



**IMO**



**INTERNATIONAL MARITIME LAW INSTITUTE**

Established under the auspices of the International Maritime Organization

A specialized agency of the United Nations

**THE GHANA SHIPPING (REMOVAL OF WRECKS) (AMENDMENT) ACT,  
2010**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) at the  
IMO-International Maritime Law Institute**

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Academic Year 2009/2010

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## **DEDICATION**

*To my parents, my mum, Mrs. Shiata Bawah and in loving memory of my dad, the Late John Ewuntoma Bawah, whose dream it was to see me succeed and to live beyond my wildest dreams...*

*To the home team, my Spouse, Hudu and our wonderful son, Khamil Mogtari who continue to inspire me to seek and achieve excellence.*

*To my brother and sisters for their immense support.*

## ACKNOWLEDGEMENT

*My thanks go to the Almighty God without whose guidance and protection this work would not have been accomplished.*

*My presence here in Malta would not have been possible but for the generosity and benevolence of the IMO, my sponsors, The Nippon Foundation, Director of IMLI, Professor David Attard and staff of IMLI to whom I remain forever grateful.*

*I remain indebted to Mr. Norman A. Martinez, a supervisor like no other, who supervised this work selflessly.*

*I owe a debt of gratitude to members of the IMLI faculty, Ms. Elda Belja and Mr. Ruben Y. Maceda for their constant support, advice and assistance.*

*I express my sincere appreciation to my Nominating Authority, The Chief Executive Officer, Mr. Kofi Mbiah, Deputy Chief Executive, Management and Staff of The Ghana Shipper's Council.*

## ***EXPLANATORY NOTE***

### ***1. PURPOSE OF DRAFT AMENDMENT BILL***

The purpose of this legislation is to incorporate the provisions of the Nairobi International Convention on the Removal of Wrecks, 2007 (the Nairobi Convention) into the Ghana Shipping Act, 2003 (Act 645), (Ghana Shipping Act). The legislation would amend Part XI of the existing law under the heading “Wrecks and Salvage” specifically, sections 347-369.

Considering the fact that Wrecks may pose a navigational hazard within port approaches, most maritime States have existing legislation empowering government agencies such as (the Coast Guard, Port or Lighthouse Authorities), to remove wrecks which pose a threat to or constitute a danger to navigation.<sup>1</sup>

The high seas are the world’s largest expanse of common space used for maritime commerce, exploitation of living resources, extraction of oil and gas, and as a disposal area for waste products of industry, agriculture, domestic life and war.<sup>2</sup> This has led to the emergence of serious environmental problems resulting in the promulgation of conventions, regulations and guidelines aimed at preserving and protecting the marine environment.<sup>3</sup>

There are basically two components to the subject of wrecks. One involves wrecks as a navigational hazard and the other involves wrecks as property. Wrecks are commonly found in places within the jurisdiction of a coastal State. Hence, it is the duty of the maritime administrations to take steps in safeguarding the interest of the public with respect to the preservation of property and the removal of wrecks from navigable channels or fairways.

At a Diplomatic Conference of the International Maritime Organization<sup>4</sup> (IMO), the Nairobi Convention was adopted. The Nairobi Convention outlines its objective and purpose by virtue of

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<sup>1</sup> Shaw, Richard and Tsimplis, Michael ‘The Liabilities of the Vessel’, Institute of Maritime Law; Southampton on Shipping Law, Informa, London, 2008, p. 191.

<sup>2</sup>P. Birnie, A. Boyle and C. Redwell, International Law & Environment, 3rd Edition, Oxford University Press, London, 2009, p. 379.

<sup>3</sup> Ibid.

<sup>4</sup> International Maritime Organization, United Nations Specialized Agency with Responsibility to develop and maintain a comprehensive regulatory framework for shipping and its remit today includes Safety, environmental

its preamble which states, ‘the fact that wrecks if not removed, may pose a hazard to navigation or the marine environment... and the need to adopt uniform international rules and procedures to ensure prompt and effective removal of wrecks and payment of compensation for the costs therein involved.’<sup>5</sup>

## **2. HISTORICAL DEVELOPMENT OF THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007**

The grounding in 1967 of the oil tanker ‘*Torrey Canyon*’<sup>6</sup> off the coasts of France and the United Kingdom led to the realisation within the IMO, that there was an urgent need for an international convention to deal with pollution control. The Legal Committee’s attention however, shifted towards the need for more stringent rules and guidelines in relation to oil and ship source pollution. The Committee held the view, that until there was a comprehensive convention on the Law of the Sea, it would be premature to attempt the drafting of a new convention on the removal of wrecks. However, when the United Nations Convention on the Law of the Sea (UNCLOS) was successfully adopted in 1982 the Committee further delayed the adoption of a removal of wrecks convention. It was thought that prior to the adoption of a removal of wrecks convention pertinent issues were to be dealt with beforehand, as such, the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) and a new protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC) were adopted. Work on both conventions concluded in 1996 and was complemented further by the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

A draft of the Nairobi Convention on the removal of wrecks was later prepared by Germany, the Netherlands and the United Kingdom in consultation with other interested parties and submitted

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concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping and related matters. [www.imo.org](http://www.imo.org).

<sup>5</sup>Preamble of the Nairobi Convention.

<sup>6</sup> *Torrey Canyon* runs aground in 1967 off the coasts of England and France spilling 30,000 tons of oil, killing the marine life and blighting the region for many years. The need for pollution control was established immediately after that disaster.

to the IMO for consideration.<sup>7</sup> After consultation with member States and stakeholders such as the Comité Maritime International (CMI), based upon responses received from a questionnaire submitted to the respective CMI National Maritime Law Associations a report was submitted to the 74<sup>th</sup> session of the Legal Committee in October, 1996 on the subject.

The proponents of the Nairobi Convention argued that it was imperative for uniform rules to be promulgated to regulate removal of wreck operations in international waters, not territorial waters.<sup>8</sup> Furthermore, the sponsoring States were of the view that the development of a convention on the removal of wrecks would be consistent with the powers granted to coastal States under article 221 of UNCLOS, while filling the existing gaps in international law in the process.

