



IMO
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MARINE POLLUTION PREVENTION

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MARINE ENVIRONMENT PROTECTION AUTHORITY

[TWO BILLS]

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) at
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EXPLANATORY NOTE

In respect of two bills:

1. The Marine Pollution Prevention Bill

2. The Marine Environment Protection Authority Bill

In order to Incorporate and give effect to MARPOL 73/78 and Annexes I and II

INTRODUCTION

Sri Lanka acceded to the International Convention for the Prevention of Marine Pollution from Ships 1973 as modified by the Protocol of 1978 otherwise known as MARPOL 73/78 and Annexes I –V on 24th June 1997. This Convention consequently entered into force for Sri Lanka on 24th September 1997.

This drafting project seeks to incorporate MARPPOL and its mandatory Annexes I and II into Sri Lankan law and to establish a Marine Environment Protection Authority charged with its administration and regulation.

WHAT IS MARPOL?

MARPOL is one of the most important conventions of the International Maritime Organization (IMO). Its catalyst was the 1967 grounding of the Torrey Canyon which resulted in 120,000 tons of crude oil being spilt off the coast of Cornwall in the United Kingdom. This was the biggest oil pollution incident recorded up to that time and it galvanized the maritime world to take action.

This action came in the form of MARPOL which was formulated so as to deal not only with accidental oil spills of the kind that occurred in the Torrey Canyon, but also the discharge of oil into the marine environment during the operation of a ship (operational discharge) which was considered to be even more harmful to the marine environment, though perhaps less spectacular.

Annex I of the Convention contains a comprehensive regime which deals with the construction and design of vessels for transportation of oil as cargo; the regulation of operational discharges; provision for discharge into reception facilities in cases where the marine environment is particularly vulnerable and for specific methods of loading, unloading and cleaning the oily cargo holds. Compliance with this system is monitored by the requirement of an oil record book, a certification system and flag and port state control. Provision is also made for accidental oil spills by requiring ships to have on board an accidental oil spill contingency plan.

Annex II which deals with noxious liquid substances was revised with effect from January 2007. It contains a list of some 200 such substances which have been identified to date. This Annex contains measures to control pollution to the marine environment particularly from the discharge of residue from the bottom of the holds of cargo ships carrying these substances, which has been identified as being particularly problematic.

There are three other Annexes adopted in 1973 dealing with other sources of ship based pollution namely Annex III which deals with harmful substances in packaged forms, Annex IV with sewage and Annex V with garbage. These unlike Annexes I and II are optional and could be ratified at the discretion of states.

However, MARPOL and its Annexes failed to attract ratification by the requisite number of states needed to bring it into force. The reason is believed to be the technical difficulties inherent in Annex II on liquid noxious substances.

Nevertheless, after several tanker accidents which took place between the period 1976 and 1977, a Protocol was adopted in 1978 in order to bring in provisions relating to tanker construction and safety which had not been dealt with in the 1973 Convention. The 1978 Protocol was adopted with the important concession that Annex II would not become binding until three years after the Protocol came into force. Since the parent Convention was not in force, this was absorbed by the Protocol and both jointly entered into force with the requisite ratifications on 2nd October 1983.

THE IMPORTANCE OF MARPOL FOR SRI LANKA

Sri Lanka is a dualist country and needs therefore to enact legislation to give effect to the international obligation undertaken by acceding to MARPOL. Several subsequent developments outlined below have also made it imperative that legislation be enacted to give effect to MARPOL.

Sri Lanka is an island state strategically located in the Indian Ocean. As a result many ships either visit the local ports or traverse the shipping routes between the East and the West. Protecting the coastline which covers an area of around 1,000 km and the attendant territorial waters from ship based pollution is therefore an important concern.

In this connection there have been at least two accidental spills concerning oil and possibly noxious substances which occurred within the territorial waters of Sri Lanka in the recent past. The first was in September 1999 by the discharge 200 metric tons of bunker fuel and a cargo of fertilizer carried on board a Turkish flag ship which was wrecked off the southern coast. Serious environmental damage was caused to the marine environment including to an adjacent reef and to lobster and chank fisheries. The second was in 2006, when a Bangladeshi flag ship carrying grain, discharged 176 metric tons of bunker oil into sea off the Southern coast. The spill caused serious damage to mangroves and fisheries.

