



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
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**AN ACT TO AMEND THE INTERNATIONAL
MARITIME ACT, 2000 AS AMENDED BY THE
INTERNATIONAL MARITIME ACT, 2001 TO
INCORPORATE THE PROVISIONS OF THE
INTERNATIONAL CONVENTION ON CIVIL
LIABILITY FOR BUNKER OIL POLLUTION
DAMAGE (2001) INTO THE LAWS OF THE
COMMONWEALTH OF DOMINICA.**

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

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EXPLANATORY NOTE

Historical Background

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001¹ came about because the current regime for compensation for oil pollution damage was exclusive and restrictive. The International Convention on Civil Liability for Oil Pollution Damage, 1992² and the Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992³, though applicable to oil spills, including spills of bunker oil from tankers when actually carrying oil in bulk as cargo, made no provisions for bunker spills involving any other vessels.

The lacuna in the CLC and Fund Convention was particularly glaring when one considers that ‘half of the total number of pollution claims arose from incidents involving ships not carrying oil as cargo.’⁴ Moreover, the claims arising from such incidents consistently exceeded the limits of compensation available under national regimes. These factors propelled the creation of a new mechanism providing compensation for damage caused by pollution of the marine environment.

The Bunker Convention was proclaimed as the solution to the left over problem of pollution caused by the escape of bunker oil from non-tankers. Specifically, its application will reduce the threat of bunker discharges causing serious environmental problems in relation to small ships which continue to use low quality heavy fuel oil.

The Convention which is patterned on the CLC was adopted in March 2001 and entered into force on November 21, 2008 which was one year after the ratification by 18 States including 5 States each with ships whose combined tonnage is not less than 1,000,000 tons. It is hoped that all States will ratify the Bunker Convention so that it will prove an

¹ Hereafter “Bunker Convention”.

² Hereafter “CLC”.

³ Hereafter “Fund Convention”.

⁴ <http://www.frc-law.com/publications/publications4.htm>. This web page was visited in November, 2008.

effective complement to the international compensation framework in the fight against oil pollution.

Overview of the Convention

The objective of the Bunker Convention is to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil when carried as fuel in non-tanker vessels or in non-laden tankers. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. However, the shipowner is entitled to limit liability to an amount which corresponds to a limit established under national law or an international regime.

Article 1-Definition

“Ship”- A ship is broadly defined as any seagoing vessel and seaborne craft, of any type whatsoever. However, the Convention will not apply unless the ‘ship’ is carrying bunker oil.

“Shipowner” means the owner including the registered owner, bareboat charterer, manager and operator of the ship. This means that there is a broader range of parties potentially liable under the Bunker Convention than under the CLC which only allowed claims for pollution damage to be brought against the ship’s registered owner.

“Bunker oil” means any hydrocarbon mineral oil, including lubricating oil used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.

Article 2- Scope of Application

The Bunker Convention applies to spills of bunker oil from ships that cause pollution damage, or to incidents which create a grave and imminent threat of causing such damage

in the territory (including the territorial sea), and in the exclusive economic zone (EEZ) or equivalent area of a State Party to the Convention. The importance of the use of the verb 'cause' is that it is not necessary that the pollution incident occurs within these areas. The Convention will apply once the pollution damage has been suffered within these jurisdictional zones.

Pollution damage is defined as loss or damage caused by contamination. However, compensation for impairment of the environment, other than loss of profit from such impairment, is limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. Pollution damage includes the costs of reasonable preventative measures, i.e. measures to prevent or minimize pollution damage.⁵

Article 3- Liability of the Shipowner

Under the Convention, the shipowner has strict liability for pollution damage caused by the escape or discharge of bunker oil from his ship. This means that he is liable even in the absence of fault on his part. He is exempt from liability only if he proves that:

- (1) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (2) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (3) the damage was wholly caused by the negligence or other wrongful act of public authorities in maintaining lights or other navigational aids.

The shipowner may also be exonerated wholly or partially, where it is shown that the claimant caused or contributed to the pollution damage.

