

THE INTERNATIONAL MARITIME LAW INSTITUTE

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COUNTRY: SAINT VINCENT AND THE GRENADINES

MARITIME LEGISLATIVE DRAFTING PROJECT

THE OBJECT OF THE DRAFT IS TO IMPLEMENT:

- i) The International Convention on Civil Liability for Oil Pollution Damage 1969 as amended by the 1992 Protocol thereto; and
  
- ii) The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage as amended by the 1992 Protocol thereto.

BACKGROUND

The problem of marine pollution has in recent years been consistently attracting a high degree of attention and debate and consequently the devastating effects which shipping activities may have on a coastal state have become more apparent.

Oil pollution has clearly dominated the media's attention and therefore inevitably, the world's attention. This is particularly evident with respect to incidents of tanker casualties which have acted as a catalyst for international action. However, the consequences of operational discharges may be equally harmful and must not therefore be overlooked.

For a small developing state, the effects of a major oil spill can be grave. Indeed where, as in the case of Saint Vincent and the Grenadines, that state is heavily dependent upon the natural beauty of its coastlines and the presence of abundant marine life as essential elements of its tourist industry, the consequences of an oil spill can be catastrophic. Accordingly, the importance of implementing legislation to prevent as well as to combat oil spills has been recognised and reiterated by top officials directly concerned in the legislative process in Saint Vincent and the Grenadines. Furthermore, consultations with respect to the implementation of such legislation have been held with IMO consultant, Mr Robert Schriel. Consequently, the urgency of enacting legislation to implement the provisions of the International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the Fund Convention) has been emphasized and appreciated.

The 1969 CLC provides a framework for imposing strict liability on a shipowner, as well as providing limits on that liability, for pollution damage caused by the escape or discharge of persistent oil from ships. However, the Convention does not provide a regime which affords full compensation for victims of oil pollution

damage in all cases. Accordingly, the provisions of the Fund Convention step in and cover the liability not covered by the CLC through the establishment of a Fund subsidised by the oil industry itself, particularly, importers of oil.

Although Saint Vincent and the Grenadines has ratified the 1969 CLC, it has not yet enacted legislation implementing its provisions. With respect to the 1971 Fund Convention, Saint Vincent is not at present, a party. However, it will soon become a party as it is recognized that the two Conventions represent two complementary parts of a single regime and, as such, will operate to maximum effect side by side.

Both the 1969 and 1971 Conventions have had important amendments made to them by their respective 1992 Protocols, none of which have been ratified by Saint Vincent. Nonetheless, as these Protocols have, most notably, increased the limits of liability, it is clearly beneficial to Saint Vincent that they be ratified as soon as possible.

With that in mind, the principal purpose of this Bill is to provide legislation implementing both the 1969 Civil Liability Convention and the 1971 Fund Convention as amended by their 1992 Protocols in anticipation of Saint Vincent becoming a party to the 1971 Convention as well as the 1992 Protocols in the near future.

**SAINT VINCENT AND THE GRENADINES**

**THE OIL POLLUTION (CIVIL LIABILITY) ACT, 1997**

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SAINT VINCENT AND THE GRENADINES

ACT NO OF 1997

AN ACT to give effect to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1992 Protocol thereto, and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and the 1992 Protocol thereto, and for matters incidental thereto.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows:-

PRELIMINARY

Short Title            1.    This Act may be cited as the Oil Pollution (Civil Liability) Act 1997.

CHAPTER 1

Interpretation            2.    In this Act, unless the context otherwise requires:-

"Dollar" means the Eastern Caribbean dollar.

"Minister" means the Minister responsible for maritime affairs.

"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.

"Liability Convention State" means a state party to the Liability Convention.

"The Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage 1969 as amended by the 1992 Protocol thereto;

"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.

"Organisation" means the International Maritime Organisation.

"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.

"Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent sub-divisions.

"Pollution damage" means:

- a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge 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 preventative measures and further loss or damage caused by preventative measures.

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



damage.

"Saint Vincent" means Saint Vincent and the Grenadines.

"Ship" means any seagoing vessel and seaborne 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 aboard.

"State of the ship's registry" means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying.