In recognition of the issues associated with the existence of wrecks in both territorial and non-territorial waters, the Nairobi Convention was adopted on 18 May, 2007. This was considered timely as the number of abandoned wrecks is said to have increased worldwide and as a consequence, continue to harm the marine environment especially the fish reserves upon which most coastal States are dependent. It ultimately attempts to define the parameters within which Affected States<sup>9</sup> may intervene in the removal of wrecks. This is determined in relation to location, whether the wreck constitutes a hazard to navigation, poses a threat to other ships approaching the port and the nature of the cargo being carried (whether hazardous or noxious substances) which may cause substantial danger to the marine and coastal environment. In so doing, the Nairobi Convention provides international solutions to this all important subject matter.

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<sup>7</sup> DE BOER, JAN E.; "The Nairobi Perspective :Nairobi International Convention on the Removal of Wrecks,2007" a paper delivered at the 39<sup>th</sup> Conference of the CMI(Athens, Greece),12-17<sup>th</sup> October,2008,CMI Yearbook 2007-2008, p. 334 at 335.

<sup>8</sup> Griggs, Patrick, Draft Wreck Removal Convention (DWRC), as per his N.J. Healy lecture at York University in November,2002, Shipping and Transport International Journal, Volume 7,p.1.

<sup>9</sup> Article 1(10) of the Nairobi Convention under definitions, 'Affected State' as a State in whose convention area the wreck is located.

### ***3. OVERVIEW OF THE NAIROBI INTERNATIONAL REMOVAL OF WRECKS CONVENTION***

#### **3.1 “Opt in” Clause**

The ‘opt in’ clause was principally included in the Nairobi Convention because one of the sponsoring States, the Netherlands did not wish to be saddled by international rules and restrictions when confronted with hazardous wrecks. Moreover, the exclusions listed in article 4(4) were part of the compromise package which enabled the “opt in” provisions in article 3 to be adopted. It is however curious that this paragraph was not included in article 3, which is where, it logically belongs. Under this clause, Contracting States have the option to extend the application of the Nairobi Convention to their national and territorial waters since the Nairobi Convention applies to international waters.

#### **3.2 The Scope and Application of the Nairobi Convention**

The Nairobi Convention establishes the parameters within which a coastal State may remove a ship ascertained as a hazard to navigation and a threat to the marine habitat to which indigenes of most coastal States depend for their sustenance. The Nairobi Convention defines a hazard as a threat to navigation and applies mainly to international waters, although coastal States already have national legislations dealing with wrecks and their removal thereto albeit in a rather restricted manner. Unlike the Ghana Shipping Act, the Nairobi Convention restrains coastal States from taking excessive measures when confronted with hazards to ensure that there is no ‘Immediate Sale’ or ‘Confiscation to the State’ as stipulated by the Ghana Shipping Act.

#### **3.3 Definitions**

There are 13 terms defined under article 1 of the Nairobi Convention which are short and hinge largely on the important terms applicable and restricted to the Nairobi Convention. A ‘Ship’ is defined as any seagoing vessel of any type whatsoever and includes hydrofoil boats, air cushion vessels, submersibles, floating craft and floating platforms except where such platforms are on location engaged in exploration...’



The 'Convention Area' refers to 'the Exclusive Economic Zone'(EEZ)<sup>10</sup> of a State Party established in accordance with international law or if, a State has not established such a zone, an area beyond and adjacent to the territorial sea of the 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', that is the zone beyond the territorial sea over which article 56 of UNCLOS confers limited jurisdiction on the coastal State.<sup>11</sup> There is no restriction in the Nairobi Convention on a State which seeks to exercise the option to extend the Nairobi Convention to the national (internal) waters and territorial sea.

Article 3 of the Nairobi Convention defines 'maritime casualty' as a collision of ships, stranding or other incident of navigation or occurrence on board a ship or external to it which results in material damage or imminent threat of material damage to a ship or cargo and this wide definition provided for maritime casualties.

A 'wreck' is defined as a sunken or stranded ship, or any part of a sunken or stranded ship including any object that is or has been on board such ship or any object that is lost at sea from a ship that is stranded, sunken or adrift at sea or a ship that is about or may reasonably be expected, to sink or strand, where effective measures to assist the ship or any property in danger are not already being taken. The definition in articles 3 and 4 of the Nairobi Convention includes protection for cargo, property and by extension the crew and or persons aboard such ship and efforts made to rescue same.

### **3.4 Facilitation of Removal of Wrecks**

Articles 5 to 9 of the Nairobi Convention deals with issues associated with reporting of wrecks, determination of hazard, locating, marking of wrecks and measures to facilitate the removal of wrecks. It outlines the rights and obligations of a coastal State and a master or registered owner of a wreck.

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<sup>10</sup> As not every State declares an EEZ, the Convention Area is extended in Article 1(1) to include an area beyond and adjacent to the territorial sea but not extending more than 200 nautical miles from the coast.

<sup>11</sup>Shaw, Richard and Tsimplis Michael , 'The Liabilities of the Vessel' Institute of Maritime Law, Southampton on Shipping Law, Informa, London, 2008, p. 155 at 190.

A 'hazard' as stipulated by article 5 of the Nairobi Convention refers to a wreck which poses a danger to navigation or may reasonably be expected to result in major harmful consequences or a threat of same to the marine environment, or damage to the coastline and related interests of one or more States. It is interesting to note that although the Nairobi Convention defines Affected State, it is silent on the role of States such as neighbouring coastal States which may likewise be affected by the wreck and provides no such definition even though it defines related interests of a coastal State directly affected by the incident. It is difficult to establish the purpose of 'related interests', that is, whether or not the term refers to the Affected State or surrounding coastal States.

The factors to take into consideration when removing wrecks include the size, type and construction of the wreck, the depth of the water, the tidal range and current, proximity to shipping routes to prevent possible collision, traffic density, nature of cargo carried, the proximity of offshore activities and the ecological sensitivity of the area. This is to ensure the safety and protection of the marine environment and to prevent pollution.

The Affected State, that is, the State in which the wreck is located is obliged to inform the ship's registry and consult with that State as well as other States likely to be affected regarding conditions and deadlines set for the removal. It must also indicate the immediacy of the need for the removal of wreck and where the owner fails to cause the removal of the wreck within the stipulated time set by the Affected State, the state may then undertake the removal and charge the owner for its cost.<sup>12</sup> This clause is in recognition of a salvor's 'right in possession' which an Affected State may interfere with at its own peril (the right of the owner to engage a salvor would not apply if the Affected State has 'opted in' and the wreck is within its territorial sea; article 4(4)).

