

**IMO
INTERNATIONAL MARITIME LAW INSTITUTE
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***Law of Georgia on Carriage of Hazardous and Noxious
Substances by Sea***

**A Legislative Drafting Project submitted in partial fulfilment of the
requirement for the award of the Degree of Master of Laws (LLM) at
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Explanatory Note

Ten years have passed since the collapse of the USSR. Georgia, a former Soviet Republic and now an independent country, is a novice to the international maritime trade.

Georgia, as a transit country, carries connective functions between East and West. In this regard, especially after the realization of the EU Transport Corridor Europe-Caucasus-Asia (TRACECA) Programme, the development of maritime transport has received a new important meaning.

Georgia, from the outset of its statehood, tried to apply international standards and rules, especially with regard to international transport and trade, and like other European countries, Georgia strives to join the European Union. One of the main challenges of modern Georgian politics is to harmonize Georgian law with European standards.

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (1996 HNS Convention) was adopted in 1996 but it has not come into force yet. However, there is a great possibility that the Convention will enter into force in a future period due to its important characteristics.

Emphasizing the importance of the above Convention, the Conference on International Co-operation on Preparedness and Response to Pollution Incidents by Hazardous and Noxious Substances was held in March 14, 2000. Resolution 2 of the Final Act of the Conference refers to early entry into force of the 1996 HNS Convention¹.

The well-drafted Convention contains very important provisions in relation to the carriage of hazardous and noxious substances and covers not only pollution damage, but also the risks a fire and explosion, including loss of life or personal injury as well as loss of or damage to property, etc. It is submitted that one of the most valuable aspects of the provisions of the Convention is that it will make possible to be paid out about

¹ Conference on International Cooperation on Preparedness and Response to Pollution Incidents by Hazardous and Noxious Substances. HNS-OPRC/CONF 14 March 2000

US\$320 million in compensation² to the victims of accidents involving hazardous and noxious substances, such as chemicals. This figure will however be linked to the tonnage of the ship causing the damage.

Chapter VIII of Georgian Maritime Code deals with carriage of goods generally. However, there is still the legal vacuum concerning the carriage of dangerous goods, i.e. hazardous and noxious substances, by sea.

In order to fill up the current gap in Georgian law the provisions of the HNS Convention should be incorporated in a “Georgian Law on Carriage of Hazardous and Noxious Substances by Sea”.

It must be noted that the above-mentioned Georgian law shall regulate all rights and obligations in relation to carriage of hazardous and noxious substances within the territory of Georgia. Some important provisions of the Conventions could not be implemented in domestic law (such as, concerning HNS Fund, Contributions in HNS Fund), as they apply to the relations in international level.

In order to solve the above issue, Georgia should adopt the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) not later January 1, 2003.

After Georgia becomes a party to the said Convention, all matters concerning the activities of HNS Fund and contribution in HNS Fund will be regulated in accordance with the Convention.

Any person (legal or natural) receiving goods during the year in any port of Georgia shall pay contribution to the HNS Fund according to the requirements of the relevant articles of the Convention and stated by HNS Fund Assembly.

However, any claim against the HNS Fund accrued within the territory of Georgia shall be brought before a competent court of Georgia.

In order to interpret properly the provisions of the legislative draft, the following clarifications need to be made:

1. The Maritime Administration of Georgia shall determine the conditions of issue and validity of the compulsory insurance certificate provided in the Article 14.
2. The provisions of Chapter VIII of the Maritime Code of Georgia shall continue to apply to all issues concerning the carriage of goods by sea not covered by the present draft law.

² http://www.imo.org/home_noflash.html

Finally, it must be emphasized that the intention of the present draft project is to harmonize the laws of Georgia with the laws of other maritime nations following the provisions of the Convention and, as a result, to promote foreign trade generally and maritime transport particularly.

Law of Georgia on Carriage of Hazardous and Noxious Substances by Sea

Chapter I General provisions

Article 1

The present law defines uniform rules on the carriage of hazardous and noxious substances by sea. Such operation shall be performed in accordance with the norms of international law, the Constitution of Georgia, other laws and regulations of Georgia and the present law.