Article 3 also contains a provision to the effect that where more than one person is liable, their liability shall be joint and several. Two further provisions of Article 3 which follow the CLC format provide that claims for bunker pollution damage can only be brought

⁵ Article 1(9).

against the shipowner under the Convention and not otherwise. However, the right of the shipowner to recover from third parties is expressly preserved.⁶

Art 4- Exclusions

The Convention does not apply to pollution damage as defined in the CLC. Consequently, bunker spills from laden tankers are excluded from the application of the Convention. It also excludes from its application warships or other vessels owned or operated by the State that are used for government non-commercial purposes unless the contracting State so prescribes. However, all commercial ships are subject to liability and jurisdiction as determined by the Convention.

Article 6- Limitation Of Liability

It was the hope of many States that a free standing fund provided by shipowners (akin to that under the Fund Convention), would be created to satisfy bunker pollution claims.⁷ This proposal was met with strong opposition particularly from shipowners and insurers, and the decision was taken that shipowners would be entitled to limit their liability in accordance with existing laws of limitation of liability. In this regard, Article 6 makes specific mention of the Convention on Limitation of Liability for Maritime Claims, 1976, (LLMC) as amended.

It should be noted that the Convention is accompanied by a Resolution on Limitation of Liability which urges all States to ratify or accede to the 1996 protocol to the LLMC 1976 thus increasing the fund available for all claims including bunker pollution claims.⁸

⁶ <http://www.bmla.org.uk/documents/imo-bunker-conventionhtm>. This web page was visited in November, 2008.

⁷ Ibid.

⁸ Ibid

Article 7- Compulsory Insurance

Although liability for bunker pollution may arise for several persons falling under the definition of shipowner, it is only the registered owner of a ship having a gross tonnage greater than 1000 gross tons who is obliged to maintain insurance to cover his liability under the Convention. The tonnage amount was greatly debated with shipowners and insurers advocating for a higher minimum tonnage whilst States with vulnerable coastlines and small registries opted for a lower threshold to ensure that as many vessels as possible came within the requirement.⁹

The certification requirement is the flag State's responsibility and is extensively described in Article 7. It lists the information which must be contained in the certificate and contains detailed provisions regarding international recognition of certificates. A ship over 1000 tons that is not in possession of the certificate is not allowed to use the port facilities of a State party. An exception to the obligation to insure is made for State-owned ships and may be extended to vessels working solely within a State's territorial sea.

A person claiming compensation for pollution damage is allowed to claim directly against the insurer or other person providing financial security. If the insurer is sued, the Convention entitles him to limit liability even if the shipowner is unable to do so. The insurer may invoke all the defences of the shipowner (except bankruptcy or winding up), and may even avoid liability if the pollution was a result of his wilful misconduct. The insurer is explicitly given the right to join the shipowner in the proceedings.

Article 8- Time limits

Claims for compensation are time barred unless legal action is brought within three years from the date of damage, and in any event within 6 years of the date of the incident.

⁹ Ibid

Articles 9 and 10- Jurisdiction and Enforcement of Judgments

The courts in the contracting State(s) where the pollution damage occurred or where preventative measures were taken have exclusive jurisdiction over actions for compensation against the shipowner and his insurer. This is likely to cause some conflict between neighboring coastal State parties with no jurisdictional agreements. However, a final judgment by a competent court which is enforceable in the State where the judgment is rendered shall be recognized and enforceable in the other contracting States.

Resolutions of the Conference

The Conference which adopted the Convention also adopted three Resolutions:

1. Resolution on limitation of liability

This urges all States to ratify or accede to the protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976. The 1996 Protocol raises the limits of liability and therefore the amount of compensation payable in the event of an incident.

2. Resolution on promotion of technical co-operation

The resolution urges all IMO member States in co-operation with IMO, other interested States, competent international or regional organizations and industry programs, to promote and provide directly, or through IMO, support to States that request technical assistance for:

- a. the assessment of the implications of ratifying, accepting, approving or acceding to and complying with the Convention;
- b. the development of national legislation to give effect to the Convention; and
- c. the introduction of other measures for, and the training of personnel charged with, the effective implementation and enforcement of the Convention.