The intervention of the Affected State must be in accordance with the limitations imposed by the Nairobi Convention and must be done with due consideration for the safety of life and property and protection of the marine environment. For instance, measures taken by the Affected State

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<sup>12</sup> Griggs, Patrick, CBE (Immediate Past President, CMI) 'The Removal of Wrecks Convention', 2007, Shipping and Transport International Journal, Volume 7, Number 1, p.1.

must be 'proportionate to the hazard' and shall not go beyond what is reasonably necessary to remove the wreck.

The main objective is to warn the Affected State to approach the process of removal with caution in a reasonable and considerate fashion when dealing with the interests of neighbouring coastal States.<sup>13</sup> That whilst exercising the rights under the Nairobi Convention, the Affected State 'shall not unnecessarily interfere with the rights and interests of other States...and of any persons...concerned'.

### **3.5 Liability**

Article 10 imposes strict liability on the registered ship owner for the costs of reporting, marking and removing of wrecks if required to do so by the coastal State. The exception applies where the owner proves that the maritime casualty was caused by war or the occurrence of a force majeure event, acts of piracy and terrorism, or omission of a third party. Further exclusion from liability would occur if a claim of negligence is made against the Affected State due to its failure to provide adequate navigational aid for ships. Such circumstances would mitigate the registered owner's liability and whoever alleges wrongdoing must prove it. Article 10 states further that nothing in the Nairobi Convention shall affect the right of the registered ship owner to limit liability under any applicable national or international regime, such as the LLMC, 1976 and its subsequent amendment.

Article 11 sets out the exceptions to liability for costs which would be in conflict with the LLMC and its amendments as well as other limitation of liability regimes of existing IMO conventions. These include the CLC 1969 and HNS which are subject to exclusion under the Nairobi Convention. For Ghana to derive the full benefit of the Nairobi Convention, it is imperative for the Government to adopt the LLMC 1976 and its 1996 amendments and thereafter alter the existing Ghana Shipping Act accordingly. They may then exercise the right to enact national legislation to exclude limitation of liability of registered ship owners in cases of removal of wrecks.

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<sup>13</sup> Ibid.

### **3.6 Compulsory Insurance**

Article 12 imposes a strict condition, that the registered owner of a ship of 300 gross tonnage and above must maintain compulsory insurance certificate or financial security. This would ensure that the Affected State recovers the cost of the removal and compensation for pollution caused from the registered owner's insurer.

### **3.7 Time Limits**

Article 13 provides that rights to recover costs shall be extinguished unless an action is brought within three years from the date the 'hazard' is determined or a maximum of six years from the date of the maritime casualty that resulted in the wreck. The Nairobi Convention is silent on the ability of an Affected State or its Government to dispose of a wreck or parts thereof as is presently the case with existing national legislation. The emphasis is on the ability and availability of funds to cover the cost of removal. It prescribes effective remedies to ensure that reasonable steps are taken to remove wrecks in conformity with internationally accepted systems of buoyage.

## ***4. PRESENT POSITION UNDER THE GHANA SHIPPING ACT, 2003***

The Ghana Shipping Act is the body of laws promulgated in 2003, to regulate shipping. It has a wide ambit and even though it largely covers public law aspects of shipping with respect to safety and navigation such as pilotage, oil pollution liability and compensation for oil pollution damage there are a few private law provisions dealing with ship sale and purchase, tonnage measurement and mortgages.<sup>14</sup> The Ghana Shipping Act consists of 482 sections and is divided into 19 parts and excludes ships and aircrafts of the Ghana Armed Forces. The Ghana Shipping Act also excludes aircrafts and ships of any foreign country visiting Ghana from the ambit of its application.<sup>15</sup> In fact, in the event that a ship belonging to the Armed Forces encounters a maritime casualty and results in a wreck, separate laws would govern the removal of such a wreck and not the Ghana Shipping Act.

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<sup>14</sup> Section 20(1) of the Ghana Shipping Act.

<sup>15</sup> Section 1(1) of the Ghana Shipping Act's provision on exclusion of foreign ships from the ambit of the Act.

The provisions of the Nairobi Convention shall be incorporated as an amendment to the Ghana Shipping Act replacing sections 347-369 under the sub-heading ‘Wrecks and Salvage.’<sup>16</sup> It contains provisions dealing with the duties, powers and fees of a receiver of wrecks, section 347-369 comprises lengthy clauses and shares the responsibility for removal of wrecks between several institutions i.e. the Director-General of the Maritime Authority, the Customs, the Police and the Ports and Harbours Authority and reads as follows;

*When a receiver is absent, the following officers or persons each in succession in the absence of the other may do anything authorized to be done by the receiver under this Part:*

- (a) an officer of Customs, Excise and Preventive Service, or*
- (b) any police officer.<sup>17</sup>*

The Police and Customs, like the Maritime and Shipping Authorities are autonomous governmental agencies functioning under various specialized legislations which fall outside the ambit of the Maritime Authority but have been lumped together under the Ghana Shipping Act, to oversee the removal of wrecks found in Ghanaian waters or on the shores of Ghana. In most instances the issues relating to identification, marking and removal of wrecks is appropriately within the purview of the Maritime Authority. This function would normally be delegated to the Ports Authority where the wreck is within the precincts of the port or within the approaches of the port and poses a hazard to ships entering the port.

Under the aforementioned instances, the Port Authority would need to collaborate with the receiver of the wreck and thereafter provide information on the outcome to the Maritime Authority as appropriate.

The Definition of ‘A Wreck’ under section 481 of the interpretation clause includes the following:

- a. flotsam, jetsam, lagan and derelict found in the waters or on the shores of Ghana;*
- b. cargo, stores, tackle or equipment;*
- c. personal property of ship wrecked person;*

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<sup>16</sup> Ghana Shipping Act, 2003, Part XII sections 347-369.

<sup>17</sup> Section 347 3(a) and (b).

*d. any wrecked or any part of a wrecked aircraft or any cargo;*

This definition is derived from the old English law position on wrecks as including all objects formerly belonging to a ship or part thereof washed up on shore or found upon the sea. In recent years however, the term has acquired a restricted meaning, that of '*wreccum maris*' which applied only to goods cast or left upon the land by ships. In comparison, a derelict is for all intents and purposes an abandoned thing deserted at sea by those in charge of it without any intention of returning to it. Invariably, temporary abandonment would not render a ship a derelict.<sup>18</sup> In fact, persons found aboard such ships shall be subjected to an examination under oath to establish the name, description and information relating to the ownership of the ship.

