



**IMO**  
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A specialized agency of the United Nations



**An Act to Incorporate  
the International Convention on Liability and Compensation  
for Damage in Connection with the Carriage of Hazardous and  
Noxious Substances by Sea, 1996 as revised by the Protocol of  
2010 to the Convention (2010 HNS Convention)  
into the Laws of India**

**A Legislation Drafting Project submitted in partial fulfillment of the  
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## Explanatory Note

**Subject:** An Act to Incorporate International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 as revised by the Protocol of 2010 to the Convention into the Indian Merchant Shipping Act of India, 1958

### **A. Executive Summary:**

The Explanatory Note is in the similar format of Cabinet Note that is proposed to the Cabinet of the Prime Minister or to the relevant Committee of the Government of India. The Cabinet Note forms the basis of the policy formulation and also evaluates the impact of the programmes, policies, plans, schemes and projects of the Government.

India follows the "dualist" school of law in respect of implementation of international law at domestic level. Therefore, in India, international treaties do not automatically form part of national law. They must, where appropriate, be incorporated into the legal system by a legislation made by the Parliament. In line with the requirement as stipulated under Article 253 of the Constitution of India, 1950, the legislation has to give effect to international conventions or international agreements. The proposal of the legislation giving effect to such international conventions or international agreements is proposed as a "bill". The bill is introduced in either of the houses, which when passed by both the houses becomes an Act and is applicable on the day published in the gazette of India or as on the date stated in the Gazette.<sup>1</sup>

The author of this draft as far as possible has maintained the language of the text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 as revised by the Protocol of 2010 to the Convention in the proposed bill and the draft rules.<sup>2</sup> The subject matter of this bill is dealt by the Central Government and its delegated authorities as

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<sup>1</sup> Please see paragraphs 5.2 and 5.3 of this Note for the legislation proposal to incorporate the International Convention.

<sup>2</sup> Certain sections and sub-rules directly reflect the relevant articles of the Convention.

conferred under the Merchant Shipping Act of India, 1958. As this proposed bill will be incorporated into the Merchant Shipping Act of India, 1958 as a new part, certain sections of the proposed bill have to be referred to the relevant sections of the Merchant Shipping Act of India, 1958. The substantive part has been drafted as proposed bill and the dynamic aspects of the above-said Convention are incorporated in the Rules, and further, administrative aspects are left open to the discretion of the competent authorities to be dealt vide administrative orders, notices and circulars in accordance with the powers provided under the Indian Constitution.

On the promulgation of the Act, certain administrative aspects as mentioned above will be issued by Director General of Shipping. These administrative orders, notices and circulars are issued without a prior requirement of approval from Parliament as the administrative orders, notices and circulars are mostly to clarify the said Act or Rules and are of an administrative nature.

Certain sections like section sub-section (5) of the section 352-ZK and the sub-rule 13 of the draft Rules is included though a State Party need not legislate it as it is a responsibility of the State, it is inserted as a self-reminder and an obligation for compliance. This is a new practice. The author has inserted an additional table in the proposed bill to enable the reader to compare the sections proposed with the articles of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.

In the explanatory memorandum the author has referred to articles from the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 and the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.<sup>3</sup>

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<sup>3</sup> In line with the article 18 of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, the articles 20 to 29 of the Protocol shall be renumbered sequentially with the preceding articles of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

## **B. Explanatory Memorandum:**

### **1.0 INTRODUCTION**

1.1 This is a proposal seeking approval for accession of India to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (“**2010 HNS Convention**”).

1.2 As a major shipping country and a coastal State, it is considered desirable that India should take initiative to ratify the Convention and as a consequence thereof, bring about necessary changes into the Merchant Shipping Act, 1958 for the reasons stated under paragraph 3.

### **2.0 Background to the Convention:**

2.1 In the wake of the *Torrey Canyon* oil spill in 1967, the Inter-Governmental Maritime Consultative Organization (IMCO)<sup>4</sup> decided to study as a matter of urgency all questions relating to the nature (whether absolute or not), extent and amount of liability of the owner or operator of a ship or the owner of the cargo for damage caused to third parties by accidents suffered by the ship involving the discharge of persistent oils or noxious or hazardous substances.<sup>5</sup> The International Maritime Organization (IMO) have since then seen successful adoption of the conventions on liability and compensation for pollution damage caused by spills of persistent oil from tankers.<sup>6</sup> The IMO Legal Committee had also considered to

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<sup>4</sup> Since 1982 as the International Maritime Organization.

<sup>5</sup> Conclusions of the Council on the Action to be Taken on the Problems Brought to Light by the Loss of the "Torrey Canyon", Inter-governmental Maritime Consultative Organization Doc. C/ES.III/5 as cited in Soyer, Baris and Tettenborn, Andrew; *Pollution at Sea - Law and Liability*, Informa Law, Cornwall, U.K., 2012, p.24.

<sup>6</sup> International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention), and International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention); these Conventions were revised by protocols adopted in 1992.

focus its work on the elaboration of a Convention on a similar regime for damage caused by hazardous and noxious substances other than oil, and a draft Convention on the subject was submitted to a Diplomatic Conference in 1984, but the Conference failed to adopt a Convention.<sup>7</sup>

2.2 The IMO Legal Committee decided at its 74<sup>th</sup> session in June 1995 to convene a Diplomatic Conference to consider the adoption of the text of a Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea. It was proposed to revise the 1984 draft by the IMO Legal Committee which was then submitted to Diplomatic Conference. The Conference met at the headquarters of the IMO in London between 15 April and 3 May 1996.<sup>8</sup> Seventy-three delegations from Member States, including India, associate members participated in the Conference, apart from observers, and signed the Final Act of the Conference on 2 May 1996; the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (herein after referred to as **the 1996 HNS Convention**).

2.3 Due to certain practical problems, the criteria set out for the ratification was not fulfilled by the Member States. The IMO Legal Committee, during the meeting of its IMO Legal Committee at its ninety-fifth session in April, 2009 Headquarters in London, approved a draft Protocol to the 1996 HNS Convention ("draft Protocol"). The draft Protocol was designed to address practical problems that had prevented many States from ratifying the original Convention which, despite being adopted in 1996, had, until the adoption of draft Protocol only 13 ratifications and is long way from meeting the level of ratification that would trigger its entry into force. Considering the request of the Legal Committee of the Organisation the Council of IMO in its one-hundred-and-second session in June, 2009, endorsed the request made to convene a Diplomatic Conference to consider the adoption of the

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<sup>7</sup> Soyer, Baris and Tettenborn, Andrew; *op.cit.*, p.24.

<sup>8</sup> LEG/CONF.10/8/2 of 9 May 1996

Protocol ("the Protocol"). The Conference met at the headquarters of the IMO in London during 26 April – 30 April, 2010. Representatives of seventy-seven States participated in the conference, of which India was too a participant.

- 2.4 The 2010 HNS Convention will enter into force 18 months after the date on which at least 12 States have expressed their consent to be bound by it and of which 4 States should have an aggregate GT of 2 million or more and the persons in such States have received during the preceding calendar year a total quantity of at least 40 million tonnes of contributing cargo. As of now,<sup>9</sup> 14 States corresponding to 13.61 % of the world shipping tonnage have ratified the 1996 HNS Convention but no country has yet ratified the 2010 HNS Convention. As at 15 January 2013, there were eight Signatory States, which signed "subject to acceptance" or "subject to ratification", but so far there are no Contracting States to the Protocol. This Protocol effectively supersedes the 1996 HNS Convention and, in accordance with resolution 3 of the International Conference on the Revision of the HNS Convention, Governments should express their consent to be bound only by the Protocol, without any reference to the 1996 HNS Convention. The articles 1 to 44 and annexes I and II of the Convention, as amended by the Protocol and the annex thereto, together with articles 20 to 29 of the Protocol, shall *mutatis mutandis* constitute and be called the 2010 HNS Convention.<sup>10</sup>
- 2.5 The 2010 HNS Convention aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and economic losses caused by the maritime transport of hazardous and noxious substances.
- 2.6 The Convention establishes a two-tier system of compensation;
- (a) Tier one will be covered by compulsory insurance taken out by shipowners, who would be able to limit their liability.