3. Resolutions on protection of persons taking measures to prevent or minimize the effects of oil pollution.

The resolution urges all States when implementing the Convention to consider the need to introduce legal provision for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution. It recommends that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would result.¹⁰

THE DOMINICAN ANGLE

The Commonwealth of Dominica¹¹ is a small but beautiful island situated between the French islands of Guadeloupe and Martinique in the Eastern Caribbean, with an estimated population of 70,000. Dominica's rugged topography, rural ambience and limited urbanization make it an ideal nature destination and the island has coined the title 'Nature Isle of the Caribbean' as its logo for eco-tourism promotion.

The economic future of Dominica is intimately linked to its ability to protect the marine environment. The territorial sea and its resources are the basis of an increasingly important component of the island's tourism product. For example, the presence of a permanent population of dolphins and sperm whales up to 6 miles off the West Coast of the island has led to the development of a thriving whale watching industry where day trips are organized for visitors and locals alike. Diving is also very popular, and in 2007 Dominica received the *Scuba Diving Magazine's Readers Choice Award* for being among the top 5 dive destinations in the world. It is estimated that approximately 30% of total tourist arrivals are divers.

¹⁰http://www.imo.org/conventions/contents.asp?topc_id=256&doc_id=660. This web page was visited on October 18, 2008.

¹¹ Hereafter "Dominica".

Dominica's Maritime Sector

Dominica has an international ship's registry for commercial vessels providing international maritime services. At present, there are 164 vessels registered under the island's flag, and the fees associated therewith provide a source of revenue for the Government of Dominica. However, it is the local maritime transport which plays a major role in Dominica's economy. The country has two (2) recently upgraded cruise ship berths which are used as ports of entry for cruise tourists. Over the 2007/ 2008 cruise ship season a total of 366, 692 cruise passengers (233 cruise ship calls) visited Dominica. Approximately 311 cruise ships are expected to call at Dominica during the 2008/2009 season bringing over half a million visitors to the island.¹²

In addition to these berths, there are three (3) shipping ports and one (1) ferry terminal on the island which are all heavily utilized. The ports have the capacity to accommodate cruise liners, tankers, container ships, bulk and general cargo ships and passenger ferries. The majority of Dominica's cargo trade is shipped by sea. In 2006, 270, 000 tons of cargo arrived by sea, compared with 102, 722kg by air.¹³ The ferry terminal facilitates non-stop daily services to and from the neighbouring French islands and St. Lucia.

The importance of Dominica's maritime sector has led to the country's adoption of several international maritime conventions. These include:

1. International Convention for the Safety of Life at Sea, 1974 as amended and its protocol;
2. International Convention on Limitation of Liability for Maritime Claims, 1976;
3. International Convention on Civil Liability for Oil Pollution Damage, 1992;
4. International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992;
5. Convention on the International Regulations for Preventing Collisions at Sea;

¹² <http://www.wiceqfm.com/news.html>. This web page was visited on November 13, 2008.

¹³ Dominica's Trade Report presented to CARICOM, 2007.

6. International Convention for the Prevention of Pollution from Ships;
7. International Conventions on Load Lines;
8. International Convention on Tonnage Measurement of Ships;
9. International Convention on Salvage, 1989;
10. Athens Convention Relating to the Carriage of Passengers and Their Luggage By Sea, 1974; and
11. United Nations Convention on the Law of the Sea, 1982.

The key provisions of most of these conventions have been enacted in national legislation and are contained in the:

1. Fisheries Act (1987);
2. International Maritime Act (2000) as amended by the International Maritime Amendment Act (2001); and
3. Dominica Air and Sea Ports Authority Act (2006).

Dominica's national maritime policy as stated in the *International Maritime Act, 2000* is

'to encourage and foster the growth of the development of the foreign commerce of the Commonwealth of Dominica in a manner that is consistent with the national defence and security as well as the ecological well being of the Commonwealth of Dominica'¹⁴.

Thus, whereas Dominica is keen on enhancing the profitability of its ports by attracting a large number of ships engaged in international and regional transport, it is clear that necessary care must be taken to sustainably manage Dominica's marine environment.