Being an island state, Sri Lanka is largely dependent on sea transport for generating revenue. The major exports include tea, garments and petroleum products whilst imports are mainly produce, petroleum and machinery. The major port is located in Colombo which is also the commercial capital. It is located on the west coast of the island. The port of Colombo is visited annually on a regular basis by around 500 foreign vessels and intermittently by another 600 vessels. Accordingly, considering the volume of traffic and the potential for pollution, it has become imperative to protect the marine environment in and around the west coast of Sri Lanka.

Moreover, it is anticipated that as a result of the current construction by India of a shipping canal in the shallow Straits which separate India and Sri Lanka, there will be a corresponding and significant increase in ship traffic. This in turn could increase the possibility of both accidental and operational pollution off the northern coastal waters of Sri Lanka. It is also anticipated that the ship traffic in the canal could have an adverse impact on the rare and diverse ecosystem in the Gulf of Mannar located in the north west of the Island which is inhabited by Dugongs and Turtles, now threatened by extinction. India has declared the ecosystem located in the Straits on its side of the international maritime boundary, a biosphere reserve. Therefore, both countries have a shared interest in protecting this common marine environment. It is hoped that the legal provisions incorporating MARPOL may to a large measure enable regulation of the discharges from ships so as to control and minimize pollution in the north and north western coast of Sri Lanka.

There are several other minor ports around the coast: Galle, Trincomalee, Kankasanthurai, Point Pedro, Olivil and Hambantota. There are plans in the pipeline to develop the port in Galle, located in the South into a major port. Thus the southern coast too would benefit from a marine pollution prevention regime.

Additionally, Sri Lanka is a member of the Indian Ocean Memorandum of Understanding (MOU) on Port State Control as of 5th June 1998. MARPOL is one of the conventions intended to be covered by this MOU. Since implementing MARPOL requires stringent port state control (i.e. to inspect ships for compliance with the requirements of the oil record book and certification system mentioned above) this is a step in the right direction. Further, implementing port state control at a regional level in this manner would ensure prompt detection of an offender who would then be deterred from operating within the entire region as a result of the cooperation between the participating States.

THE EXISTING LAW

When Sri Lanka acceded to MARPOL in 1997, there was already in existence a law to protect the marine environment from harm from oil pollution. This law was called the ‘Marine Pollution Prevention Act No: 59 of 1981.’ The administration of this law was entrusted to an authority by the name of the Marine Pollution Prevention Authority.

In the year 2008, almost ten years after accession to MARPOL, a new law was drafted, in order to give effect to MARPOL. This law has been presented to Parliament and has obtained Parliamentary approval. It remains to be certified by the Speaker and published in the Gazette before coming into force. This law will repeal and replace the Marine Pollution Prevention Act No: 59 of 1981.

However, it is submitted that this law has not properly incorporated the provisions of MARPOL in that it contains an *ad hoc* mixture of MARPOL and the provisions of certain other International Conventions to which Sri Lanka is signatory. It is believed that the result is not what the drafters of MARPOL would have intended.

In this connection, the IMO Consultant Professor P.K Mukherjee who served in an advisory capacity in reviewing and updating national maritime legislation in Sri Lanka in February 2008 had opportunity to examine the provisions of this law. His observation with regard to the law was that ‘On the whole the legislation is quite inadequate; no convention is given effect expressly or clearly.’

In these circumstances, the task of amending this new law is considered too impractical and onerous. It is therefore proposed to draft two new bills: the Marine Pollution Prevention Bill, for the purpose of giving proper effect to MARPOL 73/78 and the Marine Environment Protection Authority Bill to establish a general body to administer and regulate MARPOL and future laws relating to the prevention of maritime pollution in Sri Lanka.

THE EXISTING MARINE ADMINISTRATION STRUCTURE

Sri Lanka has the following marine administration namely:

1. The Merchant Shipping Department (MSD) which comes under the purview of the Ministry of Shipping. Its head is the Director General Merchant Shipping. The Merchant Shipping Act No: 52 of 1971 regulate all aspects of merchant shipping except, pollution.
2. The Ports Authority which comes under the supervision of the Ministry of Port Development;
3. The Marine Pollution Prevention Authority (MPPA) which comes under the Ministry of Environment and Natural Resources.

Although the functions of these Authorities are related they function under three separate Ministries. This has contributed to a general lack of coordination between them. A policy decision made by the Government to allocate the subject of marine pollution to the MPPA has caused a rift between the MSD and the MPPA.