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<sup>9</sup> Status as on 06 March, 2013 - Cited from <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>.

<sup>10</sup> Article 18 of the Protocol.

(b) In those cases where the insurance does not cover an incident, or is insufficient to satisfy the claim, a second tier of compensation will be paid from a Fund, made up of contributions from the receivers of hazardous and noxious substances ("HNS"). Contributions will be calculated according to the amount of HNS received in each Member State in the preceding calendar year.

### **3.0 Justification:**

3.1 Shipping is an international industry. It is therefore imperative for all concerned in this maritime transportation system to share a common sense of purpose. It is recognized that accidents at sea or in coastal waters or in ports have serious consequences, when the human, social, economical, legal and ecological factors are taken into account.

3.2 The 2010 HNS Convention is the culmination of a process initiated by Article 235<sup>11</sup> of the United Nations Convention on the Law of the Sea, 1982 ("UNCLOS"), to assure prompt and adequate compensation in respect of all damage caused by pollution of the marine environment by way of development of international law on responsibility and liability for the assessment and compensation for damage and the settlement of disputes. India is a party to UNCLOS and has the obligation to protect and preserve the marine environment<sup>12</sup> and as enshrined in Part IV-A of the Constitution of India, India has a fundamental duty to protect the environment and to safeguard public property.

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<sup>11</sup> Article 235: Responsibility and liability:

1. States are responsible for the fulfillment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

<sup>12</sup> Article 192 of UNCLOS



- 3.3 Other conventions relating to the liability and compensation are with respect to the tankers and cover only pollution from all ships constructed or adapted for the carriage of oil in bulk as cargo and on a subsequent ballast voyage, when residues of the carriage of oil in bulk are on board. Thus, general cargo ships and non-oil bulk carriers and those ships which carry hazardous and noxious substances are not covered by these liability and compensation related conventions.
- 3.4 The 1996 HNS Convention faced few practical problems that prevented many States from ratifying the Convention. There have been three issues discouraging the States from ratifying the 1996 HNS Convention<sup>13</sup>:
- a. The difficulties in setting up the reporting system for packaged goods.
  - b. Under the 1996 HNS Convention, the person liable for liquefied natural gas ("LNG") contributions is the person who held title to an LNG cargo immediately prior to its discharge. In the case of other accounts, the person liable is the receiver. While the receiver must be subject to the jurisdiction of a State Party, the titleholder need not be. It would, therefore, have been impossible to enforce payment of contributions to the LNG account by titleholders in non-State Parties.
  - c. Despite an obligation to do so, very few States, when ratifying the 1996 HNS Convention, have submitted reports on contributing cargo. This omission has been a contributing factor to the Convention not entering into force. In addition, there has been a growing awareness of the desirability of preventing an invidious situation arising, where non-submission of reports results in non-payment of contributions but not in withholding of compensation.

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<sup>13</sup> Preview: International Conference on the Revision of the HNS Convention, 26 – 30 April 2010 (as on IMO website last checked on 3 April, 2013: <[http://www.imo.org/blast/mainframe.asp?topic\\_id=1859&doc\\_id=12808](http://www.imo.org/blast/mainframe.asp?topic_id=1859&doc_id=12808)>).

3.5 The Protocol, subsequently approved by the IMO Legal Committee addressed the practical problems of the 1996 HNS Convention. These included:

1. Problem: The difficulties in setting up the reporting system for packaged goods.

Solution: The solution adopted by the Protocol has been to differentiate between bulk hazardous and noxious substances and packaged hazardous and noxious substances and to exclude packaged goods from the definition of contributing cargo contained in the Convention. This means, first, that receivers of these goods are exempt from the obligation to contribute to the HNS Fund in the event that the compensation to be paid exceeds the limits of liability of the shipowner under the first tier; and secondly, that there is, accordingly, no need for States to report on the movements of packaged goods, thus vastly simplifying their administrative burden. However, victims of incidents involving packaged HNS will not be disadvantaged thereby as it was also agreed that packaged goods will remain covered by the Convention; that is to say, damage caused by packaged goods remains, in the first instance, covered by the compulsory insurance provisions of the Convention under the so-called first tier of liability.

And, in cases where the shipowners' insurance is insufficient to completely cover such damage, the deal worked out at the Conference, and included in the Protocol, is that the HNS Fund will still pay out the excess, even though receivers of packaged goods will no longer contribute to financing the HNS Fund will still pay out the excess, even though receivers of packaged goods will no longer contribute to financing the second tier.<sup>14</sup>

2. Problem: Under the 1996 HNS Convention, the person liable for LNG contributions is the person who held title to an LNG cargo immediately prior to its discharge. In the case of other accounts, the person liable is the receiver. While

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<sup>14</sup> Balkin, Rosalie; "The HNS Protocol", a paper delivered at the London Shipping Law Centre, on 10 December 2010. Online available: <<http://www.imo.org/KnowledgeCentre/PapersAndArticlesByIMOSTaff/Documents/The%20HNS%20Protocol%20-%20R%20Balkin.pdf>> last checked on April 3, 2013.

the receiver must be subject to the jurisdiction of a State Party, the titleholder need not be. It would, therefore, have been impossible to enforce payment of contributions to the LNG account by titleholders in non-State Parties.

Solution: Under the Protocol the receiver, as defined in Article 1.4 of the Convention, will be liable for annual contributions to the LNG account, except in the limited situation where the titleholder pays them, following an agreement to this effect with the receiver and the receiver has informed the State Party that such an agreement exists.

3. Problem: Despite an obligation to do so, very few States, when ratifying the HNS Convention, have submitted reports on contributing cargo. This omission has been a contributing factor to the Convention not entering into force. In addition, there has been a growing awareness of the desirability of preventing the invidious situation which has occurred in the IOPC Funds, where non-submission of reports results in non-payment of contributions but not in withholding of compensation.

Solution: The Protocol deals with this in three ways:

1. In order to ratify the Protocol, States will be required to submit reports on contributing cargo - IMO, as Depositary, will not accept any ratification which is not accompanied by such reports. States will also be obliged to continue to submit reports annually thereafter until the Protocol enters into force;
2. Should a State fail to submit reports annually, after depositing its instrument of ratification, but prior to entry into force of the Protocol, it will be temporarily suspended from being a Contracting State. The Protocol will, therefore, not enter into force for any State which is in arrears with reports;
3. Once the Protocol has entered into force for a State, compensation will be withheld, temporarily or permanently, in

respect of that State, if it is in arrears with reports, except in the case of claims for personal injury and death.

The features of the Protocol may be perused in **Annexure I**.

#### **4.0 ADVANTAGES OF ACCESSION TO 2010 HNS CONVENTION**

A recent collision in August 2010, involving containerships *M.V. MSC Chitra* and *M.V. Khalijia* in the port of Mumbai led to breach of containers holding aluminium phosphate and organopesticides. These substances escaped into the sea and caused damage to national resources and also caused economic losses to tourism and fishing industry. This is similar to incidents world over: *M.V. Vicuna* in Brazil in 2004, *M.V. Napoli* in the United Kingdom in 2007, *M.V. Pacific Adventurer* in Australia in 2009.

- 4.1 With a coastline of 7,517 km, including islands and major cities at certain pockets along the coast, India is vulnerable to such accidents. The two tier compensation regime provides adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and economic losses caused by the maritime transport of hazardous and noxious substances. Furthermore, it would complement ongoing technical co-operation activities to facilitate capacity building for the effective, global implementation of the OPRC-HNS Protocol of 2000, which is concerned specifically with spill emergency preparedness, response and co-operation in HNS incidents.
- 4.2 In the event that India accedes to the 2010 HNS Convention, India would benefit in the following areas:
  - a. The 2010 HNS Convention aims to have the process by which claimants are able to recover costs incurred as a result of pollution from ships carrying hazardous and noxious substances. These include oils carried in bulk; noxious liquid substances carried in bulk; dangerous, hazardous and harmful substances; oils and

petroleum products which do not fall within the definition of “persistent oil” under the 1992 CLC and 1992 Fund Convention, such as gasoline, light diesel oil and kerosene, materials and articles carried in packaged form; liquefied gases; liquid substances carried in bulk with a flashpoint not exceeding 60°C; Solid bulk materials possessing chemical hazards; and residues left by the previous carriage in bulk of the above substances.