¹⁴ Section 2.

The Need for the Bunker Convention

From the above, it can be concluded that most of the ships that frequent the Dominican ports are non-tankers. Almost all are privately owned, and apart from the cruise liners, it is not uncommon to find substandard and second rate ships in port. Although to date Dominica has not been the subject of an oil spill (from a ship), it is submitted that the high levels of year round shipping activities coupled with the apparent imperfect conditions of the vessels, pose potential real threats to the island. An oil spill would cause serious harm to Dominica's marine environment and would cripple the island's dive tourism industry which is heavily dependent on the quality and diversity of the 50 species of coral reefs present in the territorial sea.

In the unfortunate event of an oil spill, pollution damage occasioned by tankers is recoverable by virtue of the CLC and Fund Convention, the provisions of which have been enacted into the laws of Dominica.¹⁵ However, should a bunker spill from a non-laden tanker or from a ship other than a tanker occur, the clean up and compensation costs will almost entirely be borne by the Dominica taxpayers. For this reason, and because of the foreseeable harm to fisheries and the island's critical marine habitats, and the hindrance to maritime activities and marine related industries, it is pertinent that Dominica's laws contain provisions relating to liability and compensation for bunker oil pollution.

The enactment of the provisions of the Bunker Convention is the only way to channel liability to shipowners where there is a bunker oil spill which causes damage in the territorial sea and exclusive economic zone. With its adoption, shipowners entering Dominica's waters with a gross tonnage of more than 1000 tons will have to carry insurance for oil pollution damage including clean up costs and economic losses by innocent third parties. The enforcement of the provisions of the Convention will strengthen the government's approach to marine pollution, and assist in protecting Dominica's environmental assets.

¹⁵ International Maritime Act, 2000, Chapter 6.

The Bunker Convention into the laws of Dominica

The Ministry of Foreign Affairs is the Ministry which authorizes representatives to sign treaties or conventions on behalf of the Government of Dominica. If the Minister or his authorized agent signs, ratifies or adheres to a treaty, Dominica would be bound by this treaty under international law. However, an international agreement such as the Bunker Convention that has not been incorporated into domestic law cannot be invoked by the courts nor can it establish rights or duties for private individuals. This is because Dominica adheres to the dualist doctrine of international law which dictates that an enacting provision within the domestic legal system is necessary in order to give effect to a treaty to which a State is a party.

It is thus necessary to enact the provisions of the Bunker Convention into the laws of Dominica. The law making process starts with the introduction of bills in Parliament.

Establishment of a Bill

In Dominica, matters affecting the maritime sector fall under the responsibility of the Maritime Administration Unit (MARAD) within the Ministry of Public Utilities, Ports and Energy while responsibility for the environment, including the marine environment, falls within the purview of the Ministry of Health and the Environment. The Bunker Convention which essentially involves the insuring or regulation of shipowners for the protection of the marine environment could easily be subsumed under either head. However, given that the Convention would be incorporated within the structure of the *International Maritime Act, 2000* as amended (for reasons explained below), the Ministry of Public Utilities, Ports and Energy would be designated as the sponsoring Ministry for the proposed Bill, the subject matter of this paper.

Initially, the Ministry would arrange for the submission of an explanatory memorandum of the Convention to the Cabinet of Ministers¹⁶ seeking approval and authorization for

¹⁶ Hereafter "Cabinet".

Parliamentary Counsel to draft the Bill. The memorandum would include such details as it relates to Dominica's obligations under the Convention and the costs associated therewith, the benefits to the country and other incidental matters arising. At this point, it should be noted that the Convention imposes no financial responsibility upon the Government, as its focus is on the liability of the shipowner and his ability to pay compensation for pollution damage. If the Cabinet is in agreement, instructions will be given to parliamentary counsel, who will proceed in the drafting of the Bill.