"US dollar" means the United States dollar

Shipowner's  
Liability

3. (1) Where as a result of an incident:-

- a) Oil has escaped or has been discharged from a ship; or
- b) there arises a grave and imminent threat of damage caused by a ship, (in the following

provisions of this Act referred to as a "relevant threat of contamination") except as provided in section 4, the owner of the ship at the time of the incident, or where the incident consists of a series of occurrence at the first such occurrences, shall be liable for:-

- i) any loss or damage caused outside the ship in the territory of Saint Vincent by contamination resulting from the escape or discharge; and
- ii) the costs of any measures reasonably carried out after the escape or discharge to prevent or minimize such damages; and
- iii) further loss or damage caused by the carrying out of such measures.

3. (2) This Act shall apply exclusively:-

a) to pollution damage caused:

- i) in the territory, including the territorial sea of Saint Vincent, and

ii) in the exclusive economic zone of Saint Vincent, established in accordance with international law;

b) to preventative measures reasonably carried out to prevent or minimize such damage caused in the territory of Saint Vincent

3. (3) When an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under section 4, shall be jointly and severally liable for all such damage which is not reasonably separable.

Exceptions  
from Liability

4. (1) The owner of a ship shall not be liable under section 3 by reason of any escape or discharge of oil from the ship, or by reason of any threat of contamination, if he proves that the escape or discharge, or threat of contamination:

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 navigational aids in the exercise of that function

4. (2) If the owner proves that the escape or discharge of oil, or the threat of contamination resulted wholly or partially either from:

- a) an act or omission done with intent to cause damage; or

- b) a negligent act or omission,

where such act or omission is done by the person who suffered the damage, the owner may be exonerated wholly or partially from his liability to such person.

4. (3) Where oil has escaped or has been discharged from a ship and pollution damage results therefrom or there arises a grave and imminent threat of such damage, no liability, otherwise than under section 3, shall attach to an owner in respect of such

pollution damage or costs as is mentioned in that section.

Subject to subsection (4) of this section, no liability for such pollution damage or costs shall be incurred by:

- 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 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 preventative measures;
- f) all servants or agents of persons

mentioned in sub-paragraphs (c), (d)  
and (e);

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

Limitation of  
Liability

4. (4) Nothing in this Chapter shall prejudice any  
right of recourse of the owner against  
third parties.
  
5. (1) An owner of a ship shall be entitled  
to limit his liability in accordance with  
subsection (3) below in respect of claims  
for compensation arising from liability  
incurred under section 3.
  
5. (2) The limit of liability prescribed by  
subsection (3) below shall apply to the  
aggregate of liabilities incurred under  
section 3 in respect of any one incident.
  
5. (3) The amounts to which the owner of a ship  
may limit his liability under sub-section  
(1) of this section shall be:
  - a) in relation to a ship not exceeding  
5,000 tons, three million special  
drawing rights;

b) in relation to a ship exceeding 5,000 tons, three million special drawing rights and for each additional unit of tonnage in excess of 5,000 tons, 420 special drawing rights up to a maximum amount of 59.7 million special drawing rights;

but the Minister may by Order make such amendments of paragraphs (a) and (b) above as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Convention

5. (4) Subsection (1) above shall not apply where it is proved that the escape or discharge or threat of contamination resulted from the personal act or omission of the owners, committed with intent to cause such damage or cost as is mentioned in section 3 or recklessly and with knowledge that such damage would probably result.

5. (5) For the purposes of this section a ship's tonnage shall be its gross tonnage

calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

Constitution  
of Fund

6. (1) Where a claim has been made against the owner for compensation in respect of liability under section 3, he may apply to the court to limit his liability in accordance with the amounts stated in section 5(3).
  
6. (2) If on such an application the court determines that the owner is entitled to limit his liability, the court shall direct that the owner constitute a fund for the total sum representing the limit of his liability by:
  - a) depositing such sums with the court,  
or
  
  - b) producing a bank guarantee, or other guarantee acceptable under the laws of Saint Vincent.
  
6. (3) The court shall determine the amounts due to the individual claimants without regard to any limit, and the distribution of the fund among those claimants shall be made in



proportion to their established claims.