- b. It covers pollution damage caused by hazardous substances in connection with their carriage by sea on board the ship,<sup>15</sup> as well as the risks of fire and explosion. Recoverable loss includes loss of life or personal injury on board or outside the ship carrying the HNS, in addition to loss of or damage to property (outside the vessel), economic loss resulting from contamination, e.g. in the fishing, mariculture and tourism sectors and costs of preventive measures, e.g. clean-up operations at sea and onshore or damage caused by such measures. Article 3 of the 2010 HNS Convention covers the damage caused in the territory, including the territorial sea and damage by contamination of the environment caused in the exclusive economic zone of India. The 2010 HNS Convention helps to achieve the objectives by:
- i. Establishing a strict liability regime on the ship-owners for pollution damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship (i.e. the ship owner is liable regardless of fault);
  - ii. Requiring all registered owners of ships, actually carrying hazardous and noxious substances, entering or leaving a port or terminal to maintain insurance certified by the State to meet their liability or in case of registered owner from Non State party to the 2010 HNS Convention, to maintain insurance certified by the State Party to the 2010 HNS Convention to meet ship owner’s liability;

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<sup>15</sup> Article 7.1 of the 1996 HNS Convention.

- iii. Introducing a provision that entitles claimants to sue ship's insurers via the right of direct action; and
  - iv. Allowing claims to be pursued in the State in which the damage occurred, that makes it much easier for victims to pursue the claims for cost recovery.
- c. It is often difficult and sometimes impossible to obtain compensation for pollution damage caused by hazardous and noxious substances from ships other than oil tankers. Local authorities and the Government have experienced difficulties in recovering the costs for deploying appropriate vessels and equipments used as part of preventive measures and for clean up operations arising from an incident involving hazardous and noxious substances or threat of such an incident. These difficulties encountered by the various authorities would be suitably addressed if India decides to become party to the 2010 HNS Convention and incorporate the provisions into the national law i.e. Merchant Shipping Act, 1958. The accidents involving spills of hazardous and noxious substances in international waters have highlighted the importance of the 2010 HNS Convention. The statistics at an international level states that during the years 2002 to 2010 where the relevant vessel was entered with a P & I Club member, total claims data reported were 192 incidents. The total cost of claims paid in all 192 incidents for "damage" that would have been governed by the Convention, if in force at the time of each incident, is approximately 182.7 million SDR/US\$276.5 million.<sup>16</sup> Out of this total of 192 incidents, the total cost of claims incurred in 189 incidents fell in each case within the shipowner's limit of liability under the 1996 HNS Convention (in respect of claims incurred that would have been governed by the Convention, if in force at the time of the incident). Only three incidents that occurred in this period from the list of incidents provided by the P & I Clubs resulted in "damage" claims which exceeded the shipowner's limit of liability under the 1996 HNS Convention and would therefore have engaged the HNS Fund. Consequently, in

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<sup>16</sup> LEG/CONF.17/6 of 8 March 2010 - Submitted by the International Group of P & I Associations (P & I Clubs) p.2

approximately 98%-99% of the incidents where claims data have been provided by the P & I Clubs, full compensation would have been paid by the shipowner under the 1996 HNS Convention if the Convention had been in force at the time of the incident occurring. The situation in India is not very different and India has been a witness to a number of incidents involving foreign and Indian flagships resulting in pollution damage which could have originated from hazardous and noxious substances and several difficulties were experienced in settlement of claims. Despite the country's best efforts, it has to be acknowledged that accidents will happen and when they do, it is vital that an internationally agreed effective liability and compensation is in place.

- d. On accession to the 2010 HNS Convention, the difficulties encountered by the public authorities and the other claimants for claims resulting from pollution from ships carrying hazardous and noxious substances from Indian and foreign registered ships entering or leaving Indian ports/terminals will be suitably addressed, as the compensation regime on any occurrence of claims are addressed by the 2010 HNS Convention.
- e. On accession to the 2010 HNS Convention, all Indian flag vessels, on international trade may be issued with Certificates by the Maritime Administration of the Government of India. This would enable them to engage in international shipping activities without having to approach other governments, who have ratified the 2010 HNS Convention for such Certificates.
- f. Upon accession of the 2010 HNS Convention India would be able to ensure that all foreign flag vessels entering or leaving a port or offshore facility in India which are carrying hazardous and noxious substances are duly covered by insurance as required under the Convention and in case of any pollution incident and damage to our environment, the necessary compensation can be obtained as per limits applicable.

g. India is party to (the 1976) Convention on Limitation of Liability for Maritime Claims ("LLMC") and the Protocol (1996) thereto; it is a global limitation for maritime claims. Pursuant to amendments proposed in 1996 Protocol to LLMC, the option was provided to make optional reservations to State Parties for exclusion of LLMC from the 1996 HNS Convention which is also applicable for the 2010 HNS Convention. Considering the comparative chart below, it is suggested that India may seek a reservation like Netherlands,<sup>17</sup> Poland,<sup>18</sup> Croatia,<sup>19</sup> Lithuania,<sup>20</sup> Malta,<sup>21</sup> Norway,<sup>22</sup> Turkey,<sup>23</sup> the Russian Federation<sup>24</sup> and the U.K.<sup>25</sup>(Isle of Man<sup>26</sup>). Under LLMC to exclude 2010 HNS Convention from LLMC when which may arise from occurrences which take place after the entry into force of 2010 HNS Convention with regard to the Republic of India.

Chart I. Limits of Liability of claims under LLMC and HNS - Comparison

G.T.	In SDRs					
	LLMC		Difference between HNS & LLMC		HNS	
	Art.3(1) a	Art.3(1) b	a	B	Art. 9(1)a	Art. 9(1)b
<b>Ships</b>						
<2000	2000000	1000000	8000000	10500000	10000000	11500000
2001-30000	24400000	12200000	27600000	47600000	52000000	59800000
30,001-50,000	36400000	18200000	45600000	76100000	82000000	94300000
50,001-70,000	48400000	24200000	39600000	78380000	88000000	102580000
70,001 (&above)e.g.till 80,000	52400000	26200000	38600000	80520000	91000000	106720000
Max. Limit	N.A.	N.A.			100000000	115000000

<sup>17</sup> LLMC.3/Circ.24 of 5 January 2011.

<sup>18</sup> LLMC.3/Circ.30 of 9 January 2012.

<sup>19</sup> LLMC.3/Circ.12 of 6 August 2007.

<sup>20</sup> LLMC.3/Circ.13 of 17 September 2007.

<sup>21</sup> LLMC.3/Circ.8 of 17 February 2004.

<sup>22</sup> LLMC.3/Circ.2 of 5 January 2001.

<sup>23</sup> LLMC.3/Circ.23 of 22 July 2010.

<sup>24</sup> LLMC.3/Circ.1 of 16 August 1999.

<sup>25</sup> Ibid.

<sup>26</sup> The extension was made by U.K. to Isle of Man by LLMC.3/Circ.33 of 29 May 2012.