The practical application of the Bunker Convention could be facilitated either through a new act, or through some legislation which relates to its subject matter if such exists. The *International Maritime Act, 2000* as amended, *inter alia*, consolidates aspects of shipping law and makes provision for the incorporation of various maritime conventions to which Dominica is a party. Importantly, Chapter 6 incorporates the CLC and Fund Convention which provide for liability and compensation in relation to tanker oil spills. Because the Bunker Convention provides for a similar regime, though in respect of bunker spills, it is submitted that its operation would be best fitted within this framework (as Chapter 6 A) rather than as a separate enactment. A single act which incorporates related matters calls for more efficient management and facilitates ease of reference for users.

The proposed amendments to the Act would deal with the key provisions of the Bunker Convention such as the definitions of ship and pollution damage; the scope of application, the strict liability of shipowners and the requirement for compulsory insurance for ships over 1000 tons. As it relates to the latter, the amount of insurance will comply with the limits set out in the International Convention on Limitation of Liability for Maritime Claims (LLMC), 1976 to which Dominica is a party, the provisions of which are contained in Chapter 5 of the International Maritime Act. However, in keeping with the resolution of the conference it is strongly recommended that Dominica becomes a party to the 1996 Protocol to the LLMC which *inter alia* increased the limits of liability, so as to provide for a more effective compensation regime. Finally, provision will be made for immunity for persons taking measures to prevent or minimize the effects

of bunker oil pollution, as the Convention only affords protection to persons falling under the definition of shipowner.

Regulations would also be necessary to provide for such matters as the contents of the insurance for certificates and measures to be taken by Port State Control when ships do not comply.¹⁷ Regulations may only enter into force after its 'parent' Act. However, because they are a vital part of the legislative scheme it would be useful to develop them at the same time of the Bill to ensure consistency with the framework being established. Since the regulations will be developed under the International Maritime Act, 2000 care must be taken to ensure that they fall within the authority granted by the Act.

Once the Draft Bill is completed and approved by the Minister of Public Utilities, Energy and Ports, the approval of the Prime Minister will be sought for the introduction of the Bill into Parliament. The Bill will be circulated to all members of parliament at least 14 days before its introduction by the sponsoring Minister. Once introduced, a Bill goes through several stages: it is presented and published in a first reading, debated in a second reading, examined and amended by a committee, presented by the speaker of the house and accepted or rejected in a third reading. The final stage in the enactment of a Bill is the assent by the Head of State, and then the Act will enter into force.

The provision which governs the entry into force of Acts and subsidiary legislation in Dominica is section 10 (1) of the Interpretation and General Clauses Act Chap 3:01 which states:

'Acts and subsidiary legislation shall be published in the Gazette and unless it be otherwise provided therein shall take effect and come into operation on the day of such publication.'

Thus, if no specific date is stated in the Act for its commencement, it will come into force only after having been published in the Official Gazette.

¹⁷ Note that section 11 of Chapter 1 of the Act already makes provision for the Authority to Issue Licenses, Certificates and Other Documents.

2009 INTERNATIONAL MARITIME AMENDMENT (BUNKER OIL POLLUTION) ACT (NO.2)

COMMONWEALTH OF DOMINICA

ARRANGEMENT OF SECTIONS

SECTION

CHAPTER 6 A

1. Short Title
2. Amendment
 - 149 A- Interpretation*
 - 149 B- Scope of Application*
 - 149 C- Liability of Shipowner*
 - 149 D- Restriction of Liability for Bunker Oil Pollution*
 - 149 E- Incidents Involving Two or More ships*
 - 149 F- Limitation of Liability*
 - 149 G- Compulsory Insurance or Financial Security*
 - 149 H- Rights of Third Parties Against Insurers*
 - 149 I- Extinguishment of Claim*
 - 149 J- Jurisdiction*
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3. Entry into Force

2009 INTERNATIONAL MARITIME AMENDMENT (BUNKER OIL POLLUTION) ACT (NO. 2)

COMMONWEALTH OF DOMINICA

ACT NO. OF 2009

BILL

FOR

AN ACT to amend the International Maritime Act, 2000 as amended by the International Maritime Amendment Act, 2001 to incorporate the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 into the laws of the Commonwealth of Dominica.