The Ghana Shipping Act deals predominantly with wrecks, which would at best be described as relics of Ghana's colonial past. The main reason being, that upon discovery, some of these wrecks were at the time found to contain treasures of unimaginable value. Others have been preserved as tourist attractions and research material for archaeological studies, but these do not fall within the ambit of the Nairobi Convention. Despite this, the Ghana Shipping Act contains some similarities with the provisions of the Nairobi Convention, particularly with regards to the preservation of life and cargo. However, it makes no mention of removal of wrecks which constitute a hazard to navigation and may obstruct other ships within the port approaches of a coastal State. In that respect, the provisions of the Ghana Shipping Act in relation to the nature and type of wrecks anticipated by the Nairobi Convention appear mostly antiquated and are not necessarily exhaustive in the light of the new Nairobi Convention.

The Ghana Shipping Act also contains provisions for penalties in respect of an owner or occupier of land who impedes or hinders any person in the process of carrying out a salvage of a wrecked ship and using the owner or occupier's land as an access route, section 351 (1) states as follows:

*a. pass and repass, with or without vehicles, machinery or equipment over any adjoining lands unless there is a public road equally convenient; and*

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<sup>18</sup>Buabeng, A.G. (IMO Maritime Legislation Consultant), Overview of the Ghana Shipping Act, 2003 (Act 645), The Admiral, 2009 Volume III, p. 24.

*b. deposit on those lands any cargo or other articles recovered from the vessel, without being hindered or being subject to liability for trespass by the owner or occupier...*

The legislation makes provision for unclaimed wrecks in section 360 under the heading, 'Right to Unclaimed Wrecks' which states;

*'The Government shall be entitled to all unclaimed wreck found within any part of Ghana or found or taken possession of outside Ghana and brought within Ghana, except where the Government has granted to any person the right to the wreck,'*

This provision will likely not meet the high standards required by the IMO; if the wreck was neither found in Ghanaian national or territorial waters but found outside the shores of Ghana how can it then be confiscated by the Government? The Ghana Shipping Act under the sub-heading 'Immediate Sale of Wreck by the Receiver' reflects the position that the law was promulgated under different circumstances from the present international concept. The receiver of the wreck is allowed to sell it while it is in his custody if in the receiver's opinion it falls under the value of the Ghanaian Cedi<sup>19</sup> equivalent of US \$2500, is so damaged or of a perishable nature that it cannot be kept without it losing its value, is not of sufficient value to pay for storage, or has not been removed within a time specified by the owner.<sup>20</sup>

Furthermore, the Ghana Shipping Act like the Nairobi Convention applies the concept of deadlines and timelines for removal of wrecks by the ship owner prior to the intervention of the Port Authority.

The Ghana Shipping Act is silent on who pays for the cost of removal of wrecks located within port approaches and which pose a threat to safety of navigation and pollution to the marine environment. The draft amendment legislation would include a provision for a mandatory insurance certificate or financial security as a pre-requisite for registration of ships under the Ghanaian Flag to ensure full cost recovery for removal of wrecks.

The Nairobi Convention seeks to clarify the rights, responsibilities and duties between the Affected State and the registered ship owner in respect of the elimination of wrecks and in so

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<sup>19</sup> The Cedi is the Ghanaian currency.

<sup>20</sup>Section 358 of the Ghana Shipping Act.

doing enhances the concept of uniformity in international law which would invariably impact positively on the implementation of international conventions and drafting of national laws.<sup>21</sup>

Furthermore, the Nairobi Convention is an embodiment of rules elaborated to ensure that registered ship owners pay for the cost of removal of wrecks and any environmental damage caused as a result of its stranding or removal. If ships obtain a mandatory insurance cover, ports can claim expenses for the cost of removal of wrecks and any damage caused to the marine environment directly from the ship owner's insurers.

In the majority of cases, the ship owner and the Protection and Indemnity Club (P&I Club) will once a ship has become a wreck, conduct appropriate surveys and may on their own initiative arrange for its removal. Standard contracts have been specially designed and developed for this purpose, such as the WRECKFIXED, WRECKSTAGE and WRECKHIRE by the International Salvage Union, the International Union of P&I Clubs and other interested stakeholders. These are published by the Baltic and International Maritime Council (BIMCO).<sup>22</sup>

This short exposition of the salient provisions of the Ghana Shipping Act supports the need for the repeal of the sections dealing with wrecks. The heading 'Wrecks and Salvage' is somewhat misleading and read together gives the impression that the issues pertaining to removal of wreck and salvage are interchangeable (please note that a bad salvage operation would invariably lead to a wreck). However, scholars argue that there is a relationship between salvage and removal of wreck operation, that they may be somewhat interrelated explains why they fall under the same heading in the Ghana Shipping Act. Furthermore, there is an international Convention on Salvage 1989 which discusses the subject matter extensively including the determination of salvage awards and related matters.

To achieve international uniformity in the application of international law, sections 347-369 inclusive of some definitions of the Ghana Shipping Act, need radical overhaul. For all intents and purposes, shipping is international and national laws must reflect this international character.

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<sup>21</sup> DE. BOER JAN E.; 'The Nairobi Perspective :Nairobi International Convention on the Removal of Wrecks,2007' a paper delivered at the 39<sup>th</sup> Conference of the CMI in (Athens, Greece),12-17<sup>th</sup> October,2008, CMI yearbook,2007-2008,p. 334at 335.

<sup>22</sup> Shaw, Richard and Tsimplis, Michael; 'the Liability of the Vessel' Institute of Maritime Law; Southampton on Shipping Law,Informa,London,2008, p.155at 190



The Ghana Shipping Act as it stands has no provision on mandatory insurance certificates and financial security options, which are requisite for the implementation of the Nairobi Convention.