- 4.3 Accession of the 2010 HNS Convention is therefore considered essential and desirable in view of the following:
- a. India being a member of IMO Council does have a large interest in international sea borne trade.
  - b. India is a Party to Conventions and protocols adopted by IMO and is also a Party to UNCLOS.
  - c. India has a long coastline with a high population density, in certain pockets where town/cities are located.
  - d. The number of ships calling on Indian port is increasing annually.
  - e. India is the 6<sup>th</sup> largest importer of LNG cargo.
  - f. Demand for natural gas in India is likely to rise for the following reasons:
    - (i) Capacity addition requirement in power sector,
    - (ii) Growing demand by fertilizers/industrial sector,
    - (iii) Gas use in transport sector and
    - (iv) Potential demand by residential and commercial sector.
  - g. Increase in vegetable oil production, consumption and trade in India.
  - h. India's export and import trade on chemical and dangerous goods is adequate concern to the coast line in the event of any untoward incidents from ships engaged in the carriage of such cargoes.
  - i. There is no liability and compensation regime in place to protect the interest of victims including the coastal State except the provision of Limitation of Liability Convention in the Merchant Shipping Act of India, 1958 ("M.S.Act, 1958") which is inadequate to meet the claims of affected entities in the event of major hazardous and noxious substances pollution occurring on the coast of India.
  - j. The number of vessels<sup>27</sup> above 200 GTG in Indian fleet, is 827 with GT 9764294. Out of this, 504 vessels with GT 977170 are trading on the coast and 323 vessels with GT 8787124 are trading overseas.
  - k. There is a growing awareness among the public about environment issues leading to a significant rise in Public Interest Litigation. This suits are time consuming

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<sup>27</sup> Vessels and Ships is used interchangeably in the Explanatory Note. Both the words mean the same, unless stated otherwise in the Explanatory Note.

and create legal infrastructure constraints. Environmental damage caused by pollution from hazardous and noxious substances therefore, must be tackled effectively with the adoption of the HNS Convention.

## **5.0 CONSEQUENTIAL LEGISLATIVE MEASURES NEEDED TO IMPLEMENT PROVISIONS OF THE 2010 HNS CONVENTION:**

- 5.1 Upon accession to the 2010 HNS Convention the M. S. Act, 1958 will need to be amended to incorporate the provisions of the 2010 HNS Convention including the power to frame rules to put in place administrative procedures and necessary arrangements to guarantee the completeness and accuracy of the certificate, attesting that the insurance is in force, to be issued by appropriate authority. Therefore M.S. Act, 1958 is required to be amended and rules are framed so that all the Indian flag vessels capable of carrying hazardous and noxious substances, on Indian coastal or international trade are issued with the Certificates by the Government of India. This would facilitate their coastal or continued worldwide trade to these countries who are signatory and have acceded to the 2010 HNS Convention. These Certificates would ensure possession of insurance cover by the ships as prescribed by the 2010 HNS Convention.
- 5.2 Accordingly a draft Bill to amend the M.S. Act, 1958 by adding a new Part X-D to the Act is proposed as attached in **Annexure A** and to promulgate draft rules as proposed as attached in **Annexure B**.
- 5.3 The form or the manner in which the reports to be submitted to the HNS Fund and manner in which it may be collected are developed under Rules of the M.S. Act, 1958, which will provide for the issues that are not addressed in the text of the M.S. Act, 1958, is also proposed. Further, with the changing scenario and future developments, the rules can be amended easily to the requirements. The administrative matters will be considered thereafter, vide the necessary delegated powers of the concerned authorities as provided under the proposed amendment in the M.S. Act, 1958 or the allied rules framed.

**6.0 NOTIFICATION TO BE MADE WHILE ACCEDING TO THE PROPOSAL<sup>28</sup>:**

Under Article 5, Para 1 of the 2010 HNS Convention, an option is given to the State at the time of accession, for its application or otherwise, for the ships which do not exceed 200 GT. Such ships should be capable of carrying hazardous and noxious substances only in packaged form while they are engaged on voyages between ports or facilities of that State.

- 6.2 Keeping the above in view, it is proposed that the Government of India may accede to the Convention, without any exclusion or reservation, and with our acknowledgement of the obligations imposed by the Convention as in the following text:

*“Pursuant to the Paragraph 10 and 11 of Article 12 of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, the Republic of India expresses its consent to be bound by the obligations of a Contracting State mentioned therein. ”*

- 6.3. It is also proposed that the Government of India while depositing the instrument of accession of 2010 HNS Convention with IMO, also excludes by a reservation, as allowed by article 18 of the Convention on Limitation of Liability for Maritime Claims, 1976, amended by article 7 of the Protocol of 1996, HNS Claims. The reservation can be drafted in the following manner:

*"Pursuant to the paragraph 1 of Article 18 of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, the Republic of India hereby excludes claims for damage within the meaning of the International Convention on Liability and Compensation for*

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<sup>28</sup> The proposal to the Cabinet to consider; these are important as these are the reservations that are to be made in consonance with the 2010 HNS Convention.

*Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, or any amendment or protocol related thereto."*

### **Salient Features of the 2010 HNS Convention**

1. The 2010 HNS Convention covers any damage caused by HNS in the territory or territorial sea of a State Party to the Convention. It also covers pollution damage in the exclusive economic zone, or equivalent area, of a State Party and damage (other than pollution damage) caused by HNS carried on board ships registered in, or entitled to fly, the flag of a State Party outside the territory or territorial sea of any State. The costs of preventive measures, i.e. measures to prevent or minimize damage, are also covered wherever taken.
2. The 2010 HNS Convention does not cover damage caused during the transport of HNS to or from a ship. Cover starts from the time when the HNS enter the ship's equipment or pass its rail, on loading, and the cover ends when the HNS cease to be present in any part of the ship's equipment or pass its rail on discharge.
3. The 2010 HNS Convention covers incidents involving the carriage of HNS by sea by any sea-going craft of any type whatsoever, except warships and other ships owned or operated by a State and used, for the time being, only on Government non-commercial service. The Convention allows a State to exclude from the application of the Convention, ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form, and while the ships are engaged on voyages between ports of that State.
4. The 2010 HNS Convention defines the concept of HNS largely by reference to lists of individual substances that have been previously identified in a number of

international Conventions and Codes designed to ensure maritime safety and prevention of pollution. The references to the codes and regulations covering these HNS substances are set out in article 1.5 of the Convention, and, with one exception, they reflect amendments made to them by IMO bodies since the HNS Convention, 1996. The exception relates to solid bulk materials possessing chemical hazards which are subject to the provisions, inter alia, of the International Maritime Dangerous Goods Code (IMDG Code) in effect in 1996.

5. The 2010 HNS Convention defines preventive measures as any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage. These include measures such as clean-up or removal of HNS from a wreck if the HNS present a hazard or pollution risk.
6. The 2010 HNS Convention does not cover pollution damage caused by persistent oil, since such damage may be covered under the existing international regime established by the 1992 CLC and Fund Convention. However, non-pollution damage caused by persistent oil, e.g. damage caused by fire or explosion, is covered by the Convention. The Convention does not apply to damage caused by radioactive material.
7. The amount available for compensation from the shipowner and the HNS Fund will be distributed among claimants in proportion to their established claims. However, claims for loss of life and personal injury have priority over other claims. Up to two thirds of the available compensation amount is reserved for such claims.

8. Under the 2010 HNS Convention, the shipowner is liable for the loss or damage up to a certain amount, which is covered by insurance (1st tier). A compensation fund (the HNS Fund) will provide additional compensation when the victims do not obtain full compensation from the shipowner or its insurer (2nd tier). The HNS Fund will be funded by those companies and other entities which receive HNS after sea transport in a Member State in excess of the thresholds laid down in the Convention.