6. (4) The fund representing the amount of a limit determined in pursuance of this section shall be constituted in Eastern Caribbean dollars; and

a) such an amount shall be converted from Special Drawing Rights into Eastern Caribbean dollars by first converting the amount into U.S. dollars on the basis of such sums in U.S. dollars as the International Monetary Fund have fixed as being the equivalent of one Special Drawing Right for -

i) the day on which the fund was constituted; or

ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;

b) a certificate given by or on behalf of the Treasury stating:

i) that a particular sum in U.S. dollars has been so fixed for the day on which the fund was

constituted, or

ii) that no sum has been so fixed for that day and that a particular sum in U.S. dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the fund was constituted,

shall be conclusive evidence of those matters for the purposes of this Chapter;

c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

d) The amount in U.S. dollars shall be converted into Eastern Caribbean dollars as of the date of the constitution of the fund and on the basis of the conversion rate as applied by the National Commercial Bank of Saint Vincent on the date of the constitution of the fund.

6. (5) If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has, as a result of the incident in question, paid compensation for pollution damage, such person shall *pro tanto* be placed in the same position in relation to the fund as the claimant whose claim he has paid, but only to the extent of that sum.
6. (6) The right of subrogation provided for in subsection (5) above may also 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 the claimant whose claim he has paid would have had the right of recovery against him under the laws of Saint Vincent.
6. (7) 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 sub-sections (5)

or (6) of this section, had the compensation been paid before the fund was distributed, the court may order that a sufficient sum shall be provisionally set aside to enable the owner at such later date to enforce his claim against the fund.

6. (8) Claims in respect of expenses which have been reasonable incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage to which the liability extends or might have extended shall rank equally with other claims against the fund.

6. (9) The insurer or other person providing financial security 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 fund may be constituted even if, under the provisions of section 5(4), 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.

Restriction on  
Enforcement After

7. (1) Where a person who has incurred liability under section 3, is entitled

Establishment of  
Limitation Fund

to limit his liability and has

constituted a fund in accordance with  
subsection (2) of section 6:

a) no person having a claim in respect  
of that liability shall be entitled  
to exercise any right against any  
other assets of the owner in respect  
of such claim; and

b) the court shall order the release of  
any ship or other property which has  
been arrested in connection with a  
claim in respect of that liability  
and any bail or other security  
furnished to avoid or obtain release  
from such arrest.

7. (2) Subsection (1) shall only apply if the  
claimant has access to the court  
administering the fund and the fund is  
actually available in respect of his claim.

Compulsory  
Certificate of  
Insurance

8. (1) Subsection (2) applies to any ship  
carrying more than 2,000 tons of oil in  
bulk as cargo, and entering or leaving a  
port in Saint Vincent or arriving at or  
leaving an offshore terminal in the  
territorial sea of Saint Vincent or, if the  
ship is a Saint Vincent ship, a port in any  
other country or a terminal in the

territorial sea of any other country.

8. (2) There must be in force a certificate attesting that insurance or other financial security in respect of the ship was in force in the sums fixed by applying the limits of liability prescribed in section 5(3) to cover the owner's liability under section 3 of this Act.

8. (3) The certificate must be:-

a) if the ship is a Saint Vincent ship, a certificate issued by the Minister;

b) if the ship is registered in a Liability Convention State other than Saint Vincent, a certificate issued or certified by the appropriate authority of that country;

c) if the ship is not registered in a Liability Convention State, a certificate issued or certified by the Minister or by the appropriate authority of any Liability Convention country other than Saint Vincent.

8. (4) This certificate shall be in the form of the annexed model and shall contain the

following particulars:-

- a) name of ship and port of registration;
  - b) name and principal place of business of owner;
  - c) type of security;
  - d) 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;
  - e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.
8. (5) The certificate shall be carried on board the ship and shall, on demand, be produced by the master to any officer of Customs and Excise or of the Minister and, if the ship is a Saint Vincent ship, to any proper officer.
8. (6) Where an insurance or other financial

security can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under sub-section (4) of this section, before 3 months have elapsed from the date on which notice of its termination is given to the authorities referred to in subsection (5) of this section, such insurance or security shall not satisfy the requirements of this section, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this section.

8. (7) Certificates issued or certified under the authority of a Liability Convention State in accordance with subsection (3) shall be accepted by Saint Vincent for the purposes of this Act and shall be regarded as having the same force as certificates issued or certified by the Minister even if issued or certified in respect of a ship not registered in a Liability Convention country.