Shaw has an apt description, that, ‘a wreck is, by definition, a thing of no commercial value, were it to have such a value, the salvage industry would no doubt undertake its removal in return for a salvage reward. However a valueless wreck will not yield proceeds of sale equal to the costs involved in its removal, and since most ships these days are owned by a one-ship company, the prospects of a coastal State recovering by legal action expenses which it has incurred in its removal are very poor in the absence of mandatory insurance provisions such as those proposed by the Nairobi Convention.’<sup>23</sup>

In the light of the aforementioned, the new draft Legislation amending Part XI of the Ghana Shipping Act, namely sections 347-369 shall consider the following;

- Risks to navigation and boating (yachting) activities
- Constraints and danger to search and rescue operations
- Marine environment pollution and destruction of marine habitats
- Mandatory Insurance as a requirement for registration and related matters
- Impact on Coastal communities
- Exposure of cargo
- Loss of taxes to the State
- Definitions in consonance with the Convention

##### ***5. TRANSFORMATION OF TREATIES AND CONVENTIONS INTO NATIONAL LAW***

Under the Ghanaian Constitution of 1992, the Parliament is the body mandated with the promulgation of laws. Article 75 of the Constitution, outlines the processes for the execution of a treaty and implementation into domestic law. Article 75(2) stipulates that conventions executed by or under the authority of the President must be ratified by an Act of Parliament or a resolution

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<sup>23</sup> Shaw, Richard.; Rapporteur of the CMI Working Group on the Removal of Wrecks Convention, Journal of International Maritime Law, (2007),p. 429.

of Parliament supported by the votes of more than one-half of the members of Parliament after the requisite Cabinet approval.<sup>24</sup>

As a dualist State, the Republic is required to adopt a treaty and then proceed to ratify it in accordance with the Constitution. Ratification involves a domestic process in order to transform the treaty from international law to domestic legislation. In keeping with this process, the draft Bill incorporating the provisions of the convention or treaty is initially prepared by the Attorney-General's Department. The Bill must be submitted together with a Cabinet Memorandum and explanatory notes outlining the purpose and objective of the legislation submitted for approval by Cabinet. The draft Bill and explanatory notes when approved by Cabinet shall be presented to the Chairman of the Transport Committee of the Parliament.<sup>25</sup>

The parliamentary process involves three debates on the floor of Parliament and a final vote for or against the Bill. Once the enactment process is completed, the legislation receives presidential assent and would enter into force after one publication in Gazette. A new legislation may be in the form of an Act repealing an existing one, an amendment, and regulations to an existing legislation or a legislative instrument.

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<sup>24</sup> Article 75(1) and (2) of the 1992 Constitution.

<sup>25</sup> Article 106(2) of the 1992 Constitution states that no bill shall be introduced in parliament unless it is accompanied by an explanatory memorandum setting out in detail the policy, principles of the bill defects of existing law, the remedies proposed to deal with these defects and the necessity for its introduction.



**THE GHANA SHIPPING (REMOVAL OF WRECKS) (AMENDMENT) ACT, 2010**

A

BILL

*further to amend the Ghana Shipping Act, 2003 (Act 645)*

**AN AMENDMENT TO THE SIXTH HUNDRED AND FORTY-FIFTH**

**ACT OF THE PARLIAMENT OF THE REPUBLIC**

**OF GHANA**

**ENTITLED**

**THE GHANA SHIPPING (REMOVAL OF WRECKS) (AMENDMENT) ACT, 2010**

**AN AMENDMENT ACT** to give effect to the provisions of the Nairobi Convention on the Removal of Wrecks, 2007; to enhance maritime safety and security; to create a legal framework for the effective compliance with international maritime law and other related matters.

***DATE OF ASSENT: XXX, 2010.***

**BE IT ENACTED** by Parliament as follows;

**WHEREAS** at a Diplomatic Conference held under the auspices of the International Maritime Organization, the Nairobi Convention on the Removal of Wrecks, 2007 was adopted to provide a framework for coastal States to remove wrecks that pose a danger or impediment to navigation; or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States:

***NOW THEREFORE BE IT ENACTED AS FOLLOWS:***

1. This Act shall be known and referred to as the Ghana Shipping (Removal of Wrecks) (Amendment) Act, 2010.
2. It shall come into force on such date as the Parliament of the Republic of Ghana may, by notification in the Gazette, appoint, and different dates may be appointed for different provisions of this Act.
3. Sections 347 - 369 of The Ghana Shipping Act, 2003 (Act 645) (hereinafter referred to as the principal Act), shall be replaced as follows:

#### ***DEFINITIONS***

**347.** In this part, unless the context otherwise requires, -

- a) ***“Affected State”*** means the State Party in whose port approaches the wreck is located;
- b) ***“Area of Jurisdiction”*** means the exclusive economic zone, the internal waters and the territorial sea of Ghana.
- c) ***“Authority”*** for the purpose of this part means the Director-General of the Ghana Maritime Authority;
- d) ***“Coast”*** includes the coasts of creeks and tidal waters;

- e) **“Convention”** means the Nairobi Convention;
- f) **“Hazard”** means any condition or threat that poses a danger or impediment to navigation; or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more states;
- g) **“Maritime casualty”** means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo;
- h) **“Operator of the ship”** means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended;
- i) **“Organization”** means the International Maritime Organization;
- j) **“Registered 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 at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company;
- k) **“Related interests”** means the interests of Ghana directly affected or threatened by a wreck, such as:
  - i. Maritime coastal, port and estuarine activities, including fisheries activities, constitute an essential means of livelihood of the persons concerned;
  - ii. Tourist attractions and other economic interests of the area concerned;
  - iii. The health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
  - iv. Offshore and underwater infrastructure;
- l) **“Removal”** means any form of prevention, mitigation or elimination of the hazard created by a wreck. “remove”, “removed” and “removing” shall be construed accordingly”

- m) ***“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;
- n) ***“State Party”*** means any State that has signed, ratified, acceded or by any other means expressed an intention to be bound by the provisions of the Nairobi Convention;
- o) ***“Ship”*** means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources;
- p) ***“Wreck”***, following upon a maritime casualty, means:
  - i. A sunken or stranded ship; or
  - ii. Any part of a sunken or stranded ship, including any object that is or has been on board such a ship, or
  - iii. Any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; orA ship that is about, or may reasonably be expected to sink or strand, where effective measures to assist the ship or any property in danger are not already being taken.

### ***SCOPE OF APPLICATION***

**348.** This Act shall apply to;

- (a) Wrecks in the Area of Jurisdiction.

### ***EXCLUSIONS FROM THIS ACT***

**349. (1)** This Act shall not apply to;

- (a) The following ships owned or operated by the Republic and used for non-commercial activities,
  - (i) a warship, or
  - (ii) a ship designated for naval, military, customs or law enforcement purposes; or

(iii) a ship owned or operated by any other State and used, for the time being, only on Government non-commercial service, unless the Government of that State decides otherwise in accordance with the provisions of article 4 of the Nairobi Convention; or

(b) Part or the whole of a port that is;

- (i) protected with security, and
- (ii) under the exclusive control of the Ghana Armed Forces.