**Annexure - A**

	<p><b>THE MERCHANT SHIPPING (AMENDMENT) BILL, 2013</b></p>
	<p><b>A Bill</b></p> <p><b>further to amend the Merchant Shipping Act, 1958.</b></p> <p><b>BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:-</b></p>
	<p><b>1.</b> (1) This Act may be called the Merchant Shipping ( Amendment ) Act, 2013.  (2) It shall come into force on such date as the Central Government may, by notification, in the official Gazette, appoint.</p>
	<p><b>2.</b> In the principal Act, after Part X-C, the following Part X-D containing sections 352-ZB to 352-ZW shall be inserted, namely:-</p>
	<p><b>PART X-D</b></p> <p><b>INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA</b></p>
<p><b>Corresponding Article/Para of The 2010 HNS</b></p>	<p><b>Part X- D of the M.S.Act 1958</b></p>
<p>Article 3, 4 (except 4.5) and 5</p>	<p><b>352-ZB. Application.</b></p> <p>a) This Part applies to all ships as defined under this part.</p> <p>Provided that the Central Government may, by general or special order, direct that this Part shall not apply to ships which do not exceed 200 gross tonnage and which carry hazardous and noxious substances only in packaged form while they are engaged on voyages:</p>



	<p>(i) between ports or facilities in India; or</p> <p>(ii) between ports or facilities of neighbouring countries, that may be specified in such order;</p> <p>b) The Applicable Convention under this Part shall apply exclusively:</p> <p>(i) to any damage caused in the territory, including the territorial waters of India as defined under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force;</p> <p>(ii) to damage by contamination of the environment caused in the territorial waters of India or any marine areas beyond and adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force;</p> <p>(iii) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board an Indian ship;</p> <p>(iv) to preventive measures, wherever taken, to prevent or minimize such damage as referred to in (i),(ii) and (iii) above;</p> <p>c) This Part shall not apply:</p> <p>(i) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and</p> <p>(ii) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in the International Maritime Solid Bulk Cargoes Code, as amended.</p>
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	<p>d) Nothing in this Part shall apply to claims arising out of any contract for the carriage of goods and passengers provided that such exclusion does not prevent any claims for damage arising from the carriage of hazardous and noxious substances by sea</p> <p>(e) Nothing in this Part shall apply to the extent that the provisions provided as hereunder are incompatible with the provisions under Workmen's Compensation Act, 1923 or Employees' State Insurance Act, 1948 or any other act regulating the workers' compensation or social security schemes..</p>
	<p><b>352-ZC. Definitions.-</b></p> <p>In this Part, unless the context otherwise requires,--</p>
Article 1.9	<p>(i) "<b>Carriage by sea</b>" means the period from the time when the hazardous and noxious substances enter any Part of the ship's equipment, on loading, to the time they cease to be present in any Part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.</p>
Article 1.10	<p>(ii) "<b>Contributing cargo</b>" means any bulk HNS which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.</p>
Article 1.6	<p>(iii) "<b>Damage</b>" means</p> <p>a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by the hazardous or noxious nature of</p>

	<p>the substances.</p> <p>b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by the hazardous or noxious nature of the substances.</p> <p>c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and</p> <p>d) the costs of preventive measures and further loss or damage caused by preventive measures.</p> <p>Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in sub-section (c) of Section 352-ZZC.</p>
	<p>(iv )“<b>Discharge or escape</b>”, in relation to damage, means the discharge or escape of HNS carried by the ship;</p>
	<p>(v) “<b>Guarantor</b>” means any person providing insurance or other financial security to cover the owner’s liability;</p>
Art 1.5	<p>(vi). "<b>Hazardous and noxious substances</b>" means</p> <p>(a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:</p> <p>(1) oils, carried in bulk, as defined in regulation 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;</p> <p>(2) noxious liquid substances, carried in bulk, as defined in regulation 1.10 of</p>

	<p>Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;</p> <p>(3) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;</p> <p>(4) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;</p> <p>(5) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;</p> <p>(6) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);</p> <p>(7) solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and</p> <p>(b) residues from the previous carriage in bulk of substances referred to in (a)(1) to (3) and (5) to (7) above;</p> <p>ii. <b>“Bulk HNS”</b> means any hazardous and noxious substances referred to in above subsection (a) (1) to (3) and (5) to (7) and above sub-section (b);</p>
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	iii. <b>“Packaged HNS”</b> means any hazardous and noxious substances referred to in above subsection (a)(4).
	(vii) <b>“HNS Convention”</b> means the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substance by Sea, 1996 and Protocol of 2010 to International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substance by Sea, 1996, read and interpreted together as one single instrument, that may be amended from time to time;
	(viii) <b>“HNS Fund”</b> means the International Hazardous and Noxious Substances Fund established under the <b>HNS Convention</b> ;
	(ix) <b>"Incident"</b> means any occurrence, or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing such damage;
Article 1, Para3	(x) <b>"Owner"</b> means— (i) the person registered as owner of the ship; or (ii) in the absence of registration, the person owning the ship; or (iii) in the case of a ship owned by the Government of India or the Government of a foreign State , the person registered in that State as operator of the ship; or (iv) in the case of a ship owned by the Government of India or the Government of a foreign country and operated by a Company which in that State is registered as the ship’s operator, “owner” shall mean such company.
Article 1, Para 2	(xi) <b>“Person”</b> means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent sub-divisions;
Article 1, Para 7	(xii) <b>"Preventive measures"</b> means any reasonable measures taken by any person after an incident has occurred, to prevent or minimize damage.
Article 1.4	(xiii) <b>"Receiver"</b> means the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal

	shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund;
Article 1, Para 1	(xiv) “ <b>Ship</b> ” means any sea-going vessel and sea borne craft of any type whatsoever.
Article 1, Para 13	(xv) “ <b>State of the ship’s registry</b> ”, in relation to registered or unregistered ships, means the State of registration of the ship, or as the case may be, the State whose flag the ship is flying;
	(xvi) “ <b>Special drawing rights</b> ” means the Special Drawing Rights as determined by the International Monetary Fund.
	(xvii) “ <b>Terminal</b> ” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated offshore and linked by pipeline or otherwise to such site.
	(xviii) “ <b>Workers</b> ” means workman under the Workmen Compensation Act, 1923 or under Employees’ State Insurance Act, 1948.
Article 7 of the Convention	<p><b>352-ZD. Liability of owner.</b></p> <p>(1) Save as otherwise provided in sub- sections (2) and (3) the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.</p> <p>(2) No liability shall attach to the owner if the owner proves that:</p> <p style="padding-left: 40px;">(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or</p> <p style="padding-left: 40px;">(b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or</p> <p style="padding-left: 40px;">(c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of</p>

	<p>lights or other navigational aids in the exercise of that function; or</p> <p>(d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either</p> <ul style="list-style-type: none"><li>(i) has caused the damage, wholly or partly; or</li><li>(ii) has led the owner not to obtain compulsory insurance in accordance with this Part ;</li></ul> <p>provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.</p> <p>(3) If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.</p> <p>(4) No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Part.</p> <p>(5) Subject to sub-section 6, no claim for compensation for damage under this Part or otherwise may be made against:</p> <ul style="list-style-type: none"><li>(a) the servants or agents of the owner or the members of the crew;</li><li>(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;</li><li>(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;</li></ul>
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	<p>(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;</p> <p>(e) any person taking preventive measures; and</p> <p>(f) the servants or agents of persons mentioned in (c), (d) and (e);</p> <p>unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.</p> <p>(6) Nothing in this Part shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in sub-section 5.</p>
Article 8	<p><b>352-ZE. Incidents involving two or more ships</b></p> <p>(1) Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under 352-ZD, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.</p> <p>(2) However, owners shall be entitled to the limits of liability applicable to each of them under section 352-ZF.</p> <p>(3) Nothing in this section shall prejudice any right of recourse of an owner against any other owner.</p>
Article 12.8	<p><b>352-ZF Rights of third parties against insurer</b></p> <p>(1) Where it is alleged that the owner has incurred a liability under this Part, , any claim for compensation in respect of the liability may be brought directly against the guarantor.</p> <p>(2) In any proceedings brought against the guarantor by virtue of this section, it shall be a defence (in addition to any defence affecting the owner’s liability) to prove that the damage resulted from the wilful misconduct of the owner himself.</p>



	<p>Provided the guarantor shall not invoke any other defence which the guarantor might have been entitled to invoke in proceedings brought by the owner against the defendant.</p> <p>(3) Notwithstanding that the owner is not entitled to limitation of liability, the guarantor may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as provided under section 352-ZG</p> <p>(4) The guarantor shall have the right to require the owner to be joined in the proceedings.</p> <p>(5) Where the owner and the guarantor each apply to the Court for the limitation of his liability, any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.</p>
Art 9.1 & 9.2	<p><b>352-ZG. Limitation of liability.</b></p> <p>(1) The owner of a ship shall be entitled to limit liability as may be prescribed under this Part in respect of any one incident unless it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.</p>
Art 9.3	<p><b>352-ZH. Constitution of limitation fund.</b></p> <p>(1) The owner shall, for the purpose of benefiting from the limitation provided for in Section 352-ZG:</p> <p>(a) constitute a fund for the total sum representing prescribed limit of liability shall make an application to the High Court for constitution of a HNS fund .</p> <p>(b) such fund may be constituted either by depositing the sum with the High Court or by furnishing bank guarantee or such other security as, in the opinion of the High Court, is satisfactory.</p>
Art 9.11	<p>(2) The guarantor may apply to the High Court for constitution of the fund under sub-section (1) and any fund so constituted shall have the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provision of the section 352-ZG, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant</p>