Two matters which influenced the drafting of the bills:

1. Limited financial resources (Sri Lanka is a third world country fighting a civil war for the past 26 years).
2. The need for coordination within the existing marine administration, which comprises a small number of personnel and limited expertise.

THE AUTHORITY

Under MARPOL 73/78 the Government of a Member State is defined as the 'Administration.' From a practical point of view, this task needs to be delegated to an adequately representative and competent body. This is what is sought to be achieved by the Marine Environment Protection Authority Bill.

1. The Marine Environment Protection Authority (MEPA) Bill

The Legal Status of MEPA

The MEPA has been incorporated (conferred legal personality) in order to facilitate the carrying out of its numerous functions as the policy maker, regulator and general administrator of MARPOL.

The structure and functions of the MEPA:

1. The Board including four permanent members
2. A Director General and a Secretariat

The Board - The policy makers

The function of the Board is to make policy decisions particularly on the advice of the four permanent members. These members are required to be qualified and experienced in areas relating to shipping, port operations, marine science, environmental science, ecology or maritime law in order to bring in a degree of expertise into the decision making functions of the Board.

The membership of the Board is explained briefly below:

The Director General of Merchant Shipping is made the Chairman of the Board. The reason is that the Merchant Shipping Act which comes under his supervision already contains provision for surveyors and officers to board vessels, check documentation and if necessary to detain ships. This inclusion would also facilitate coordination between the MSD and the MEPA which is presently lacking. The Ministry of Shipping under whose purview the MSD functions has also been made a Board member.

The Ministry of Port Development and the Chairman Ports Authority have been made members of the Board. The reason is twofold, firstly: the officers of the Ports Authority could be used to assist the MSD officers since under the existing administrative structure the Port Authority exercises some Port State Control and secondly, the inclusion of the Ports Authority will support the coordinated approach aimed for.

The other members and the reason for their inclusion in brief are:

- The Ministry of Foreign Affairs (or his representative) since MARPOL is an international Convention and certain provisions of MARPOL require the Diplomatic or Consular Offices of a State to be informed of steps intended to be taken by the Authority.
- The Minister of Finance (or his representative) to ensure that financial support in marine environmental matters would be facilitated.
- The Ministry of Defense and the Commander of the Navy, in view of the on going civil war between the Government forces and terrorists who have a stronghold in the Northern Peninsular and the adjacent coastal waters inaccessible to civil administration.

- The Central Environmental Authority, the Coast Conservation Department, the Ministry of Environment and the Ministry of Fishing, in view of the emphasis on the marine environment.
- The Director General Disaster Management in the event of a catastrophe resulting from an oil spill or discharge of noxious substances.

The Director General and the Secretariat – The Executive and the Administration

Provision has been made for the appointment of the Director General as the Chief Executive Officer of the Authority. This officer and the Secretariat that will function under his supervision will be in charge of the day to day decision making of the Authority subject to general direction and control of the Board.

THE PROTECTION OF THE MARINE ENVIRONMENT

2. Marine Pollution Prevention Bill

Powers of MEPA

The administration and regulation of this bill is entrusted to the MEPA. The MEPA is empowered to act in respect of all Sri Lankan flag ships and all ships of member states operating within the territorial jurisdiction of Sri Lanka. Practical measures and sanctions have been introduced to ensure that ships conform to the standards prescribed by MARPOL.

The most important practical measure is the power conferred on the Authority to make provisional detention orders. These orders operate at two levels: firstly to restrict the movement of ships (where there is an actual or imminent threat of discharge of harmful substances) in order to protect the marine environment and secondly to facilitate

investigations; to secure the attendance of the offender at any legal proceeding and to effectively enforce sanctions imposed under the Act.

A provisional detention order would cease upon deposit of a bond or other financial security in its place or where this is not the case, the Court is empowered to make the detention order final. Such a detention order will prevail until the conclusion of any investigation or legal proceedings. In a case where no deposit is made and the detention order has been made final, provision has also been made for the recovery of the fine imposed on an offender who has been found guilty by a Court, by the sale of the ship.

Functions of MEPA

The functions of the MEPA under the proposed law are intended to cover both flag state and port state control. Coastal state control gets automatically covered since the bill would have application within the 'territorial jurisdiction' of Sri Lanka, which covers coastal waters as well.

