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**A Law to Implement in the Union of Comoros the 1996  
International Convention on Liability for Damage in  
Connection with the Carriage of Hazardous and Noxious  
Substances by Sea.**

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## Explanatory Note

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The Comoros archipelago consists of four islands located in the western Indian Ocean, at the north end of the Mozambique Channel between Mozambique and Madagascar. Grande Comore (Ngazidja), Moheli (Moili), Anjouan (Ndzuwani) form what is known since the latest referendum on December 23, 2001 the “Union des Comores, (Union of Comoros)”. The fourth island of the archipelago, Mayotte (Maore), is still under French Administration, despite the fact that Comoros acceded to the international sovereignty as a whole on July 6, 1975.

The economics of the country depend largely with seaborne trade and the sea is of great importance. Many activities such as fisheries, carriage of goods and persons between the islands, tourism are tributaries to the sea and besides most of the activities are located and carried out on the coastal zone. In these conditions, it is vital for Comoros to protect its environment and in particular the marine environment.

Since the last decade, as elsewhere in the world, the protection of the environment became more and more urgent to find adequate solutions to the different threats to the fragile ecosystems of our country. A national environmental policy and an environmental action plan were adopted by the Government to respond to these threats. Comoros also ratified international conventions on the protection of the environment such Biodiversity, Climate Change, Law of the Sea, Basel Convention, and Nairobi Convention on the Protection and Management of the Regional Sea of the Eastern Africa.

More recently, Comoros had acceded to the Civil Liability Convention (CLC) and Fund convention 1992 and the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990). In this perspective, it is necessary today to complete in the national legislation the shipowner’s liability regime by acceding to the International Convention on Liability for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS) by Sea adopted by the International Maritime Organisation (IMO) on London, May 3, 1996.

The fundamental reason is our geographical location on the main route in the West Indian Ocean used by vessels to transfer from the Middle East to Europe and America. This constitutes a great threat to our sea in case of an accident involving HNS due to the fact that the country is not able to face such accident which would damage considerably our economy.

The problem of the carriage of HNS by sea has been a concern of the international community since the earliest of the 1980. Indeed, IMO in 1984 convened a Diplomatic Conference to discuss the amendment to the 1969 CLC and 1971 Fund convention on oil pollution. For the first time a draft of a HNS convention was submitted to the delegates but due to lack of sufficient time and the complexity of the subject, the attempt failed to succeed.

In 1996, the matter was reconsidered by IMO and this time, the International Convention on Liability for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS) by Sea was agreed by the Diplomatic Conference. The objective of the Convention is to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of HNS. The liability system is based on the two-tier system established under the CLC and Fund Convention. However, the HNS Convention covers not only pollution damage but also the risk of fire and explosion including loss of life or personal injury as well as damage to property.

The aim of this law is to incorporate in Comoros national law the HNS Convention in order to protect our marine environment and to make sure that in case of incident, the victims will receive compensation from the person liable carrying such hazardous and noxious substances.

Indeed, the basis of liability is a presumed fault of the shipowner. In Chapter 2 which deals with the liability of the shipowner, the law makes him strictly liable unless he proves that his liability cannot, in accordance with the provisions of Article 6 and 7 of this law, be engaged. However, the shipowner is authorised to limit his liability in respect of any incident by constituting a fund with the Tribunal of Moroni. Therefore, the law requires the shipowner to maintain insurance or other financial security to cover his liability for damage under this law.

The law defines in Chapter 3 the rights of victims to claim and to bring actions against the shipowner. It gives the Tribunal of Moroni exclusive jurisdiction to entertain all actions related to matters concerning the implementation of the HNS Convention in Comoros.

In those cases where the shipowner is not liable, Chapter 4 provides for the modalities of intervention of the HNS Fund. Essentially, the HNS Fund, established by the Convention and recognised by this law to enjoy in Comoros a status of a legal person, will compensate the victims of the incident.