Where there are reasonable grounds for believing that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Act, the Minister may at any time request consultation with the issuing or certifying State.

8. (8) 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 (2) above, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding One hundred and fifty thousand dollars.

8. (9) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5) above, the master shall be liable on summary conviction to a fine not exceeding Five thousand dollars.

Issue of  
Certificate by  
Minister

9. (1) Subject to subsection (2) below, if the Minister is satisfied, on the application for such a certificate as is mentioned in section 8 in respect of a

Saint Vincent Ship or a ship registered in any country which is not a Liability Convention 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 Article VII of the Liability Convention 1969 as amended by the 1992 Protocol (section 8 of this Act), the Minister shall issue such a certificate to the owner.

9. (2) The Minister may refuse the certificate if he is of the opinion that there is doubt as to the ability of the person providing insurance or other security to meet his obligations thereunder, or as to the adequacy of the insurance or other security to cover the owner's liability under section 3 in all circumstances.
9. (3) The Minister may make regulations providing for the cancellation and delivery up of a certificate issued by him under this section in such circumstances as may be prescribed by the regulations.
9. (4) If a person required by regulations under subsection (3) above to deliver up a

certificate fails to do so he shall be liable on summary conviction to a fine not exceeding

9. (5) The Minister shall send a copy of any certificate issued by him under this section in respect of a Saint Vincent ship to the Registrar of Ships, and the Registrar shall make the copy available for public inspection.

Action Against  
Insurer

10. (1) Where a person alleges that the owner of a ship has incurred liability under section 3 as a result of any escape or discharge of oil occurring, or as a result of any threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 8 related, he may bring proceedings for compensation directly against the person providing insurance or other financial security (in the following provisions of this section referred to as "the insurer")

10. (2) The insurer may avail himself of the limits of liability prescribed in sub-section (3) of section 5 even if the owner is not

entitled to limit his liability because the pollution damage resulted from the personal act or omission of the owner as mentioned in section 5(4).

10. (3) In all proceedings brought against the insurer it shall be a defence to prove that the escape or discharge of oil or the threat of contamination resulted from the wilful misconduct of the owner himself.

10. (4) The insurer may invoke in proceedings brought against him, except where such proceedings are brought by the owner against him, any defences which the owner himself would have been entitled to invoke; the insurer shall in any event have the right to require the owner to be joined in the proceedings.

Limitation of Time

11. No action may be brought before a court in Saint Vincent in order to enforce a claim for compensation in respect of a liability incurred under section 3 unless such action is commenced within three years from the date when the damage occurred, and in any event not later than six years from the date of the incident or the first of the incidents which caused the damage.

Jurisdiction of  
the Court

12. Where as a result of an incident oil escapes or is discharge from a ship or there arises a relevant threat of contamination in the territory including the territorial sea or an area referred to in section 3(2) of one or more Liability Convention States or preventative measures have been taken to prevent or minimize such damage in such territory including the territorial sea or area, actions for compensation may only be brought in the courts of any such Liability Convention State or States. Reasonable notice of any such action shall be given to the defendant.

Recognition of  
Foreign Judgments

13. (1) Any judgment given by a court with jurisdiction in accordance with section 12 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in Saint Vincent, except:-
- a) where the judgment was obtained by fraud; or
  - b) where the defendant was not given reasonable notice and a fair opportunity to present his case.
13. (2) A judgment recognized under subsection (1) above shall be enforceable as soon as the

formalities required in Saint Vincent have been complied with.

Government Ships 14. (1) The provisions of this Act shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

(2) With respect to ships owned by a Liability Convention State and used for commercial purposes, each State shall be subject to suit in the jurisdiction set forth in section 12 and shall waive all defences based on its status as a Sovereign State.

## CHAPTER II

### INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Interpretation 15. In this chapter unless the context otherwise requires:-

a) "the Liability Convention" has the same meaning as in Chapter I of this Act;

b) "the Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971

as amended by the 1992 Protocol thereto;

c) "the Fund" means the International Fund established by the Fund Convention; and

d) "Fund Convention State" means a country in respect of which the Fund Convention is in force.