Chapter II

Definitions

Article 2

For the purposes of this Law

“ship” means any seagoing vessel whatsoever of not less than 200 gross tonnage;

“owner” means the person or persons registered as the owner of the ship. In the case of a ship owned by a State, “owner” shall mean the Government of such State. Where a ship is owned by a State but is operated by a company, which in that State is registered as the ship's operator, "owner" shall mean such company;

“shipper” means any person by whom or in whose name a contract of carriage of hazardous and noxious substances by sea has been concluded with a carrier or any person by whom or in whose name or whose behalf the hazardous and noxious substances are actually delivered to the carrier in relation to the contract of carriage by sea;

“hazardous and noxious substances” means any of the substances listed in the Annex hereto;

“carriage by sea” means the period from the time when the hazardous and noxious substances are loaded on the board of the ship, to the time they are discharged in any port;

“damage” means:

- a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances, caused by those substances,
- b) loss or damage outside the ship caused by those hazardous and noxious substances,
- c) loss or damage by pollution to the environment caused by the hazardous and noxious substances;

Damage includes the costs of preventive measures and further loss or damage caused by preventive measures;

Damage does not include loss of life or personal injury in respect of members of the crew of the ship;

“preventive measures” means any reasonable actions to prevent or reduce damage, after an incident has occurred;

“incident” means any occurrence or series of occurrences having the same origin, which causes damage;

“goods” means all hazardous and noxious substances carried by a ship;

“Court” means any competent court of Georgia;

“unit of account” means the special drawing right as defined by the International Monetary Fund.

Chapter III

Scope of application

Article 3

1. The present law shall apply to:

- a) any damage caused by a hazardous and noxious substance carried on board a ship registered in any State in the territory, territorial sea or exclusive economic zone of Georgia;
- b) damage, other than damage by pollution to the environment, caused outside the territory of any State, if this damage has been caused by a substance carried on board a ship registered in Georgia, or entitled to fly the flag of Georgia;
- c) preventive measures, wherever taken.

2. The present law shall also apply to claims, for damage arising from the carriage of hazardous and noxious substances by sea, other than claims arising out of any contract of the carriage of goods and passengers.

3. The present law shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used only by the Government for non-commercial purposes;

Chapter IV
Responsibilities and liabilities of the owner

Article 4

The responsibility of the owner for the goods under this law covers the period during which the owner is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

Article 5

The owner is obliged in good time, before the voyage is commenced:

- a) to place the ship in seaworthy condition;
- b) to ensure that the ship is technically fit to carry the hazardous and noxious substances;
- c) to ensure that the ship is properly manned;
- d) to place the holds and all other parts of the ship where cargo is carried in a condition ensuring appropriate reception and carriage of the hazardous and noxious substances.

Article 6

1. The owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their loading on board the ship and carriage by sea, provided that, the damage resulted from the negligent act of the owner.

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

Article 7

No liability shall attach to the owner if he proves that:

- 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
- b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

- c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
 - d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either
 - (i) has caused the damage, wholly or partly; or
 - (ii) has led the owner not to obtain insurance in accordance with Article 14;
- 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.

Article 8

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

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

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

Chapter V

Limitation of liability of the owner

Article 9

The owner shall be entitled to limit liability in respect of any incident by an aggregate amount calculated as follows:

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

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

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

Article 10

For the purposes of benefiting from the limitation of liability provided in Article 9 of this law, the owner shall set up a fund in the court, where the claim is being made against him.

Article 11

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

2. Claims in respect of death or personal injury have priority over other claims.

Article 12

The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with Article 10 of this law on the same conditions and having the same effect as if the owner constituted it. Such a fund may be constituted even if the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 13

1. Where the owner, after an incident, has constituted a fund in accordance with Article 10 of this law and is entitled to limit liability:

- a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and
- b) the Court may order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and may similarly release any bail or other security furnished to avoid such arrest.

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

Chapter VI

Compulsory insurance of the owner

Article 14

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

Article 15

A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this law shall be issued to each ship after the Maritime Administration of Georgia has determined that the requirements of the Article 14 of present law have been complied with. With respect to a ship registered in Georgia such compulsory insurance certificate shall be issued or certified by the Maritime Administration of Georgia. This compulsory insurance certificate shall contain the following particulars:

- a) name of the ship, distinctive number or letters and port of registry;
- b) name and principal place of business of the 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;
- f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

Article 16

The compulsory insurance certificate shall be issued in Georgian and in English languages.

Article 17

The compulsory insurance certificate shall be carried on board the ship. When implementing port state control the Maritime Administration of Georgia shall check every ship carrying hazardous substances for the compulsory insurance certificate.

Article 18

An insurance or other financial security shall not satisfy the requirements of this law if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under Article 15 of this law, before three months have elapsed from the date on which notice of its termination is given to the Maritime Administration of Georgia, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this law.