Chapter 1 deals with the preliminary provisions and defines the scope of application of this law, in Article 3. In principle, the law applies to any claims for damage arising from the carriage of hazardous and noxious substances in the territory of Comoros including its territorial sea and exclusive economic zone. Article 4 excludes from the application warships, ships owned by States and engaged in non commercial service, and damage covered by the CLC 1992.

Finally, Chapter 5 deals with the transitional provisions and in particular reserves the application of Chapter 4 concerning the HNS Fund until the entry in force of the Convention.

For all the reasons, it is important for Comoros to adopt this law in our national legislation.

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## Chapter 1 : Preliminary Provisions

**Article 1:** This Law is enacted to implement the provisions of the 1996 International Convention on Liability for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (London, 3, May 1996) which Comoros has acceded in accordance with the law N° 02/ .... 2002.

**Article 2:** For the purpose of this law, unless the context otherwise requires or it is otherwise expressly provided:

“Administration ” means Maritime Administration of Comoros as defined in Article 2 of the Merchant Shipping Act N°01/012/CE of 24 July 2001.

“Archipelagic waters” has the same meaning as 切切fined in Article 1 of the law N° 82/005 of 6 May 1982 relating to the delimitation of the maritime zones of Comoros;

“Carriage by sea” 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.

“Comoros ” has the same meaning as is assigned to it by Article 1 of the 23<sup>rd</sup> December 2001 Constitution.

“Comorian Ship” means a ship registered under the Comorian Merchant Shipping Act 2001 and entitled to fly the flag of Comoros .

“Contributing cargo” means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of Comoros and discharged in Comoros. 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.

“Convention” means the International Convention on Liability for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea adopted in London, 3, May 1996.

“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 of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;

(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

(d) the costs of preventive measures and further loss or damage caused by preventive measures.

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 Article 4, paragraphs (b) and (c).

In this paragraph, "caused by those substances" means caused by the hazardous or noxious nature of the substances.

“Director” means the Director of the HNS Fund.

“Foreign Ship” means a ship registered under a law of another State and entitled to fly its flag.

“Hazardous and noxious substances” (HNS) means:

(a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:

(i) oils carried in bulk listed in appendix I 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;

(ii) noxious liquid substances carried in bulk referred to in appendix II of 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 A, B, C or D in accordance with regulation 3(4) of the said Annex II;

(iii) 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, 1983, 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 1.1.3 of the Code;

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;

(v) liquefied gases as listed in Chapter 19 of the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk, 1983, 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;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60° C (measured by a closed cup test);

(vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and

(b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

"HNS Fund" means the International Hazardous and Noxious Substances Fund established under the Convention and recognized Article 34 of this law.

"Incident" means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

"Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

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

"Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.



“Receiver” means either:

(a) the person who physically receives contributing cargo discharged in the ports and terminals of Comoros; 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 Comoros, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or

(b) the person in Comoros who in accordance with the law of Comoros is deemed to be the receiver of contributing cargo discharged in the ports and terminals of Comoros, provided that the total contributing cargo received according to the law of Comoros is substantially the same as that which would have been received under (a).

“Ship” means any seagoing vessel and seaborne craft, of any type whatsoever.

“State of the ship's registry” means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

“Terminal” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

“Tribunal” means the Tribunal of Moroni which is the only competent Court in Comoros to entertain all actions brought under this law.

“Unit of account” means the Special Drawing Right as defined by the International Monetary Fund.

**Article 3:** This law shall apply :

1. to claims for damage arising from the carriage of hazardous and noxious substances by sea; to any damage caused in the territory of Comoros including its territorial sea;
2. to any damage by contamination of the environment caused in the exclusive economic zone of Comoros as established by law N° 82/005 of 6 May 1982 relating to the delimitation of the maritime zones of Comoros;
3. to damage, other than damage by contamination of the environment, caused outside the territory, including the the territorial sea, of any State, if this damage has been caused by a substance carried on board a Comorian ship; and
4. to preventive measures, wherever taken.

**Article 4:** This law shall not apply :

- a. to State - owned ships engaged in non commercial service or warships, ships of the navy or security defence of the Comorian Government;
- b. 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
- c. to pollution caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.