### ***REPORTING WRECKS***

**350. (1)** The master and the operator of a ship shall report to the Authority, without delay when that ship has been involved in a maritime casualty resulting in a wreck.

**(2)** Such reports shall provide the name and the principal place of business of the registered owner/operator and all the relevant information necessary for the Authority to determine whether the wreck poses a hazard in accordance with section 347, including:

- a) the precise location of the wreck;
- b) the type, size and construction of the wreck;
- c) the nature of the damage to and the condition of, the wreck;
- d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- e) the amount and types of oil, including bunker oil and lubricating oil, on board.

### ***DETERMINATION OF HAZARD***

**351.** When determining whether a wreck constitutes or is likely to constitute a hazard, the following criteria should be taken used:

- a) The type, size and construction of the wreck;
- b) Depth of the water in the area;
- c) Tidal range and currents in the area;
- d) Particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive

economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;

- e) Proximity of shipping routes or established traffic lanes;
- f) Traffic density and frequency;
- g) Type of traffic;
- h) Nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- i) Vulnerability of port facilities;
- j) Prevailing meteorological and hydrographical conditions;
- k) Submarine topography of the area;
- l) Height of the wreck above or below the surface of the water at lowest astronomical tide;
- m) Acoustic and magnetic profiles of the wreck;
- n) Proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- o) Any other circumstances that might necessitate the removal of the wreck.

### ***LOCATING OF WRECKS***

**352. (1)** Upon becoming aware of a wreck, the Authority shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.

**(2)** If the Authority has reason to believe that a wreck poses a hazard, the Authority shall ensure that all practicable steps are taken to establish the precise location of the wreck.

### ***MARKING OF WRECKS***

**353. (1)** If the Authority determines that a wreck constitutes a hazard, the Authority shall ensure that all reasonable steps are taken to mark the wreck.

**(2)** In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.



(3) The Authority shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

**354.** A report shall be compiled by the Authority and submitted to the ship owner's insurers and Flag State of the ship in respect of the wreck and cost of its removal.

#### ***MEASURES TO FACILITATE THE REMOVAL OF WRECKS***

**355. (1)** Where the Authority determines that a wreck constitutes a hazard, the Authority shall immediately:

- a) Inform the State of the ship's registry and the registered owner; and
- b) Proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

(2) The registered owner shall remove a wreck determined to constitute a hazard.

**356. (1)** When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the Authority with evidence of insurance or other financial security as required by section 361.

(2) The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Authority may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

(3) When the removal referred to in sub-sections 1 and 2 has commenced, the Authority may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

**357. (1)** The Authority shall:

- a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with section 351;

- b) inform the registered owner in writing of the deadline and specify that, if the registered owner does not remove the wreck within that deadline, the Authority may remove the wreck at the registered owner's expense; and
- c) inform the registered owner in writing that he intends to intervene immediately in circumstances where the hazard becomes particularly severe.

(2) If the registered owner does not remove the wreck within the deadline set in accordance with section 357(1)(a), or the registered owner cannot be contacted, the Authority may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

(3) In circumstances where immediate action is required and the authority has informed the State of the ship's registry and the registered owner accordingly, the Authority may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

(4) The Authority shall take appropriate measures to ensure that registered owners comply with sub-sections 2 and 3.

(5) The information referred to in this article shall be provided by the Minister to the registered owner identified in the reports referred to in section 357(2).

### ***LIABILITY OF THE OWNER***

**358. (1)** Subject to section 355, the registered owner shall be liable for the costs of locating, marking and removing the wreck under sections 353-355, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

- a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- 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 Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(2) Nothing in this Act shall affect the right of the registered owner to limit his liability under Part XIV of this Act.

(3) No claim for the costs referred to in sub-section 1 may be made against the registered owner otherwise than in accordance with the provisions of this Act.

**359.** Nothing in this section shall prejudice any right of recourse against third parties.

### ***EXCEPTIONS TO LIABILITY***

**360. (1)** A registered owner shall not be liable under this Act for the costs mentioned in sub-section 1 of section 347 if, and to the extent that, liability for such costs would be in conflict with:

- a) The International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
- b) The domestic law of Ghana governing nuclear liability regime; any other binding international legal instrument, which Ghana adopts.

(2) To the extent that measures under this Act are considered to be salvage under Part XII of the Ghana Shipping Act, and the said section shall apply to questions of the remuneration or compensation payable to salvor's

### ***COMPULSORY INSURANCE OR OTHER FINANCIAL SECURITY***

**361. (1)** The registered owner of a ship of 300 gross tonnage and above shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Act in an amount equal to the limits of liability under section 358.

(2) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Act shall be issued to each ship registered in Ghana, of 300 gross tonnage and above by the Authority after determining that the requirements of sub-section 1 have been complied with. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Act, and shall contain the following particulars:

- a) name of the ship, distinctive number or letters and port of registry;
- b) gross tonnage of the ship;
- c) name and principal place of business of the registered owner;
- d) IMO ship identification number;
- e) type and duration of security;
- f) 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
- g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security

**(3)** The Authority may issue or certify the Certificate of compulsory insurance in the above form to foreign flagged ships of 300 gross tonnages and above where such ships are not registered by State Parties to the Nairobi Convention.

**(4)** Pursuant to the section, the Authority may authorize the Port Authority to issue the certificate referred to in sub-sections 2 and 3.

**(5)** The certificate shall be carried on board the ship and a copy shall be deposited with the Authority.

**362.** An insurance or other financial security shall not satisfy the requirements of this Section 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 sub-section 2 three months from the date on which notice of its termination is given to the Authority unless the certificate has been surrendered to the Authority or a new certificate has been issued within the stipulated 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.

**363.(1)** The Authority shall, subject to the provisions of this section and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.

**(2)** Nothing in this Act shall be construed as preventing the Authority from relying on information obtained from other States or the Organization or other international organizations

relating to the financial standing of providers of insurance or financial security for the purposes of this Act. In such cases, the Authority is not by reason of reliance on such information relieved of responsibility as issuing Authority of the certificate required by section 361(2).