Flag state control exercised by the MEPA:

Provision has been made for the survey and certification of all Sri Lankan flag ships, in order to ensure compliance with the requirements in Annex I and II.

Port state control exercised by the MEPA:

Provision has been made for:

- (i) The inspection of ships of member states within the territorial jurisdiction of Sri Lanka to ascertain whether the relevant certification is carried on board and whether the certification is compliant with Annex I and II.
- (ii) Inspection of ships to ascertain whether there has been a discharge of harmful substances into the territorial jurisdiction of Sri Lanka in violation of the standards prescribed in Annex I and II.

Offences and Penalties.

Under the criminal law of Sri Lanka if an offence by definition has a mental and physical element, both elements have to be proved by the prosecution. Where the offence has only a physical element, the liability is strict but the offender could rely on one of several exceptions contained in the Penal Code, in particular section 72 and prove that he acted with due care and attention and therefore should not be held liable.

Sri Lanka is a signatory to 1982 United Nations Convention on the Law of the Sea (UNCLOS). The provisions contained in Part XII of the said Convention advocates monetary penalties except in a case of willful and serious act of pollution (Article 230).

The liability regime that is intended to be implemented is strict liability. A gradation of punishments has been provided for, taking into account the gravity of the offence and the directive in Article 230 of UNCLOS.

The principal offender under this bill is the ship owner. This is by virtue of his 'ownership'. However, the master, agent, servant or any other person in charge of the ship, could also be proceeded against in the same manner, where they have committed the following offences:

1. the offence of failing to produce a valid certificate
2. irrespective of whether or not a valid certificate is produced, the offence of a ship being found to be non compliant with Annex I and II

According to the gradations of sanctions imposed, the lowest is the power given to the Authority to compound the offence. This could be relied upon in a case of a first offender, where there has been no discharge of harmful substances in excess of the permitted levels.

The next level is the provision to levy a fine (without imprisonment) after conviction, pursuant to a summary trial in the Magistrate's Court. This could be relied upon in the

case of a second and subsequent offender but the discretion whether to compound even in such a case, has been left to the Authority. Here again, there must have been no discharge of harmful substances.

A separate offence has been created where there is an actual discharge of harmful substances within the territorial jurisdiction of Sri Lanka. Such a discharge has been made punishable irrespective of whether or not a ship carries a valid certificate. Liability is once again strict and punishment is by way of a fine which again does not carry a sentence of imprisonment. The court specified is the High Court which is the forum in Sri Lanka before which more serious offences are tried by proceedings instituted by way of an indictment.

A third category of offence is created which requires proof of both the mental and physical element of liability. That is, where a discharge is caused with intent, recklessly and with knowledge of the probable result. This offence is again triable by the High Court and is punishable either with a fine or sentence of imprisonment or with both, at the discretion of the Court.

In the case of an offence which is punishable with a fine, the Court is required to be guided by the regulations prescribed by the Minister setting out the type and quantity of the pollutant discharged and graded according to the degree of seriousness with which it should be viewed.

Ancillary powers

The MEPA has also been entrusted with wide ranging functions and powers which will enable the effective implementation of MARPOL. Emphasis has been placed on training personnel, creating public awareness, creating multiple means of securing evidence, establishing a data base and for exchanging information and evidence with other member states and the IMO.

The Annexes

Since Annex I and II, the Appendices and Unified Interpretation are almost entirely technical in content they are (as in the case of MARPOL) to be maintained as annexes to the Marine Pollution Prevention Bill. The only legal content is the reference made in both Annexes to its scope of application. In this connection, since Part II of the Marine Pollution Prevention Bill confines its application to Sri Lankan flag ships and flag ships of Member States of MARPOL, these same limits have been expressly mentioned in the relevant provisions in Part VI and VII of the Bill by which the Annexes are introduced.

The procedure in Sri Lanka for these two bills to acquire the force of law require their submission firstly, to the Attorney General's Department for certification that they are in conformity with the provisions of the Constitution; secondly, to Parliament for debate and approval and for certification by the Speaker and finally for publication in the Government Gazette under the hand of the relevant Minister who would specify the date from which they would enter into force, as the law of the land.

MARINE POLLUTION PREVENTION BILL

An Act to provide for the prevention of pollution of the marine environment by the discharge of oil and noxious liquid substances or effluents containing such oil and noxious substances from ships and for matters connected therewith and incidental thereto.

