.

3. Nothing contained in this article shall prejudice any right of recourse of an owner against any other owner.

### **Limitation of liability**

#### **Article 9**

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

(a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3. The owner shall, for the purpose of benefitting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4. Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.



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

**9. (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.**

**(b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.**

**(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.**

**10. For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.**

**11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effects as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of**

liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

#### Article 10

1. Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

- (a) no person having a claim for 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; and
- (b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

#### Death and injury

#### Article 11

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

#### Compulsory insurance of the owner

#### Article 12

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.

**2. A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:**

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

**3. The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.**

**4. The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.**

**5. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.**

**6. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.**

**7. Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.**

**8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owners's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.**

**9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.**

**10. A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.**

**11. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.**

**12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in**

accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

**Chapter III**  
**COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS**  
**SUBSTANCES FUND (HNS FUND)**

**Establishment of the HNS Fund**

**Article 13**

**1. The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:**

- (a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and**
- (b) to give effect to the related tasks set out in article 15.**

**2. The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.**

**Compensation**

**Article 14**

**1. For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:**

- (a) because no liability for the damage arises under chapter II;**
- (b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially**

**incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;**

**(c) because the damage exceeds the owner's liability under the terms of chapter II.**

**2. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.**

**3. The HNS Fund shall incur no obligation under the preceding paragraphs if:**

**(a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or**

**(b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.**

**4. If the HNS Fund proves that the damage resulted wholly or partly either 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 HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.**

**5. (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.**

**(b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.**

**(c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.**

**(d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.**

**6. Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.**

**7. The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.**

### **Related tasks of the HNS Fund**

#### **Article 15**

**For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:**

**(a) to consider claims made against the HNS Fund;**

**(b) to prepare an estimate in the form of a budget for each calendar year of:**

#### **Expenditure:**

**(i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and**

**(ii) payments to be made by the HNS Fund in the relevant year;**

#### **Income:**

- (iii) surplus funds from operations in preceding years, including any interest;**
  - (iv) initial contributions to be paid in the course of the year;**
  - (v) annual contributions if required to balance the budget; and**
  - (vi) any other income;**
- (c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and**
- (d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.**

### **General provisions on contributions**

#### **Article 16**

- 1. The HNS Fund shall have a general account, which shall be divided into sectors.**
- 2. The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:**
  - (a) oil as defined in article 1, paragraph 5(a)(i) (oil account);**
  - (b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and**
  - (c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).**
- 3. There shall be initial contributions and as required, annual contributions to the HNS Fund.**



**4. Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.**

**5. For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(c), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated to the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limits.**

**6. “Associated person” means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.**

## **General provisions on annual contributions**

### **Article 17**

**1. Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.**

**2. Annual contributions payable pursuant to articles 18, 19 and 21, paragraph 5 shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged during the preceding calendar year or such other year as the Assembly may decide.**

**3. The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and article 21, paragraph 5, the amount of that person’s annual contribution to each account on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other person as the Assembly may**

decide. For the general account the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that amount by the total quantity of cargo contributing to that account.

4. The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5. The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

### **Annual contributions to the general account**

#### **Article 18**

1. Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1, which fall within the following sectors:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) substances referred to in paragraph 2; and
- (c) other substances.

2. Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

### **Annual contributions to separate accounts**

## **Article 19**

**1. Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:**

**(a) in the case of the oil account,**

**(i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and**

**(ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;**

**(b) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;**

**(c) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.**

**2. Subject to paragraph 3, the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.**

**3. The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:**

**(a) 350 million tonnes of contributing cargo in respect of the oil account;**

**(b) 20 million tonnes of contributing cargo in respect of the LNG account; and**

**(c) 15 million tonnes of contributing cargo in respect of the LPG account.**

**4. The Assembly may suspend the operation of a separate account if:**

**(a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or**

**(b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.**

**5. The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.**

**6. Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.**

## **Initial contributions**

### **Article 20**

**1. In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5 be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.**

**2. The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.**

**3. Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.**

## **Reports**

### **Article 21**

**1. Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.**

**2. For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.**

**3. For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.**

**4. Where a State Party does not fulfil its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.**

**5. In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:**

- (a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or**
- (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who**

**discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.**

### **Non-payment of contributions**

#### **Article 22**

**1. The amount of any contributions due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.**

**2. Where a person who is liable to pay contributions in accordance with articles 18, 19, 20, or article 21, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.**