WHEREAS Dominica is committed to provide for the protection and conservation of its ecologically sensitive marine resources and to enhance the environmental quality of its territorial sea;

AND WHEREAS Dominica is a party to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;

AND WHEREAS it is necessary and expedient to give effect to this Convention:

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

1. This Act may be cited as the-

**INTERNATIONAL MARITIME AMENDMENT (BUNKER OIL POLLUTION)
ACT NO. 2, 2009**

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2. The International Maritime Act, 2000 as amended by the International Maritime Amendment Act 2001 is amended by the insertion of the following Chapter 6 A, Civil Liability for Bunker Oil Pollution Damage

CHAPTER 6 A
CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE

Interpretation

149-A. In this Act unless the context otherwise requires-

“bunker oil” means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil;

“Bunker Oil Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;

“Bunker Convention Country” means a country in respect of which the Bunker Oil Convention is in force;

“Civil Liability Convention” means the International Convention on Civil liability for Oil Pollution Damage, 1992, as amended;

“exclusive economic zone” has the same meaning as in the Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Fisheries Zone Act, 1981;

“government ship” means a ship including a warship that is owned or operated by the Commonwealth of Dominica, a State or a foreign country;

“incident” means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage;

“Maritime Administrator” means the Administrator of Maritime Affairs appointed under Part 1 of this Act and includes the Deputy Administrator of Maritime Affairs appointed thereunder;

“Minister” means the Minister of Public Utilities, Energy and Ports;

“pollution damage” means

- (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for the 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
- (b) the costs of preventive measures and further loss or damage caused by preventive measures;

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

“registered owner” means the person(s) registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “registered owner” shall mean such company;

“ship” means any seagoing vessel and seaborne craft, of any type whatsoever;

“shipowner” means the owner, including the registered owner, bareboat charterer, manager and operator of the ship;

“territorial sea” has the same meaning as in the Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Fisheries Zone Act, 1981; and

“Secretary General” means the Secretary General of the International Maritime Organization.

Scope of application

Application of Chapter

149-B. (1) This chapter applies to-

- a. pollution damage caused:
 - (i) in Dominica including the territorial sea of Dominica; and
 - (ii) in the Exclusive Economic Zone of Dominica;
- b. preventive measures, whether taken to prevent or minimize such damage; and
- c. ships registered in Dominica.

Overlap with CLC

(2) This chapter does not apply to any liability incurred under Chapter 6.

Government Ship

(3) This chapter applies to a government ship only if it is being used for commercial purposes.

Liability of the shipowner

149-C. (1) Except as provided in subsections (3) and (4), the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or

originating from the ship, provided that if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.

(2) Where more than one person is liable in accordance with subsection (1), their liability shall be joint and several.

(3) No liability shall be incurred by the shipowner for pollution damage under this section if he proves that the damage:

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) was wholly caused by the negligence or other wrongful act of a Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(4) If the shipowner proves that the pollution damage resulted wholly or partially 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 shipowner may be exonerated wholly or partially from liability to such person.

Restriction of liability for bunker oil pollution

149-D. (1) No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this chapter.

- (2) Subject to subsection 3, no claim for compensation for pollution damage under this chapter or otherwise may be made against:
- a. the servants or agents of the shipowner or the members of the crew;
 - b. the pilot or any other person who, without being a member of the crew, performs services for the ship;
 - c. any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
 - d. any person taking preventive measures; and
 - e. the servants or agents of the persons mentioned in (c) and (d);

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.

(3) Nothing in this chapter shall prejudice any right of recourse of the shipowner which exists independently of this chapter.

Incidents involving two or more ships

149-E. Where an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships, unless exonerated under section 149-C shall be jointly and severally liable for all such damage which is not reasonably separable.

Limitation of liability

149-F. (1) Where the shipowner incurs liability under section 149-C, the shipowner and the person(s) providing insurance or other financial security may limit their liability in accordance with the provisions of Chapter 5.