Art 9, Para 9	<p>against the owner.</p> <p>(3) The amount in Special Drawing Rights to be deposited or secured in the fund under sub-section (1) shall be converted in rupees on the basis of official value in rupees of the Special Drawing Rights as determined by the Reserve Bank of India on the date of constitution of the fund.</p>
Art 9.5 & 9.6          Art 9.7	<p><b>352-ZI. Acquisition of right for compensation by subrogation.</b></p> <p>(1) If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security or any other person who has, as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this part.</p> <p>(2) Where owners or other persons establish that they may be compelled to pay at a later date in whole or in Part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under sub-section 1 had the compensation been paid before the fund was distributed, the High Court may order that a sufficient sum from the fund may be provisionally set aside to enable such person at such later date to enforce the claim against the fund.</p>
Article 11       Art 9.8 & Art.9.4	<p><b>352-ZJ. Consolidation of claim and distribution of fund.</b></p> <p>(1) The High Court shall consolidate all claims against the fund including those arising under section 352-ZG.</p> <p>(2) (a) Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount as established in accordance with prescribed limits.</p> <p>(b) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with such other established claims against the fund.</p> <p>(3) Subject to the provisions of sub-section (2) of section, the High Court shall</p>

	distribute the amount in the fund among all claimants in proportion to their established claims.
Art.12.1	<p><b>352-ZK. Compulsory insurance or other financial guarantee.</b></p> <p>(1) The owner of a ship registered in India and actually carrying hazardous and noxious substances shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the prescribed limits of liability, to cover liability for damage under this part.</p>
Art.12.2	<p>(2) In respect of every Indian ship which maintains insurance or other financial security under sub-section (1), there shall be issued by the Director-General a certificate in such form and giving such particulars as may be prescribed.</p>
Art.12.7	<p>(3) On an application by the owner or agent of any foreign ship, the Director-General may issue a certificate under sub-section (2) in respect of such foreign-ship on production of satisfactory evidence relating to maintenance of insurance or other financial security in accordance with the provisions of the Part.</p> <p>(4) For every certificate issued under sub-sections (2) and (3) there shall be charged such fee as may be prescribed.</p>
Art.12.7	<p>(5) The Director General of Shipping shall maintain a record of any certificate issued by him under this section in respect of an Indian vessel which shall be hosted on the official website of the Director General of Shipping.</p>
Art.12.7	<p><b>352-ZL. Acceptance of certificates issued outside India.</b></p> <p>Any certificate issued by a competent authority in any State outside India to a ship registered in that State or any certificate issued by a competent authority of any State which is a contracting party to the <b>HNS Convention</b> to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Act.</p>
	<p><b>352-ZM. Ban-on entering or leaving an Indian port without certificate.</b></p> <p>(1) No Indian ship as applicable under this part, shall enter or leave or attempt to</p>

<p>Art. 12.4, 12.10, 12.11 &amp; 12.12</p>	<p>enter or leave any port or place in India unless it carries on board a valid insurance certificate as required under this Part 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 India, with the Indian authority issuing or certifying the certificate under sub-section 3 of the section 352-ZK.</p> <p>(2) Ships not registered in India, shall not enter or leave or attempt to enter or leave any port or place in India, unless it carries on board a valid certificate issued under sub-section 3 of section 352-ZK or a certificate accepted under section 352-ZL.</p> <p>(3) No customs officer shall grant inward entry or outward clearance to any ship which requires to carry, unless its master produces a certificate required under the respective sub-section.</p>
<p>Article 4. 4 of Convention</p>	<p><b>352-ZN. Government ships.</b></p> <p>Nothing in this Part shall apply to any warships, naval auxiliary or any ship for the time being used by the Government of India or any other State for non-commercial purposes, other than to any State who has applied the provisions of this HNS Convention to such ships.</p>
	<p><b>352-ZO. Contribution to the HNS Fund.-</b></p> <p>(1) Contributions to the Fund shall be payable in accordance with the requirements of the HNS Convention.</p> <p>(2) The Central Government may require persons, who are or may be liable to pay contributions to the HNS Fund under this part, to give financial security for payment of contributions to that Government or the HNS Fund.</p>
<p>Art.21.3 &amp; 22.2 &amp; Art.36</p>	<p><b>352-ZP. Power to call for information.-</b></p> <p>(1) The Central Government may, for the purpose of transmitting to the HNS Fund the names and addresses of the persons are liable to make contributions to the HNS Fund every year and the quantity of contributing oil in respect of which they are so liable, by notice require any such person to furnish such information as may be specified therein.</p> <p>(2) A notice under this section may require a person to give such information as may be required a person to give such information as may be required to</p>

	<p>ascertain whether he is liable to contribute to the HNS Fund.</p> <p>(3) A notice under this section may specify the manner in which, and the time within which, such notice is to be complied with.</p> <p>(4) In proceedings by the HNS Fund against any person to recover any amount due under this part, particulars contained in any list transmitted by the Central Government to the HNS Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.</p> <p>(5) No person shall disclose any information which has been furnished to or obtained by him under this section unless the disclosure is made,-</p> <ul style="list-style-type: none"> <li>(a) with the consent of the person from whom the information was obtained;</li> <li>(b) in connection with the compliance of this section;</li> <li>(c) for the purpose of any legal proceedings arising out of this section or of any report of such proceedings.</li> </ul>
<p>Article 6.</p>	<p><b>352-ZQ Penalties:</b></p> <p>A person who,-</p> <ul style="list-style-type: none"> <li>(a) refuses or willfully neglects to comply with a notice under the section 352-ZP; or</li> <li>(b) makes, while furnishing any information in compliance with a notice under the section 352-ZP, any statement which he knows to be false in a material particular, or recklessly makes any statement, which is false in a material particular; or</li> <li>(c) does not comply with such provisions of this Part that the Director General may deem relevant;</li> </ul> <p>shall be guilty of an offence punishable under this Act and the Director General may revoke licence granted under section 406 for the ships to which the provisions of this Part apply.</p>
	<p><b>352-ZR Liability of the HNS Fund.-</b></p>

Art.14.	<p>(1) Where any person suffering damage has been unable to obtain full and adequate compensation for damage under the terms in this Part on any of the grounds specified in article 14 of HNS Part or as amended thereafter, the HNS Fund shall be liable for compensation to such person suffering damage in accordance with the provisions of this Part.</p> <p>(2) Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this section.</p>
Article 38.1 & Art.38.2	<p><b>352-ZS Jurisdiction of Courts.-</b></p> <p>(a) Action against the Owner:</p> <p>(1) Any actions for compensation may be brought against the owner or guarantor only before the High Court for an incident that has caused damage, or preventive measures that have been taken to prevent or minimize such damage in an area in India as referred to in paragraph (ii) of the sub-section (b) section 352-ZB .</p> <p>(2) Any actions for compensation may be brought against the owner or guarantor only before the High Court for an incident that has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Part set out in paragraph (iii) of the sub-section (b) section 352-ZB have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or guarantor only before the High Court:</p> <p>(i) in case of ships registered in India; or</p> <p>(ii) in case where the owner has habitual residence or where the principal place of business of the owner is established in India.</p> <p>(b) Action against the HNS Fund:</p> <p>(1) Any action for a claim for compensation against the HNS Fund under section 352-ZR shall be brought before the High Court having jurisdiction under subsection a of the section 352-ZS in respect of actions against the owner who is liable for damage caused by the relevant incident or before a High Court which</p>