### **Tax exemptions and currency regulations**

#### **Article 35**

**1. The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.**

**2. When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.**

**3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.**

**4. The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.**

**5. Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.**

**6. Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without restriction.**

### **Confidentiality of information**

#### **Article 36**

**Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.**

### **Chapter IV CLAIMS AND ACTIONS**

#### **Limitation of actions**

#### **Article 37**

**1. Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.**

**2. Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.**

**3. In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.**

**4. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.**

### **Jurisdiction in respect of action against the owner**

#### **Article 38**

**1. Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any States Parties.**

**2. Where an incident has caused damage, exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:**

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

**3. Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.**



**4. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.**

**5. After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the appointment and distribution of the fund.**

#### **Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund**

#### **Article 39**

**1. Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.**

**2. In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.**

**3. Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.**

**4. Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.**

**5. Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.**

**6. Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.**

**7. Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the**

proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

## **Recognition and enforcement**

### **Article 40**

**1. Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:**

**(a) where the judgement was obtained by fraud; or**

**(b) where the defendant was not given reasonable notice and a fair opportunity to present the case.**

**2. A judgment recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.**

**3. Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.**

## **Subrogation and recourse**

### **Article 41**

**1. The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the**

**rights that the person so compensated may enjoy against the owner or the owner's guarantor.**

**2. Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.**

**3. Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.**

### **Supersession clause**

#### **Article 42**

**This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.**

**ANNEX I**

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

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

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

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

**Type of security.....**

**Duration of security.....**

**Name and address of the insurer(s) and/or guarantor(s)**

**Name.....**

**Address.....**

.....

**This certificate is valid until.....**

**Issued or certified by the Government**

**of.....**

.....

**(Full designation of the State)**

**At.....On.....**

(Place)

(Date)

.....  
(Signature and Title of issuing or  
certifying official)

**Explanatory Notes:**

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

**ANNEX II**

**REGULATIONS FOR THE CALCULATION OF ANNUAL CONTRIBUTIONS  
TO THE GENERAL ACCOUNT**

**Regulation 1**

6. The fixed sum referred to in article 17, paragraph 3 shall be determined for each sector in accordance with these regulations.
7. When it is necessary to calculate contributions for more than one sector of the general account, a separate fixed sum per unit of contributing cargo shall be calculated for each of the following sectors as may be required:
  - a. solid bulk materials referred to in article 1, paragraph 5(a)(vii);
  - b. oil, if the operation of the oil account is postponed or suspended;

- c. LNG, if the operation of the LNG account is postponed or suspended;**
- d. LPG, if the operation of the LPG account is postponed or suspended;**
- e. other substances.**

## Regulation 2

8. For each sector, the fixed sum per unit of contributing cargo shall be the product of the levy per HNS point and the sector factor for all sectors.
9. The levy per HNS point shall be the total annual contributions to be levied to the general account divided by the total HNS points for all sectors.
10. The total HNS points for each sector shall be the product of the total volume, measured in metric tonnes, of contributing cargo for that sector and the corresponding sector factor.
11. A sector factor shall be calculated as the weighted arithmetic average of the claims/volume ration for that sector for the relevant year and the previous nine years, according to this regulation.
12. Except as provided in paragraph 6, the claims/volume ratio for each of these years shall be calculated as follows:
  - a. established claims, measured in units of account converted from the claim currency using the rate applicable on the date of the incident in question, for damage caused by substances in respect of which contributions to the HNS Fund are due for the relevant year; divided by
  - b. the volume of contributing cargo corresponding to the relevant year.
13. In cases where the information required in paragraphs 5(a) and (b) is not available, the following values shall be used for the claims/volume ratio for each of the missing years:

a. solid bulk materials referred to in article 1, paragraph 5(a)(vii)	0
b. oil, if the operation of the oil account is postponed	0
c. LNG, if the operation of the LNG account is postponed	0
d. LPG, if the operation of the LPG account is postponed	0
e. other substances	0.0001
14. The arithmetic average of the ten years shall be weighted on a decreasing linear scale, so that the ratio of the relevant year shall have a weight of 10, the year prior to the relevant year shall have a weight of 9, the next preceding year shall have a weight of 8, and so on, until the tenth year has a weight of 1.

- 15. If the operation of a separate account has been suspended, the relevant sector factor shall be calculated in accordance with those provisions of this regulation which the Assembly shall consider appropriate.**



## **Objects and Reasons**

**The Object of the Bill is to provide for Malta's accession to the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, and for the implementation of certain provisions of this Convention, thereby supplementing its marine pollution legislation.**