**364.** Certificates issued and certified under the authority of other State Parties to the Convention shall be accepted by the Authority for the purposes of this Act and shall be regarded as having the same force as certificates issued or certified by the Authority, even if issued or certified in respect of a ship not registered in a State Party. The Authority may, if it deems necessary at any time request consultation with the issuing or certifying State over the financial capability of the insurer or guarantor named in the certificate to meet the obligations imposed by this Act.

**365.** Any claim for costs arising under this Act may directly be brought against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime.

**366.(1)** The registered owner is not entitled to limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with sub-section 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the willful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

**(2)** The Authority shall not permit any ship entitled to fly the Ghanaian flag to which this section applies to operate at any time unless a certificate has been issued under sub-section 2 of section 361.

**(3)** Subject to the provisions of this section, the Authority shall ensure, under the Ghana Shipping (Removal of Wrecks Amendment) Act, 2010, that insurance or other security to the extent required by sub-section 1 is in force in respect of any ship of 300 gross tonnages and above,

wherever registered, entering or leaving a port in its territory, or arriving or leaving from an offshore facility in its territorial sea.

**367.** Vessels shall be required to tender the Certificate of Insurance or other financial security issued by a State Party to the Nairobi Convention, except where the Ship is registered in or claims to be certified by a State, which has notified the Secretary General that it maintains records in an electronic format accessible to all States Parties to the Nairobi Convention, subject to verification by the Authority.

**368.** If insurance or other financial security is not maintained in respect of a ship owned by the Government of Ghana or any of its Agencies, the provisions of this section relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the Authority, stating that it is owned by the Government of Ghana or any of its Agencies and that the ship's liability is covered within the limits prescribed by this Act. Such a certificate shall follow as closely as possible the model prescribed by herein.

#### ***TIME LIMITS***

**369.** Rights to recover costs under this Act shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Act. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

#### ***REPEAL***

**4.** Sections 347-369 of the Ghana Shipping Act is hereby repealed.

**5.** Notwithstanding the repeal of sections 347-369 of this Act, any instrument or notice issued, served or granted under the repealed enactment or any valid law in existence immediately before the coming into force of this Act, shall until revoked, amended or cancelled continue in force as if it were made under this Act.

**6.** In this Act, "instrument" means any Regulation, license, certificate, validation, exemption, notice or other authority, issued, made or given.

Signed---

The Director General,

Ghana Maritime Authority

Republic of Ghana

### **STATEMENT OF OBJECTS AND REASONS**

By far the most important challenge to maritime transport is the protection and preservation of the marine environment; hence concerns about the effects of marine environment pollution have led to the promulgation and adoption of several Conventions, Regulations and Guidelines by the International Maritime Organization (IMO) and Contracting States aimed at protecting the marine environment and especially the fish reserves within the seabed. It is in furtherance of this worldwide objective that the Government of Ghana has for the past 20 years ratified several IMO conventions including the Nairobi Convention on the Removal of Wrecks, 2007.

The proposed amendment to the Ghana Shipping Act, 2003 provides a platform for the implementation of the new Nairobi Convention. Ghana currently bears the enormous burden of paying for the cost of removal, marking and locating of wrecks within its port approaches and would therefore benefit from the mandatory financial security requirements outlined by the Nairobi Convention.

This Amendment Bill incorporates the provisions of the Nairobi Convention and develops a set of regulations for implementation of this Bill under the auspices of the Minister of Transport.



## ***SCHEDULE***

### ***Nairobi International Convention on the Removal of Wrecks, 2007***

#### ***(Text of the Convention)***

### ***ADOPTION OF THE FINAL ACT AND ANY INSTRUMENTS, RECOMMENDATIONS AND RESOLUTIONS RESULTING FROM THE WORK OF THE CONFERENCE***

#### ***NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007***

##### ***Text adopted by the Conference***

Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

NOTING that many wrecks may be located in States' territory, including the territorial sea,

RECOGNISING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

HAVE AGREED as follows:

## **Article 1**

### **Definitions**

For the purposes of this Convention:

1 “Convention area” means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Part has not such a zone, an area beyond and adjacent to the territorial sea of that State determined by the 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.

2 “Ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are no location engaged in the exploration, exploitation or production of seabed mineral resources.

3 “Maritime Casualty” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4 “Wreck”, following upon a maritime casualty, means:

- a) a sunken or stranded ship; or
- b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

5 “Hazard” means any condition or threat that:

- a) poses a danger or impediment to navigation; or

- b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

6 “Related interests” means the interests of a coastal State directly affected or threatened by a wreck, such as:

- a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- b) tourist attractions and other economic interests of the area concerned;
- c) the health of the coastal pollution and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
- d) offshore and underwater infrastructure.

7 “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.

8 “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or person owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company.

9 “Operator of the ship” means the owner of the ship or any other organization or person such as the manager, or the bareboat charter, who has assumed the responsibility for operations of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended\*.

10 “Affected State” means the State in whose Convention area the wreck is located.

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\* Refer to the International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the Assembly of the International Maritime Organization by resolution A.741(18), as amended.

11 “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.

12 “Organization” means the International Maritime Organization.

13 “Secretary-General” means the Secretary-General of the Organization.

## **Article 2**

### **Objectives and general principles**

1 A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2 Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3 Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship’s registry, and of any person, physical or corporate, concerned.

3 The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

4 The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

5 States Parties shall endeavour to co-operate when the effects of a marine casualty resulting in a wreck involve a State other than the Affected State.

## **Article 3**

### **Scope of application**

1 Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

2 A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.

3 When a State Party has made a notification under paragraph 2, the “Convention area” of the Affected State shall include the territory, including the territorial sea, of that State Party.

4 A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.

5 A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

## **Article 4**

### **Exclusions**

1 This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended,

or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2 This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3 Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4 (a) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its territory, including the territorial sea:

- (i) Article 2, paragraph 4;
- (ii) Article 9, paragraph 1, 5, 7, 8, 9 and 10; and
- (iii) Article 15

(b) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read:

Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

## **Article 5**

### **Reporting wrecks**

1 A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2 Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with Article 6, including:

- a) the precise location of the wreck;
- b) the type, size and construction of the wreck;
- c) the nature of the damage to , and the condition of, the wreck;
- d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- e) the amount and types of oil, including bunker oil and lubricating oil, on board.