<p>Article 39.1</p> <p>Article 39.4, Article 39.5, Article 39.7, Article 39.6 &amp; 39.7</p>	<p>would have been competent if an owner had been liable;</p> <p>(2) Where an action for compensation for damage has been brought before High Court against the owner or the guarantor, such Court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 of the HNS Convention or as amended thereafter in respect of the same damage.</p> <p>(3) The HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in the High Court against the owner or his guarantor.</p> <p>(4) Where an action for compensation for damage has been brought against the owner or his guarantor before the High Court each party to the proceedings may notify the HNS Fund of the proceedings.</p> <p>(5) The HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a part, unless where such notice of proceedings has been given to the HNS Fund as referred in paragraph (4) of the sub-section b of this section, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the HNS Fund in the sense that the facts and evidence in that judgment may not be disputed by the HNS Fund on the ground that it has not intervened in the proceedings.</p>
<p>Article 37</p>	<p><b>352-ZT Extinguishment of claims.-</b></p> <p>Notwithstanding anything contained in any other law for the time being in force, no action to enforce a claim against the HNS Fund under this Part shall be entertained by a High Court unless-</p> <p>(a) the action to enforce is commenced; or</p> <p>(b) notice of action as referred in paragraph (4) of the sub-section (b) of section 352-ZS to enforce a claim against the owner or his guarantor in respect of the same damage is given to the HNS Fund,</p> <p>within three years from the date when the person suffering the damage knew or ought to reasonably to have known of the damage and of the identity of the owner;</p>

	<p>Provided that in no case an action to enforce a claim shall be brought after ten years under this Part but where the incident consists of a series of occurrences, the ten-year period shall run from the date of the last of such occurrences</p>
Art.42	<p><b>352.ZU Conflict with other Convention.-</b></p> <p>The provisions under this Part shall supersede any convention in force or open for signature, ratification or accession at the date, but only to the extent that such convention would be in conflict with the provisions under this Part; however, nothing in this article shall affect the obligations of the Government of India arising under this Part to States not party to the HNS Convention.</p>
Article 41	<p><b>352-ZV Subrogation and right of recourse.-</b></p> <p>(1) The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund under this part, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.</p> <p>(2). Nothing in this Part shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in paragraph (d) of the sub-section 2 of the section 352-ZD, other than those referred to in the above sub-section, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.</p> <p>(3) Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, any sum paid by a public authority or agency thereof in India thereof which has paid compensation for damage shall acquire by subrogation the rights which the person so compensated would have enjoyed under this part.</p>
	<p><b>352-ZW Power to make rules.-</b></p> <p>The Central Government may make rules prescribing—</p> <p>(a) the form of certificate to be issued by the Director-General under section 352-ZK and the particulars which it may contain;</p> <p>(b) fees which may be charged for issue of certificates under section 352-ZK;</p> <p>(c) the limits of liability of owner in respect of one or more incident of damage or other requirements having regard to the provisions of the HNS Convention;</p>



	<p>(d) to carry out the purposes of this Part.</p> <p>Provided that the rules shall be made in due regard to implement the provisions of the HNS Convention.</p>
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**DRAFT RULES**

**MERCHANT SHIPPING (INTERNATIONAL CONVENTION ON LIABILITY  
AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE  
CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA) RULES,  
2013**

(TO BE PUBLISHED IN PART II SECTION 3, SUB-SECTION (i) OF THE GAZETTE  
OF INDIA)

GOVERNMENT OF INDIA  
MINISTRY OF SHIPPING  
(SHIPPING WING)

New Delhi, dated \_\_\_\_\_

**NOTIFICATION**

G.S.R-----In exercise of the powers conferred by section 352-ZW of the Merchant Shipping Act, 1958 (44 of 1958), the Central Government hereby makes the following rules, namely-

Preliminary

Part I

1. Short title, commencement and application

1) These rules may be called the Merchant Shipping (International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by sea, 2010 ) Rules 2013.

2) They shall come into force on the date of their publication in the Official Gazette.

## 2. Definitions

(1) In these rules, unless the context otherwise requires –

- a) “Act” means the Merchant Shipping Act, 1958 (44 of 1958);
- b) “Competent Authority” means the Director General of shipping to implement and enforce the provision of these rules;
- c) “Contributing Cargo” means any bulk HNS which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.
- d) “Form” means a Form annexed to these rules;
- e) “MS Notice” means a notice issued by the Director General of Shipping from time to time to implement the provisions of the rules;
- f) “Ship’s Tonnage” means the gross tonnage which is calculated in accordance with the Merchant Shipping (Tonnage Measurement of Ships) Rules, 1987;
- g) “Section” means section of the Act;
- h) “Unit of Account” means the Special Drawing Right as defined by the International Monetary Fund in respect of India which shall be converted into rupees on the basis of official value in rupees and Special Drawing Right as determined by Reserve Bank of India on the dated on constitution of Fund.

(2) The words and expressions used in these rules but not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

## **Part I**

### Limitation of liability for maritime claims under HNS Convention.

3. Limitation of liability for maritime claims.- (1) Subject to the provisions of section 352-ZD, the owner of a ship shall be entitled to limit liability for claims under sub-section (1) of 352-ZF in respect of any one incident to an aggregate amount calculated as follows:-

(a) Where the damage has been caused by bulk HNS:

- (i) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

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

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

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

(b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:

- (i) 11.5 million units of account for a ship not exceeding 2,000 units of tonnage; and
- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,725 units of account; for each unit of tonnage in excess of 50,000 units of tonnage, 414 units of account;

provided, however, that this aggregate amount shall not in any event exceed 115 million units of account.

(2) Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with above sub-rule (1) of rule 3 .

## Part II

### **Issuance of Insurance Certificate**

#### 4. General requirement to issue certificate of insurance or equivalent security-

Every ship as required under the part X-D shall maintain a certificate of insurance or equivalent security issued by the Principal Officer, Mercantile Marine Department District. The owner of such ship shall submit an application duly filled in along with an original blue card issued by the recognized insurance company specifying the limitation of liability and relevant provision of the part X-D. The online application or hard copy along with the specified documents may be accepted by the issuing authority. The procedure of such application shall be prescribed by the Competent Authority. The Principal Officer, if considered necessary shall verify the genuineness and authenticity of the blue card before issuing the certificate of insurance in the prescribed format. The validity of this certificate shall be restricted to the validity specified in the blue card.

#### 5. HNS Convention insurance and issue of certificate / other Financial Security-

(i) The owner of Indian ship, who is required to maintain insurance or other financial security in respect of that ship in accordance with the provisions of sub-section (2) of section 352-ZJ, shall make an application to the Director General for issue or renewal of

Certificate of Insurance / other Financial Security in respect of HNS Convention in Form A.

(ii) The owner or agent of any foreign ship, who has maintained insurance or other financial security in respect of such foreign ship in accordance with the provisions of the HNS Convention, may also make an application to the Director General of Shipping for issue of a Certificate of Insurance / other Financial Security in respect of HNS Convention, in Form A.

(iii) Every application under sub-rules (1) and (2) shall contain such particulars as may be mentioned therein and be accompanied by documentary evidence regarding maintenance of such insurance or other financial security and fees as prescribed by Competent Authority by demand draft drawn in favour of Director General of Shipping.

iv) After receiving the application under sub-rule (1) or sub-rule (2) of rule 6 the Competent Authority shall, on being satisfied about the maintenance of insurance or other financial security in respect of that ship, issue the Certificate of Insurance / other Financial Security in respect of HNS Convention in Form B.

6. Issue of certificate of insurance to a ship of the flag administration not party to HNS Convention-

When a request is made to the Director General of shipping, by a ship of the registered or flying a flag of a State not party to HNS Convention for the issuance of Certificate of Insurance/Financial Security, the Competent Authority shall issue such certificate by following the procedures specified above. The requisite fees shall be paid by the ship owner or his agent as specified in these rules.