Whereas Sri Lanka is a party to the International Convention on the Prevention of Pollution from Ships, 1973, its Protocol of 1978 and Annexes I and II thereto hereinafter referred to as MARPOL

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

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

This Act may be cited as the Marine Pollution Prevention Act No: of 2009 and shall come into operation on such date as the Minister may appoint by Order published in the Gazette (hereinafter referred to as the ‘appointed date’)

Part I

General Provisions

1. In this Act unless the context otherwise requires-

“ This Act ” shall include reference to any regulations made by the Minister, Annexes I and II, the Appendices and the Unified Interpretation annexed herewith;

“Administration” shall

- (i) in relation to Sri Lanka mean the Marine Environment Protection Authority established under Act No: Of2009;
- (ii) in relation to a member State, mean the Government of the State under whose flag and / or authority the ship is operating;

“Any other person” shall mean any person other than the Master who at the relevant time is in command or in charge of any ship whether with or without the authority of the Owner or Master;

“Discharge” in relation to harmful substances or effluents containing such substances, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying but does not include-

- (i) release of harmful substances directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources; or
- (ii) release of harmful substances for purposes of legitimate scientific research into pollution abatement or control;

"Exclusive Economic Zone" means the zone so declared by the President by proclamation published in the gazette under the Maritime Zones Law No: 22 of 1976;

“Harmful substance” means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes any substance subject to control under this Act;

“Incident” means an event involving the factual or probable discharge into the sea of a harmful substance, or effluents containing such a substance;

“Marine Environment” includes the area of the sea and its environs as contained within the territorial jurisdiction of Sri Lanka as herein defined;

“MARPOL” means International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and Annexes I & II thereto, and any amendments effective up to 1/1/2008;”

“Master” includes every person, except a pilot having command of a ship or being in charge of any ship;

“Member State” means a State the Government of which is a party to MARPOL;

“Minister” shall mean the Minister of Environmental and Natural Resources

“Organization” shall mean the International Maritime Organization Holden in London, England;

“Owner” and “ship owner” in relation to a ship includes a demise or bareboat charterer, a managing owner and an operator;

“President” means the duly elect President of the Democratic Socialist Republic of Sri Lanka;

“Regulations” means the regulations which are required to be prescribed by the Minister under this Act;

“ship” means a vessel of any type whatsoever operating in the marine environment and includes, without limitation, pleasure vessels, fishing vessels, hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

“Territorial Jurisdiction of Sri Lanka’ shall mean any port, harbor, off shore installation, the territorial sea and exclusive economic zone of Sri Lanka;

“Territorial sea” means the zone so declared by the President by proclamation published in the gazette under the Maritime Zones Law No: 22 of 1976;

Part II

Application

2. (1) This Act shall apply to-
 - (a) all Sri Lankan flag ships; and
 - (b) all ships of Member States operating within the territorial jurisdiction of Sri Lanka
- (2) Provided however that the provisions of this Act shall not apply to:
 - (a) any warship, naval auxiliary or other ships owned or operated by the Government of Sri Lanka and used only in Government non commercial service; and
 - (b) warships, naval auxiliary or other ships owned or operated by a member state and used for the time being only in Government non-commercial service,
- (3) In the application of the provision of this Act, ships of non Member States shall not receive more favorable treatment than ships of Member States.

Part III
Functions of the Authority

3. This Act shall be administered by the Marine Pollution Prevention Authority Established under Act No.... of 2009 hereinafter referred to as the Authority.

4. (1) The Authority shall:

(a) Survey every Sri Lankan flag ship in conformity with this Act;

(b) Ensure that every such ship is compliant with the provisions of this Act and issue the necessary certification in proof of the same;

(c) Provide for appropriate standards and certification of ships, not dealt with by this Act. Such standards and certification shall be prescribed by regulation made by the Minister in consultation with the Authority.