(2) Subsection (1) shall not apply in a case where it is proved that the pollution damage resulted from the personal act or omission of the shipowner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Compulsory insurance or financial security

149-G. (1) The registered owner of a ship having a gross tonnage of 1000 and over shall maintain insurance or other financial security to cover the liability of the shipowner for pollution damage in an amount equal but not exceeding the limits of liability prescribed by Chapter 5.

(2) The ship shall not

- (i) enter or leave a port in Dominica or
- (ii) arrive or leave an offshore facility in the territorial sea of Dominica or

if it is a ship registered in Dominica

- (i) enter or leave any port in any country or
- (ii) arrive or leave an offshore facility in the territorial sea of any other country;

if the ship does not have on board an insurance certificate complying with the provisions of subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other financial security in accordance with the provisions of subsection (1).

(3) The certificate shall be

- a. if the ship is registered in Dominica, a certificate issued by the Maritime Administrator;
- b. if the ship is registered in a Bunker Convention Country other than Dominica, a certificate issued by or under the authority of the Government of that Bunker Convention Country; or
- c. if the ship is registered in a country which is not a Bunker Convention Country, a certificate issued by the Maritime Administrator or by or under the authority of any government of any Bunker Convention Country other than Dominica.

(4) Subsection (3) does not apply if:

- a. an insurance certificate for the ship is in force; and
- b. the issuer of the certificate has notified the Secretary General that it maintains records in an electronic format that attest to the existence of the certificate which are accessible to all countries to which the Bunker Oil Convention applies.

(5) In relation to a Government ship being used for commercial purposes, it shall be sufficient compliance with this section if there is in force a certificate issued by the Government of the State to which the ship belongs, showing that the ship is owned by that State and that any liability for pollution damage will be met up to the limits of liability prescribed by Chapter 5.

(6) The Minister may make regulations providing for the issue, production, and cancellation of a certificate under this section in such circumstances as may be prescribed by the regulations.

Rights of third parties against insurers

149-H. (1) Where it is alleged that the shipowner has incurred a liability for pollution damage under section 149-C while there was in force a contract of insurance or other financial security to which an insurance certificate referred to in section 149-G (3) is related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other financial security (in the following provisions of this section referred to as “the insurer”).

(2) In any proceedings brought against the insurer by virtue of this section, the insurer may invoke the defences, other than bankruptcy or winding up of the shipowner, which the shipowner would have been entitled to invoke including the right to limit his liability pursuant to section 149-F (1).

(3) The insurer may invoke the defense that the pollution damage resulted from the willful misconduct of the shipowner but the insurer shall not invoke any other defense

which the insurer might have been entitled to invoke in proceedings brought by the shipowner against the insurer.

Extinguishment of claim

149-I. (1) No action to enforce a claim in respect of a liability incurred under section 149-C shall be entertained by a court in Dominica unless the action is commenced within three years from the date when the pollution damage occurred, and in no case shall an action be brought more than six years from the date of the incident which caused the damage.

(2) Where the incident consists of a series of occurrences, the six year period shall run from the date of the first such occurrence.

Jurisdiction

149-J. (1) Where an incident has caused pollution damage in an area referred to in section 149-B (1) (a) (i) and (ii), or preventive measures have been taken to prevent or minimize such damage, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of Dominica.

(2) Reasonable notice of any action taken under subsection (1) shall be given to each defendant.

Recognition and Enforcement

149-K. Any judgment given by a court of a Bunker Convention Country upon an action for compensation against the shipowner, insurer or other person providing security for the shipowner's liability where it is no longer subject to ordinary forms of review shall be recognized in Dominica except where:

- a. the judgment was obtained by fraud;
- b. the defendant was not given reasonable notice and a fair opportunity to present his case.

3. This Law shall come into effect 15 days after publication in the Official Gazette.

*D.O.N. Liverpool
President of the Commonwealth
of Dominica*

DRAFT REGULATIONS

COMMONWEALTH OF DOMINICA

BUNKER OIL POLLUTION REGULATIONS

PART 1

PRELIMINARY

1. Short Title and Commencement
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8. Production of Certificate
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SCHEDULE

Schedule 1- Certificate of Insurance or other Financial Security in Respect of Liability for the Bunker Oil Pollution Damage

COMMONWEALTH OF DOMINICA
STATUTORY RULES AND ORDERS, 2009 NO.