7. Issue of duplicate certificate-

Where the certificate issued under this Rule is destroyed or defaced or otherwise lost, the owner or agent of the ship may apply to the Director General for issuance of a duplicate certificate on the payment of fees as prescribed by Competent Authority, in Form C.

Provided that in case a lost certificate is traced or found by the owner or his agent subsequently, he shall return the same to the Competent Authority.

8. Verification of Compliance-

The authorized official of the Competent Authority may board any ship to which these rules are applicable for verification of valid certification of insurance or equivalent security arrangements available against liability and compensation due to oil pollution. The ship may be detained if certificate as required by the rules is not in the prescribed format as per the rules or the convention as the case may be or its validity has expired, etc. The authorized official shall not unduly delay the ship.

9. Production of certificate of insurance / financial security-

The master for Indian ships, wherever it is and for ships other than Indian ships in the territorial waters of India or any marine areas beyond and adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force shall carry a certificate on board. The master of the ship shall produce the certificate to the authorized official of the Director General of Shipping or collector of customs or officials of the port authority or official designated by the Indian Coast Guard.

### Part III

### **Contributions**

10. Contribution to the HNS Fund-

(1) Contributions to the Fund shall be payable in accordance with the requirements of the HNS Convention.

(2) The Central Government may require persons, who are or may be liable to pay contributions to the HNS Fund under this part, to give financial security for payment of contributions to that Government or the HNS Fund.

(3) Contributions shall also be payable to the HNS Fund in respect of the contributing cargo when first received in installation in India after having been carried by sea and discharged in a port or terminals in a State which is not a party to HNS Convention.

(4) The person liable to pay contributions to the fund shall be –

a In case of contributing cargo which is being imported in to India, the importer; or

b. in any other case, the person by whom the cargo is received in India.

(5) A person shall not be liable to pay contributions to the HNS Fund in respect of the contributing cargo imported or received by him in any year if the quantity of contributing cargo so imported or received in the year does not exceed the quantity as may be specified from time to time in the HNS Convention provided where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any subsidiary or commonly controlled entity exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.

#### 11. Contribution payable by persons to the HNS Fund-

(1) The contributions payable to the HNS Fund by a person for any year shall be,-

(a) such amount as may be determined by the Assembly of the HNS Fund under Articles 17,18,19 and 20 of the HNS Convention and as may be amended thereafter;

(b) in such installments, becoming due at such dates, as may be notified and if any amount due from such person remains unpaid after the date on which it became due, it shall from that due date bear interest at a rate determined in accordance with the internal regulations of the HNS Fund until it is paid.



12. Obligations of persons receiving contributing cargo-

Any person who is liable to contribute to Fund under rule 11 shall give a report of such receipts and such other information as may be required by the Central Government in Form-I and a Summary.

13. Obligation of Central Government to Report to Fund-

The Central Government shall transmit to the Fund the list of names and addresses of the person receiving HNS who is liable to contribute to the Fund and the quantity of contributing cargo received by such person during the preceding calendar year in Form-II

14. Appeal-

The owner, manager, master, agent and any other person who is affected by the decision of the concerned authorities has right to appeal against such decision. The appeal shall be made to the Competent Authority within a period of 15 days. Every appeal made under this rule shall be accompanied by a copy of order appealed against. The Competent Authority before disposing of an appeal shall give a reasonable opportunity of being heard to the appellant. An appeal shall be disposed off as expeditiously as possible but within a period of 60 days from the date of filing of the appeal. The Competent Authority may confirm, modify or reverse the order appealed against. The decision of the Competent Authority shall be binding on the appellant.

15. Penalty –

Any infringement of these rules by the ship owner, manager, master or agent as the case may be shall be dealt with as per the provision of Merchant Shipping Act, 1958 and other applicable Indian laws. Whoever contravenes any of the provisions of these rules shall be punishable with fine in accordance with the provisions of section 458 of the M.S. Act. The licence granted by the Competent Authority under section 406 or 407 of the M.S. Act, 1958 may be cancelled by the Competent Authority if any Indian Ship which to maintain insurance or equivalent security as required under this Rule or in accordance with the Convention

16. Implementation and Enforcement-

The Central Government in consultation with Competent Authority and concerned entities may issue notification in the official gazette or by general orders or special orders notices in writing from time to time to implement and enforce the provision of the rules.

However, the Competent Authority may issue such **Merchant Shipping** notices from time to time to facilitate and ensure the implementation and enforcement of the provisions of the rules.

Joint Secretary to the Govt. of India

*Form A*

**Application**

(As per sub-rule i and ii of Rule 6)

***Form of application for Certificate of Insurance or other Financial Security maintained under the Act:***

1. Name of the ship :
2. Distinctive number or letters :
3. Port of Registry :
4. Name of Owner / agent and address :
5. (i) Gross Tonnage :  
(ii) Net Tonnage :  
(Attach a photo copy of Certificate of Registry)
6. (a) Particulars of Insurance or other  
Financial security maintained :  
(Attach documentary evidence to show maintenance of insurance  
or other financial security)  
  
(b) Limits of the Liability :  
(c) Period of validity :  
(Attach documentary evidence to show period of validity)
7. Fee paid (in rupees) :  
(Payable by demand draft drawn in favour of Director General of Shipping)

I hereby solemnly declare that the particulars given in this form are true and correct to the best of my knowledge and belief. I request you to issue Certificate of Insurance or other Financial Security accordingly.

I have been authorized by the owner to make this application (in case of agent).

Place:

Date:

Signature of Applicant

Name:

\* Strike out if not applicable.

\* Any existing or expired certificate shall be enclosed.

Form B

(As per sub-rule (iv) of Rule 6)

**Form of Certificate to be issued by the**  
**Director General of Shipping**

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

**Issued in accordance with the provisions of Article 12 of the International  
Convention on Liability and Compensation for Damage in Connection with the  
Carriage of Hazardous and Noxious Substances by Sea, 2010**

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

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of **the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010..**

Type of Security \_\_\_\_\_

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Duration of Security \_\_\_\_\_

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

Name \_\_\_\_\_

Address \_\_\_\_\_

This certificate is valid until \_\_\_\_\_

Issued or certified by the Government of India \_\_\_\_\_

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(Full designation of the State)

At \_\_\_\_\_ On \_\_\_\_\_  
(Place) (Date)

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Signature and Title of issuing or certifying official

**Explanatory Notes:**

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.

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

**Form “C”**

(See Rule 8)

(Form of application for a duplicate Certificate of Insurance or other Financial Security maintained under the Merchant Shipping Act, 1958)

1. Name of the ship :
2. Distinctive number or letters :
3. Port of Registry :
4. Name of Owner / agent and address :
5. (i) Gross Tonnage :  
(ii) Net Tonnage :  
(Attach a photo copy of Certificate of Registry)
6. (a) Particulars of Insurance or other  
Financial security maintained :  
(Attach documentary evidence to show maintenance of insurance  
or other financial security)  
  
(b) Limits of the Liability :  
(c) Period of validity :  
(Attach documentary evidence to show period of validity)
7. Fee paid (in rupees) :  
(Payable by demand draft drawn in favour of Director General of Shipping)



I hereby solemnly declare that the particulars contained in this form are true and correct to the best of my knowledge and Certificate of Insurance described in Rule - 4 was defaced / destroyed or otherwise lost under the following circumstances –

- -----
- -----

I request you to issue a duplicate Certificate of Insurance accordingly, I have been authorized by the owner to make this application (in case of agent).

Place:

Date:

Signature of Applicant

Name:

\* Strike out if not applicable.

\* Any existing or expired certificate shall be enclosed.

Form I

Sl. No .	Name of Receiver cargo	Address of the Receiver	Quantity of contributing				
			Solid Bulk Materials	Oil	LNG *	LPG **	Other substances

Receiver/Authorised person of the receiver:

Address of registered place of business:

Signature:

Date:

Form II

Summarised Statement on Contributing Cargo received in India for the Calendar  
year \_\_\_\_\_

Sl. No .	Name of Receiver cargo	Address of the Receiver	Quantity of contributing				
			Solid Bulk Materials	Oil	LNG *	LPG **	Other substances
	Total received						