(2) (a) Board and inspect every ship within the territorial jurisdiction of Sri Lanka in order to ascertain that there is on board valid certification issued in conformity with this Act;

(b) Accept as prima facie valid, the certification issued by the Administration of the relevant member state;

- (c) Inspect such a ship where there exist clear grounds for believing that its preparedness to prevent pollution, its condition or equipment do not correspond with the particulars of such certification or where there is no such certification, with the requirements of this Act;
- (d) Take steps, in the event that such an inspection confirms that the ship is non compliant, to either:
 - (i) detain the ship and direct the owner, the master or any other person in charge of the ship to rectify the condition of the ship or its equipment in order that it becomes compliant; or
 - (ii) direct the dispatch of the ship to the nearest repair yard for this purpose, provided it can proceed to sea without presenting an unreasonable threat of harm to the marine environment; and
 - (iii) take steps as provided for under sub section (f) below; and
 - (iv) institute proceedings for such non compliance under the provisions of this Act.
- (e) Deny access to any ship seeking entry into the territorial jurisdiction of Sri Lanka, where there is reason to believe that such a ship is not compliant with this Act and there is a threat of or discharge of harmful substances;

- (f) Immediately notify the Consul or Diplomatic Representative of a member state or failing which, the Administration of the relevant member state of any steps taken and intended to be taken under this section. Nothing herein contained shall prevent consultation with the Administration of the relevant member state before any denial of access or any steps taken or intended to be taken.
 - (g) Take appropriate steps upon receipt of information from the Administration of any Member State that a ship flying the flag of Sri Lanka is not carrying a certificate on board and /or is non compliant with MARPOL;
 - (h) Dispatch a report of the steps taken in this connection to the said Administration and to the Organization.
- (3)
- (a) Inspect any ship in order to ascertain whether there has been a discharge of harmful substances in violation of the standards prescribed in this Act;
 - (b) Detain the ship in conformity with this Act;
 - (c) Institute proceedings for any such violation in accordance with this Act;
 - (d) Dispatch a report containing all relevant information in this regard to the Administration of the relevant Member State;
- (4)
- (a) Inspect any ship upon receipt of a request from any Member State that a ship flying its flag or the flag of any other Member State, which has entered the territorial

waters of Sri Lanka, has discharged harmful substances in the marine environment of any place.

- (i) Dispatch a report of the results of such inspection to the requesting State and the flag State provided that such a request is accompanied in the first place by sufficient evidence in proof of the fact of discharge;
 - (ii) Institute proceedings for any offence committed under this Act;
5. Conduct any investigations and institute legal action in relation to discharge or imminent discharge of harmful substances into the territorial jurisdiction of Sri Lanka or any other place
 6. Provide or ensure the provision of reception facilities and direct every port, harbor, terminal, repair yard, dry dock or other related facility to obtain the services of such a facility.
 7. Formulate policy for the effective implementation of this Act and an action plan to meet the contingency of a serious incident whether occurring within the territorial jurisdiction of Sri Lanka or adjacent thereto.
 8. Formulate practical measures for environmental monitoring to facilitate the detection of violations and offences committed under this Act
 9. Establish a data base with a set of indicators for regular monitoring of all information pertaining to the regulation and enforcement contained therein;
 10. Develop diverse methods of securing evidence, in order to ensure effective regulation and enforcement;

11. Establish adequate and reciprocal procedures for reporting and accumulation of evidence between Member States and the Organization.
12. Conduct programs in order to promote awareness of the general public in the coastal areas of Sri Lanka of:
 - (i) the general objectives of this Act and the functions of the Authority;
 - (ii) the need for assistance of the general public in observing and reporting violations to the Authority and for participating as witnesses in any prosecution of an offence under this Act.
13. Standardize and institutionalize training programs for personnel in order to achieve effective implementation of the provisions of this Act.
14. Provide publicity of the requirement of certification, as a condition precedent for entry into the territorial jurisdiction of Sri Lanka, with a view to implementing the provisions of this Act.
15. Conduct an investigation into any casualty, which occurs to any Sri Lankan flag ship which produces a major deleterious effect upon the marine environment
16. Obtain from the Master or any person having charge of any ship, a report in respect of any incident within the territorial jurisdiction of Sri Lanka resulting in the discharge of harmful substances. Such a report shall be made in a form prescribed by the Authority.
17. In the application of these provisions, ships of non member States, shall not receive more favorable treatment than ships of Member States.