## Chapter 2: Liability of the Shipowner

**Article 5:** 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.

If the damage was caused by a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first of such occurrences.

**Article 6:** The owner shall not be liable if he can prove 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 17 of this law;

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 7:** 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.

**Article 8:** Subject to Article 9, no claim for compensation for damage under this law or otherwise may be made against:

- a. the servants or agents of the owner or the members of the crew;
- b. the pilot or any other person who, without being a member of the crew, performs services for the ship;
- c. any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- d. any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- e. any person taking preventive measures; and
- f. the servants or agents of persons mentioned in (c), (d) and (e);

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.

**Article 9:** All claim for compensation for damage shall be made only against the owner in accordance with this law.

However, nothing in this law shall prejudice any existing right of recourse of the owner against any third party if the damage resulted from his personal act or omission committed with the intent to cause such damage, or recklessly and with his knowledge that such damage would probably result.

**Article 10:** In the case of an incident involving two or more ships, each of which is carrying hazardous and noxious substances, each owner, unless exonerated under this law, shall be jointly and severally liable for all the damage caused.

However, the owners shall be entitled to limit their liability in accordance with the provisions of this law. Nothing in this Article shall prejudice any right of recourse of an owner against any other owner.

**Article 11:** The liability of the owner of a ship shall be limited in accordance with and to the extent provided in this law.

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

- a. 10 million units of account for a ship not exceeding 2000 units of tonnage; and
- b. for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in paragraph (a):

for each unit of tonnage from 2001 to 50000 units of tonnage, 1500 units of account;

for each unit of tonnage in excess of 50000 units of tonnage, 360 units of account;

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

For the purpose of the ship's tonnage, the calculation shall follow the method contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969 .

**Article 12:** The owner shall not be entitled to limit liability under this law if it is proved that the damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

**Article 13:** In order to limit his liability, the owner shall constitute a fund with the Tribunal for the total sum representing the limit of liability established in accordance with this law.

The amount of the fund shall be converted into Comorian Francs calculated on the basis of the value of the Unit of account on the date of the constitution of the fund and with the method of valuation applied by the International Monetary Fund.

The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the Comorian law where the fund is constituted, and considered to be adequate by the Tribunal.

The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of Article 12, 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 14:** The fund shall be distributed among the claimants in proportion to the amounts of their established claims.

Nevertheless 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.

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.

**Article 15:** The right of subrogation may be exercised by any person in respect of any amount of compensation for damage which such person may have paid. In that case, such person shall, up to the amount paid, acquire by subrogation the rights which the claimant so compensated would have enjoyed under this law.

**Article 16:** Where the owner, after an incident, has constituted a fund in accordance with Article 11 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 Tribunal shall 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 shall similarly release any bail or other security furnished to avoid such arrest.

**Article 17:** The owner of a Comorian ship or foreign ship navigating into the archipelagic waters 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 11 paragraph 2 of this law to cover liability for damage under this law.

**Article 18:** The Administration shall require before issuing a certificate of insurance all relevant documentation showing that insurance or other financial security is in force in accordance with the provisions of this law.

The compulsory insurance certificate shall be in French language and include a translation into English.

The compulsory insurance certificate shall be in the form of the model set out in Annex I of this law and 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 has established; and
- f. period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

**Article 19:** A Comorian ship shall not be permitted to carry any hazardous noxious substances unless a certificate of insurance is issued by the Administration.

**Article 20:** The compulsory insurance certificate shall be carried on the ship and shall be produced on demand by any official of the Administration. With respect to Comorian ships, a copy of such certificate shall be kept by the Administration.

**Article 21:** The compulsory insurance certificate issued or certified under the authority of other States parties to the Convention shall have in Comoros the same force as compulsory insurance issued by the Administration.

However at any time, Comoros may 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:** Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such 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 17.

The defendant may further invoke the defenses (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defense that the damage resulted from the willful misconduct of the owner, but the defendant shall not invoke any other defense 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 23:** Any sums provided by insurance or by other financial security maintained in accordance with Article 17 of this law shall be available exclusively for the satisfaction of claims under this law.