Contributions

16. (1) Any person who has received in total quantities of contributing oil in excess of 150,000 tons in the ports or terminal installations in the territory of Saint Vincent carried by sea to such ports or terminal installations shall be liable to make annual contributions to the Fund.

16. (2) For the purpose of subsection 1 above:

a) all the members of a group of companies shall be treated as a single person, and

b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

16. (3) Contributions shall also be payable to the

Fund in respect of total quantities of contributing oil in excess of 150,000 tons when first received in any installation in Saint Vincent after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

16. (4) a) Where the aggregate quantities of contributing oil received in the territory of Saint Vincent by any person in a calendar year and any associated person or persons in the same calendar year exceed 150,000 tons, each such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.

b) "Associated Person" means any subsidiary or commonly controlled entity.

16. (5) The person liable to pay contributions is:

a) in the case of oil which is being imported into Saint Vincent, the importer, and



b) otherwise, the person by whom the oil is received.

16. (6) The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.

Arrears

17. (1) Where the amount of any contributions due under Article 12 of the Fund Convention remains unpaid after the date on which it became due it shall from that point bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.

17. (2) The Minister shall take any appropriate measures, including the imposition of such sanctions as he deems necessary against those persons who are under an obligation to contribute to the Fund arising under the Fund Convention for the purpose of ensuring that any such obligation is fulfilled.

List of  
Contributors

18. (1) For the purposes of submitting to the Fund the names and addresses of the persons

who under section 16 are liable to make contributions to the Fund for any year, the Minister may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice, including data on the relevant quantities of contribution oil received during the preceding calendar year by any such person who is liable to contribute to the Fund.

18. (2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 16(2).

18. (3) Any person from whom information is requested by a notice under this section shall furnish such information in compliance with the notice in the manner, and within the time specified, if any; and if none is specified, in a reasonable manner and within a reasonable time.

18. (4) A person who:

a) refuses or wilfully neglects to comply with a notice under this section or

b) in furnishing any information in compliance with a notice under this section knowingly or recklessly makes a materially false statement,

shall be liable:

i) on summary conviction to a fine,

ii) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding twelve months, or to both.

Compensation

19. (1) The Fund shall pay compensation to any person suffering pollution damage in the territory of Saint Vincent if such person has been unable to obtain full and adequate compensation for the damage under section 3:

a) because the damage -

i) resulted from a natural phenomenon of an exceptional, inevitable and irresistible character; or

ii) was wholly caused by an act or

omission done with intent to cause damage by a third party (not being a servant or agent of the owner), or

iii) 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

b) because the owner liable for the damage under section 3 is financially incapable of meeting his obligations in full and any financial security that may be provided under section 8 does not cover or is insufficient to satisfy the claims for compensation for the damage, or

c) because the damage exceeds the owner's liability under section 3 as limited pursuant to subsection 3 of section 5.

19. (2) For the purposes of this section an owner is treated as being financially incapable of meeting his obligations and a financial security as being insufficient if the

person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under Chapter I after having taken all reasonable steps to pursue the legal remedies available to him.

19. (3) For the purpose of this section, expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage; accordingly any claim against the Fund in respect of such expenses will be treated as if it were a claim in respect of liability under section 3.

19. (4) The Fund shall incur no obligation under this section if:

a) it proves that the pollution damage -

i) resulted from an act of war, hostilities, civil war or insurrection, or

ii) was caused by oil which has 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  
Governmental non-commercial service,  
or

b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

19. (5) If the Fund proves that the pollution damage resulted wholly or partly -

a) from an act or omission done with intent to cause damage by the person who suffered the damage, or

b) from the negligence of that person,  
the Fund may (subject to subsection 7 below) be exonerated wholly or partly from its obligation to pay compensation to such person

19. (6) Subject to subsection 7 below, where the shipowner has been exonerated under section 4(2) the Fund shall be exonerated to the same extent.

19. (7) Subsections (5) and (6) above shall not apply where the pollution damage consists

of the costs of preventive measures or any damage caused by such measures.

Limitation of  
Fund's Liability  
under S.19

20. (1) The Fund's liability under section 19 shall be subject to the limits imposed by paragraphs 4 and 5 of the Fund Convention (which impose an overall limit on the liabilities of the Fund), and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.