Article 19

Any claim for compensation for damage may be brought directly against the insurer or any person providing financial security for the owner's liability for damage. In such a case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with Article 14. The defendant may further invoke the defences, which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the willful misconduct of the owner, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

Article 20

Any sums provided by insurance or by other financial security maintained in accordance with Article 14 of the present law shall be available exclusively for the satisfaction of claims under the present law.

Article 21

Compulsory insurance certificates issued or certified by competent authorities of other States shall be accepted by the Maritime Administration of Georgia for the purposes of the present law and shall be regarded as having the same force as compulsory insurance certificates issued or certified by the Maritime Administration of Georgia. Maritime Administration of Georgia may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this law.

Article 22

1. No ship registered in Georgia shall be permitted to lawfully engage in any trade unless it is in possession of an insurance certificate issued in accordance with the requirements of the present law.

2. It shall not be permissible for any ship, wherever registered to enter or leave the ports of Georgia unless it is in possession of a valid certificate of insurance covering the sums specified in Article 14 of this law.

3. Where a vessel does not carry on board a valid compulsory insurance certificate, the vessel may be detained by the Maritime Authority of Georgia.

Chapter VII Responsibilities and liabilities of the shipper

Article 23

Where the shipper hands over the goods to the owner, the shipper shall inform him of the real character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such owner does not otherwise have knowledge of the real character of the goods, the shipper is liable for the damage caused by the hazardous and noxious substances.

Chapter VIII **HNS Fund**

Article 24

The HNS Fund established according to Article 13 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) shall be recognized as a legal person capable of assuming rights and obligations and of being a party in legal proceedings before the courts of Georgia.

Article 25

1. Any action against the HNS Fund for compensation under present law shall be brought only before the Court where the action against the owner has been brought.

2. It is recognized that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this law before the Court against the owner or the owner's guarantor.

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

Chapter IX

Jurisdiction

Article 26

1. When the incident has caused damage in the territory, territorial sea or exclusive economic zone of Georgia, the action may instituted in the Court where:

- a) the defendant has his principal place of business, or in the absence therefore, where the habitual residence of the defendant is situated; or
- b) the contract of carriage of hazardous and noxious substances by sea was made, provided that the defendant has a place of business, branch or agency in such place; or
- c) the agreed port of loading is situated; or
- d) the additional place designated for this purpose in the contract of carriage of hazardous and noxious substances by sea is situated.

2. After a fund under Article 10 of this law has been constituted by the owner or by the insurer or other person providing financial security in accordance with Article 12 of this law, the court of Georgia in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

Article 27

1. Claims under this law shall be brought within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.

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

3. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 2 of this article shall run from the date of the last of such occurrences.

Chapter X

Transitory provisions

Article 28

Articles 24 and 25 shall enter into force on the date when the requirements of Article 46 paragraph 1 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) 1996 have been fulfilled provided that on such date Georgia has expressed its consent to be bound by Convention.

Article 29

Upon the adoption by Georgia of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of hazardous and Noxious Substances by Sea (HNS), the Minister of Transport and Communication of Georgia shall issue Regulations relating to the payment and control of payments to the HNS Fund.

Article 30

The present law shall enter into force upon publication in the official Gazette.

President of Georgia

E. Shevardnadze

A N N E X

LIST OF HAZARDOUS AND NOXIOUS SUBSTANCES

Asphalt solutions

Blending stocks

Roofers flux

Straight run residue

Oils

Clarified

Crude oil

Mixtures containing crude oil

Diesel oil

Fuel oil No. 4

Fuel oil No. 5

Fuel oil No. 6

Residual fuel oil

Road oil

Transformer oil

Aromatic oil (excluding vegetable oil)

Lubricating oils and blending stocks

Mineral oil

Motor oil

Penetrating oil

Spindle oil

Turbine oil

Distillates

Straight run

Flashed feed stocks

Gas oil

Cracked

Gasoline blending stocks

Alkylates - fuel

Reformates

Polymer - fuel

Gasolines

Casinghead (natural)

Automotive

Aviation

Straight run

Fuel oil No. 1 (kerosene)

Fuel oil No. 1-D

Fuel oil No. 2

Fuel oil No. 2-D

Jet fuels

JP-1 (kerosene)

JP-3

JP-4

JP-5 (kerosene, heavy)

Turbo fuel

Kerosene

Mineral spirit

Naphtha

Solvent

Petroleum

Heartcut distillate oil