**Article 24:** An insurance or other financial security shall not satisfy the requirements of the provision of Article 17 if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate before three months have elapsed from the date on which notice of its termination is given to the Administration, 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 Article 17.

### Chapter 3: Claims and Actions

**Article 25** : Rights to compensation under this law shall be extinguished unless an action is brought thereunder 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.

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

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

**Article 26**: Where an incident has caused damage in the territory of Comoros, including the archipelagic waters, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the Tribunal.

Only the Tribunal of Moroni in Comoros possesses the necessary and exclusive jurisdiction to entertain all actions for compensation, limitation of liability and all other related matters concerning the implementation of the HNS Convention .

The tribunal shall, in the interpretation and application the provisions of this law, give effect to the provisions of this law, give effect to the Convention.

**Article 27**: Where an incident has caused damage exclusively outside the territory of Comoros, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the court where a fund has been constituted in accordance with the Convention.

**Article 28**: Without prejudice of the provision of Article 27, the defendant must in all cases be given reasonable notice before the case is settled by the Tribunal of Moroni.

**Article 29**: Any judgement given by a court of a State Party of the Convention which is no longer subject to ordinary forms of review, shall be recognized in Comoros and enforceable in the same way as in that State except if the judgement was obtained by fraud or if the defendant was not given reasonable notice and a fair opportunity to present the case.

**Article 30**: Subject to the subsequent provisions of this law, any action against the HNS Fund for compensation under Article 34 of this law shall be brought only before the Tribunal in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of Article 26 of this law shall apply mutatis mutandis to claims against the HNS Fund.



**Article 31:** The HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this law against the owner or the owner's guarantor.

Otherwise, 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 party.

**Article 32:** Where an action under this law for compensation for damage has been brought against an owner or owner's guarantor before the Tribunal, each party to the proceedings shall be entitled to notify the HNS Fund of the proceedings.

Such notification must be made in accordance with the Comorian Civil Code of Procedures and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings.

Any judgement rendered by the court after such notification of the proceedings to the HNS Fund shall become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the Fund even if it has not actually intervened in the proceedings.

**Article 33:** The HNS Fund shall in respect of any amount of compensation for damage paid by the HNS Fund in accordance with Article 35 of this law acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.

Nothing in this law shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in Article 6 (d), other than those referred to in the previous paragraph, 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.

## **Chapter 4: The International Hazardous and Noxious Substances Fund (HNS)**

**Article 34:** The HNS Fund established in the Convention shall enjoy in Comoros the status of a legal person capable of assuming rights and obligations and of being a party in legal proceedings before the Tribunal and its Director shall be the legal representative.

**Article 35:** The HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of Chapter 2:

- a. because no liability for the damage arises under Chapter 2;
- b. because the owner liable for the damage under Chapter 2 is financially incapable of meeting the obligations under this law in full and any financial security that may be provided under Chapter 2 does not cover or is insufficient to satisfy the claims for compensation for damage being treated as financially incapable to meet these obligations and a financial security being treated as insufficient the person has been unable to obtain full satisfaction of the amount of compensation due under Chapter 2 after having taken all reasonable steps to pursue the available legal remedies;
- c. because the damage exceeds the owner's liability under the terms of Chapter 2.

**Article 36:** The expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purpose of Article 35 of this law.

**Article 37:** Subject to the provisions of Articles 35 or 36 of this law, the HNS Fund shall incur no obligation if:

- a. it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of incident, only on Government non-commercial service; or
- b. the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

**Article 38:** If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligations to pay compensation such person.

The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under Article 7 of this law. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

**Article 39:** The aggregate amount of compensation payable by the HNS Fund shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under Chapter 2 for damage within the scope of application of this law as defined in Article 3 shall not exceed 250 million units of account.

The aggregate amount of compensation payable by the HNS Fund for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.

The interest accrued on a fund constituted in accordance with Article 13 of this law, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund.

**Article 40:** Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under Article 39 of this law, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this law shall be the same for all claimants.

Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with Article 39.

**Article 41:** The provisions of the Convention relating to the modalities of contributions on the HNS Fund shall apply in Comoros to any person who is a receiver of a contributing cargo.

The Administration shall ensure that any contributing cargo discharged in a Port or a terminal in Comoros is recorded as such with the name and address of the receiver and the quantities. This information shall be kept in a special record and shall be the origin of calculation of the contribution to be paid to the HNS Fund by the receiver in accordance with the Convention.

The Administration shall provide each year to the Secretariat of the HNS Fund a report with all information required by the Convention of the quantities of HNS received in Comoros.

**Article 42:** Contributions shall be made to the HNS Fund by any person in Comoros who was in the preceding calendar year a receiver of a contributing cargo either directly to the Fund or via the channel of the Administration. In any case, a copy of the payment shall be sent to the Administration.

Where a person who is liable to pay contributions in accordance with this law and the Convention does not fulfill the obligations in respect of any such contribution or any part thereof and is arrears, the Director or the Administration, shall take all appropriate actions, including action in the Tribunal, against such person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Administration shall require the Fund to examine and settle the situation.

**Article 43:** Comoros shall not be in any case liable for the default of payment by any person to whom a contribution is due to the HNS Fund in accordance with this law and the Convention.

## **Chapter 5: Final and Transitional Dispositions**

**Article 44:** Any infringement of the provisions of Articles 17; 18; 19; 20 and 42 of this law by any person shall be subject to the penalties provided by Article 311 of the Merchant Shipping Act 2001.

**Article 45:** The provisions of Chapter 2 on the liability of the shipowner and Chapter 3 on claims and actions shall enter into force after the adoption of this law by the Parliament and its publication on the Official Journal of Comoros.

The provisions of Chapter 4 on the HNS Fund shall not enter into force until the Convention itself satisfies the provisions of its Article 46.

**Article 46:** This law shall be executed as law of Comoros and applied to all parts of its territory.

**ANNEXE I****ANNEX I****UNION DES COMORES****UNION OF COMOROS***Unité- Solidarite-Developement**Unity-Solidarity-Development***MINISTERE DES TRANSPORTS  
ADMINISTRATION MARITIME****MINISTRY OF TRANSPORT  
MARITIME ADMINISTRATION**

**Certificat d'Assurance ou Autre Sécurité Financière pour la Responsabilité pour Dommages causes par de Substances Nocives et Potentiellement Dangereuses (HNS) / CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR DAMAGE CAUSED BY HAZARDOUS AND NOXIOUS SUBSTANCES (HNS)**

**Est délivré conformément aux dispositions de l'article 12 de la convention internationale sur la responsabilité et l'indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses, 1996.** *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, 1996*

<b>Nom du navire</b> <i>Name of ship</i>	<b>Signes distinctives nombre ou lettres</b> <i>Distinctive number or letters</i>	<b>Numéro d'identification du navire par l'OMI</b> <i>IMO ship identification number</i>	<b>Port d'enregistrement</b> <i>Port of registry</i>	<b>Nom et adresse complète du principal place de business du propriétaire</b> <i>Name and full address of the principal place of business of the owner</i>

**Le présent certificat atteste que le navire mentionne ci-dessus a une police d'assurance ou autre sécurité financière satisfaisant les conditions de l'article 12 de la convention internationale sur la responsabilité et l'indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses, 1996.** *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, 1996.*

**Type de securite/** *Type of security***Duree de la securite/** *Duration of security***Nom et adresse de l'assureur (s)** *Name and address of the insurer(s) and/or guarantor(s)***Nom /** *Name***Adresse /** *Address***Ce certificat est valide jusqu'au /** *This certificate is valid until***Delivre ou certifie par le Gouvernement de /** *Issued or certified by the Government of L'Union des Comores/*  
*Union of Comoros* **A /** *At*.....**On (lieu) (date) /** *(Place) (Date)*.....**(Signature et titre officiel de l'agent) /** *(Signature and title of issuing or certifying official)*