## **Article 6**

### **Determination of hazard**

When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

- a) The type, size and construction of the wreck;
- b) Depth of the water in the area;
- c) Tidal range and currents in the area;
- d) Particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive

economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;

- e) Proximity of shipping routes or established traffic lanes;
- f) Traffic density and frequency;
- g) Type of traffic;
- h) Nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, particular, the damage likely to result should the cargo or oil be released into the marine environment;
- i) Vulnerability of port facilities;
- j) Prevailing meteorological and hydrographical conditions;
- k) Submarine topography of the area;
- l) Height of the wreck above or below the surface of the water at lowest astronomical tide;
- m) Acoustic and magnetic profiles of the wreck;
- n) Proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- o) Any other circumstances that might necessitate the removal of the wreck.

## **Article 7**

### **Locating wrecks**

1 Upon becoming aware of a wreck, the Affected State shall use all practicable means, including the good offices of States and organization, to warn mariners and the States concerned of the nature and location of the wreck a matter of urgency.

2 If the Affected State has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.



## **Article 8**

### **Marking of wrecks**

1 If the Affected State determines that a wreck constitutes a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.

2 In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted systems of buoyage in use in the area where the wreck is located.

3 The Affected State shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

## **Article 9**

### **Measures to facilitate the removal of wrecks**

1 If the Affected State determines that a wreck constitutes a hazard that State shall immediately:

- a) Inform the State of the ship's registry and the registered owner; and
- b) Proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck

2 The registered owner shall remove a wreck determined to constitute a hazard.

3 When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.

4 The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

5 When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

6 The Affected State shall:

- a. Set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6;
- b. Inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and
- c. Inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

7 If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

8 In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

9 State Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.

10 States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.

11 The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports to in article 5, paragraph 2.

## **Article 10**

### **Liability of the owner**

1 Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

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

2 Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3 No claim for costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Convention, this is without prejudice to the rights and obligations of a State Party that has made a notification under article 3, paragraph 2, in relation to wrecks located in its territory including the territorial sea, other than locating, marking and removing in accordance with this Convention.

4 Nothing in this article shall prejudice any right of recourse against third parties.

## **Article 11**

### **Exceptions to liability**

1 The registered owner shall not be liable under this Convention for the costs mentioned in article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

- a. the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
- b. the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;
- c. the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or
- d. the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 as amended;

provided that the relevant convention is applicable and in force.

2 To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

## **Article 12**

### **Compulsory insurance or other financial security**

1 The registered owner of a ship 300 gross and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not

exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2 A 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 of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such 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 the annex to this Convention, and shall contain the following particulars:

- a. Name of the ship, distinctive number or letters and port of registry;
- b. Gross tonnage of the ship;
- c. Name and principal place of business of the registered owner;
- d. IMO ship identification number;
- e. Type and duration of security;
- f. 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
- g. Period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

3 a. A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

b. A State Party shall notify the Secretary-General of:

- i. the specific responsibilities and conditions of the Authority delegated to an institution or organization recognized by it;
- ii. the withdrawal of such authority; and
- iii. the date from which such authority for withdrawal of such authority takes effect.

c. The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language(s) of the State may be omitted.

5 The 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 authorities issuing or certifying the certificate.

6 An insurance or other financial security shall not satisfying 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 5 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 article.

7 The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.

8        Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other State or Organization or other international organizations relating to the financial standing of providers or insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9        Certificates issued and certified under the authority of a State Party 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 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 certificate is not financially capable of meeting the obligations imposed by this Convention.

10       Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defenses (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defense that the maritime casualty was caused by the willful misconduct of the registered owner, but the defendant shall not invoke any other defense which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11       A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12       Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of

any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

13 Notwithstanding the provisions of paragraph 5, a State Party, may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Parties, attesting the existence of the certificate and enabling State Parties to discharge their obligations under paragraph 12.

14 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 certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

## **Article 13**

### **Time limits**

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.



## **Article 14**

### **Amendment provisions**

1 At the request of not less than one-third of State Parties a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment of this Convention, shall be deemed to apply to this Convention, as amended.

## **Article 15**

### **Settlement of disputes**

1 Where a dispute arises between two or more State Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.

2 If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the States party to the dispute are also States Parties to the United Nations Convention on the Law of the Sea, 1982.

3 Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to Article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

4 A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or any time thereafter shall be free to choose by means of a written declaration, one

or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.

5 A declaration made under paragraph 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

## **Article 16**

### **Relationship to other conventions and international agreements**

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

## **Article 17**

### **Signature, ratification, acceptance, approval and accession**

1 This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

- a) States may express their consent to be bound by this Convention by:
  - i. signature without reservation as to ratification, acceptance or approval; or
  - ii. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - iii. accession

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

## **Article 18**

### **Entry into force**

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

## **Article 19**

### **Denunciation**

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

## **Article 20**

### **Depositary**

1 This Convention shall be deposited with the Secretary General.

2 The Secretary-General shall:

- a) Inform all States which have signed or acceded to this Convention of:
  - a. each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof:
  - b. the date of entry into force of this Convention
  - c. the deposit of any instrument of denunciation of this Convention, together with the date of the deposit and the date on which the denunciation takes effect; and
  - d. other declarations and notifications received pursuant to this Convention.
- b) Transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.

3 As soon as this Convention enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations, for registration and publication in accordance with article 102 of the Charter of the United Nations.

## **Article 21**

### **Languages**

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

DONE IN NAIROBI this eighteenth day of May two thousand and seven.

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

*ANNEX*

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY**

**IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS**

Issued in accordance with the provisions of Section 17 of the Ghana Shipping (Amendment) Act, 2010 (Act No. \*\*\*, 2010).

<b>Name of Ship</b>	<b>Gross tonnage</b>	<b>Distinctive number of letters</b>	<b>IMO Ship Identification Number</b>	<b>Port of Registry</b>	<b>Name and full address of the principal place of business of the registered owner</b>

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 Section 357 of the Ghana Shipping (amendment) Act 2010, (Act No. \*\*\* of 2010)

**Type of Security:**.....

**Duration of Security:**.....

**Name and address of the insurer(s) and/or organization:**.....

**Name:** .....

**Address:**.....

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

Issued or certified by the Director- General of The Ghana Maritime Authority under the auspices of the Ministry of Transport, Republic of Ghana.

At ..... On.....

(Place)

(Date)

.....

(Signature and Title of issuing or  
Certifying official)

.....

**DIRECTOR-GENERAL, GHANA MARITIME AUTHORITY,**