20. (2) A certificate given by the Director of the Fund stating that sub-paragraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 19 shall be conclusive evidence for the purposes of this Chapter that it is so applicable.

20. (3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under section 19 shall notify the Fund, and -

a) no steps shall be taken to enforce the judgment unless and until the court gives

leave to enforce it,

b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount, and

c) in the latter case the judgment shall be enforceable only for the reduced amount.

20. (4) Payment of an amount or a reduced amount in execution of such a judgment as is mentioned in subsection (3) above shall be made in Eastern Caribbean dollars; and

a) such an amount shall be converted from Special Drawing Rights into Eastern Caribbean dollars by first converting the amount into U.S. dollars on the basis of such sum in U.S. dollars as the International Monetary Fund have fixed as being the equivalent of one Special Drawing Right for -

i) the relevant day, namely the date of the decision of the Assembly of the Fund as to the first date of payment



of compensation; or

ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;

b) a certificate given by or on behalf of the Treasury stating -

i) that a particular sum in U.S. dollars has been so fixed for the relevant day, or

ii) that no sum has been so fixed for the relevant day and that a particular sum in U.S. dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day

shall be conclusive evidence of those matters for the purposes of this Chapter.

c) The amount in U.S. dollars shall be converted into Eastern Caribbean dollars as of the date of the constitution of the fund and on the basis of the conversion rate as

applied by the national Commercial Bank of Saint Vincent on the date of the constitution of the fund.

20. (5) The Minister may by order make such amendments of this section as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions of the Fund Convention.

20. (6) Any document purporting to be such a certificate as is mentioned in sub-section (2) or (4)(b) above shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate

Jurisdiction of  
the Court

21. (1) The Courts of Saint Vincent shall have jurisdiction over any claims in respect of a liability falling on the Fund under this Chapter.

21. (2) The Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with section 12 against the owner of a ship or his guarantor.

21. (3) Without prejudice to the provisions of

subsection (2) above, where an action under Chapter I for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Fund Convention country each party to the proceedings shall be entitled to notify the Fund of the proceedings.

21. (4) Where pursuant to subsection (3) above either of the parties to the action notifies the Fund of the proceedings, such notification shall only be valid if it is:

a) in writing, and

b) made within such a reasonable time after the commencement of proceedings as to enable the Fund effectively to intervene as a party to the proceedings whether it actually intervenes or not.

21. (5) The 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 except as provided in subsection (6) below.

21. (6) Where the Fund has been given notice of proceedings in accordance with the formalities set out in sub-section (4)

above, so that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

21. (7) Where a person incurs a liability under the law of a Fund Convention country corresponding to Chapter I of this Act for damage which is partly in the territory of Saint Vincent, subsection (6) above shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgment in proceedings under that law of the said country.
21. (8) The Courts of Saint Vincent shall recognise and enforce any final judgment given by a court in a Fund Convention State to enforce a claim in respect of liability incurred under any provision corresponding to section 19

21. (9) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered gives leave to enforce it; and -

a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention or that it is to be reduced to a specified amount; and

b) in the latter case, the judgment shall be enforceable only for the reduced amount

Limitation of Time

22. No action may be brought before a court in Saint Vincent to enforce any claim against the Fund under this Chapter unless:

a) the action is commenced, or

b) a notification has been made pursuant to section 21(3)

within three years from the date when the damage occurred, and in any event not later than six years from the date of the incident, or first of the incidents which caused the damage, by reason

of which the claim against the Fund arose.

Rights of  
Subrogation

23. (1) Where the Fund has paid compensation to a claimant in accordance with section 19(1) in respect of pollution damage suffered by him, it shall acquire by subrogation the rights that the claimant so compensated has (or but for the payment would have) against the owner or his guarantor or any other person.

23. (2) Where any public authority in Saint Vincent has paid any sum as compensation to a person in respect of pollution damage, that authority shall

acquire by subrogation any rights that the person so compensated has against the Fund under this Chapter.

Supplementary  
Provisions as  
to Proceedings  
Involving the Fund

24. (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's Representative

(2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or



ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1969.

Type of Security

Duration of Security

Name and Address of Insurer(s) and/or Guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of  
Saint Vincent and the Grenadines

At \_\_\_\_\_  
(Place)

On \_\_\_\_\_  
(Date)

.....  
Minister