IN EXERCISE of the powers conferred upon him by section 149G-6 of the International Maritime Act, 2000 as amended, the Minister makes the following Regulations

PART I

PRELIMINARY

1. These Regulations may be cited as the-
BUNKER OIL POLLUTION REGULATIONS, 2009.

These regulations shall come into operation on the day of 2009.

2. In these Regulations unless the context otherwise requires-

“Act” means the International Maritime Act as amended;

“enforcement officer” means an officer of the Customs and Excise Division within the meaning of the Customs Act, 1992 or a person so authorized in writing by the Maritime Administrator; and

“Maritime Administrator” has the same meaning given in the Act.

PART II

ISSUE OF CERTIFICATE

Application for Certificate

3. (1) A person may apply to the Maritime Administrator for the issue of a certificate for a ship that is registered in Dominica or a foreign country that is not a Bunker Convention Country by submitting the following:

- a. A notarized copy of flag certificate showing details of the ship and the port of registry;
- b. A notarized copy of the certificate of ownership showing the name and principle place of business of the registered owner;
- c. IMO ship identification number;
- d. Type and duration of security;

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

f. Receipt of payment of application fee.

(2) The fee payable on an application for a certificate is U.S. \$300.

Issue of Certificate

4. (1) If the Maritime Administrator is satisfied that the registered owner of the ship is maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability referred to in Chapter 5 of the Act, the Maritime Administrator shall issue a certificate for the ship within 5 working days of submission of the application.

(2) The Maritime Administrator may refuse the application where he has doubt that the person providing the insurance will be able to meet his obligation thereunder, or whether the insurance or other security will cover the registered owner's liability.

(3) A certificate issued under this section shall be in the form approved under Schedule 1.

(4) A certificate under this section comes into force on the day specified in the certificate and remains valid for the period specified in the certificate.

(5) The period of validity of the certificate shall not be longer than the period of validity of the insurance or other financial security.

Cancellation of certificate

5. The Maritime Administrator may cancel a certificate issued under section 4 of these Regulations if he is satisfied that the registered owner of the ship is no longer maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability specified in Chapter 5 of the Act.

Certificate ceasing to be in force

6. A certificate issued under section 4 of these Regulations for a ship immediately ceases to be in force if, when the certificate was issued:

(i) the ship was registered in Dominica and the ship ceases to be registered in Dominica; or

(ii) in relation to a ship registered in a foreign country that was not a Bunker Convention Country the ship ceases to be registered in that country or that country becomes a Bunker Convention Country.

Review of decisions

7. Applications may be made to the High Court of Justice for review of the following decisions of the Maritime Administrator:

- (i) a decision to refuse to issue a certificate under section 4 of these Regulations; or
- (ii) a decision to cancel a certificate under section 5 of these Regulations.

PART III

PRODUCTION OF CERTIFICATES AND OFFENCES

Production of Certificates

8. (1) An enforcement officer may require the master or other person in charge of a ship to which these regulations apply to produce to the officer an insurance certificate referred to under section 149G(3) of the Act if:

- a. for a ship that is registered in Dominica, the ship is in Dominica; or
- b. for a ship that is not registered in Dominica, the ship is at a port in Dominica or at an offshore facility in the territorial sea of Dominica.

(2) A person who fails to produce a certificate when required to do so by an enforcement officer shall be guilty of an offence and shall be liable on conviction to a fine of U.S. \$5000.

Detention of ships

9. (1) An enforcement officer may detain a ship to which this part applies if the officer has reasonable grounds to believe that at the time the ship attempts to leave the port, there is not an insurance certificate for the ship that is in force.

(2) The officer may detain the ship until the certificate is produced to the officer or the officer is satisfied that the certificate has been obtained.

(3) The master or other person in charge of a ship shall be guilty of an offence if the ship leaves the port while it is under detention by an enforcement officer and shall be liable on conviction to imprisonment for a period of four years.

SCHEDULE 1