Part IV
Offences

18. The Authority may, having regard to the circumstances in which an offence under this Act is committed, compound such offence for a sum of money not exceeding one-third of the maximum fine imposable for such offence and all such sums of money received by the Authority in the compounding of an offence under this section, shall be credited to the Fund established under the Marine Environment Protection Authority Act No... of 2009;
19. Where an act or omission which constitutes an offence for which a ship owner is liable under this Act has in fact been committed or made by the master, agent, servant or any other person in charge of the ship, such master, agent, servant or any other person in charge of the ship shall be liable to be proceeded against for the offence in the same manner as if he were the ship owner, and shall be liable to like punishment as if he were the ship owner;
20. (1) Where there is a failure to produce a valid certificate which is in conformity with this Act, to an officer of the Authority, the ship owner shall be guilty of an offence under this Act;
- (2) irrespective of whether or not a valid certificate is produced, where the ship is in fact non compliant with the provisions of this Act, the ship owner shall be guilty of an offence under this Act;
- (3) Every person guilty of an offence under this section shall be liable, on conviction after a summary trial before a Magistrate to a fine;
- (4) Proceedings before the Magistrate's Court shall be commenced by the Authority submitting a report in terms of section 136(1) (b) of the Code of Criminal Procedure Act No. 15 of 1979;

21. (1) Where there is an actual discharge of harmful substances within the territorial jurisdiction of Sri Lanka, in circumstances otherwise falling within the definition of offences under sections 20(1) and 20(2) of this Act the ship owner shall be guilty of an offence punishable by a fine imposed by the High Court within whose jurisdiction the offence under this section is committed;
- (2) Where there is a discharge of harmful substances within the territorial jurisdiction of Sri Lanka by a ship which is in possession of certification issued by the Administration of the relevant Member State the ship owner shall be guilty of an offence punishable by a fine imposed by the High Court within whose jurisdiction the offence under this section is committed;
22. Where there is a discharge of harmful substances, within or outside the territorial jurisdiction of Sri Lanka, caused by any person, with intent to cause damage, or recklessly and with knowledge of the probable result, such person shall be guilty of an offence under this Act punishable by with a fine in a sum of Rs. 1 million, or with a sentence of imprisonment not exceeding 10 years, or with both upon indictment in the High Court of Colombo;
23. Where there is a variance between the quantity of the pollutant stated in the indictment and the quantity proved by evidence the Court shall permit the prosecution to amend the indictment at any time before conviction and enter a conviction accordingly;
24. Where an accused is convicted of an offence under this Act the Court before proceeding to determine the sentence shall take into consideration the regulations prescribed under this Act for quantifying the fine payable based on the type and quantity of the pollutant discharged into the environment;
25. Where the accused fails to make payment of any sum imposed by way of a fine, the Court shall make order that the bond or financial security deposited by or on behalf of the ship owner be liquidated or failing which the ship

detained pursuant to the provisions of this Act to be sold in satisfaction of the sum due;

26. All proceedings instituted under this Part shall be concluded without undue delay;

27. The Authority shall obtain the assistance of the Attorney General in the prosecution of every offence under this Act.

Part V

Powers of the Authority

28. (1) The Authority shall have the power to detain any ship, referred to in sections 4(2) (d) (i) and 4(3) (b) by a provisional detention order made under this section;

(2) The Authority shall also have the power to make a provisional detention order in a case where it is necessary to conduct investigations in order to determine whether a discharge has occurred or where there is reasonable cause to believe that such a discharge is imminent, either within the territorial jurisdiction of Sri Lanka or any other place;

(3) The Authority shall also be empowered to make a provisional detention order in the event a case is filed by the Authority for any offence committed under this Act;

(4) Where a ship has been provisionally detained by order under subsection (1) steps shall be taken to:

- (a) Forthwith serve a written statement of the grounds of detention to the owner, master or any other person in charge of the ship;
- (b) Notify the Administration of the relevant member state or the Consul or Diplomatic Representative of that state in respect of any steps taken under this section and where relevant under section 4(2) (d)(i) and 4(3)(b);

(5) The provisional detention shall cease upon a bond or other financial security being paid to the High Court within whose jurisdiction the ship is detained;

(6) The jurisdiction of the High Court shall be invoked by the Authority filing a report stating the circumstances of the case in which shall be included an approximate estimate of the discharge in excess of the permitted level having regard to the applicable regulations;

(7) The amount of the bond or other financial security shall be decided by the High Court having regard to the need to secure attendance of the offender at a trial and the contingency of non payment of any fine or other sum which may fall due under this Act;

(8) Such bond or financial security shall be retained until the conclusion of any proceedings instituted under this Act and shall be used in satisfaction for any sum due and owing;

(9) In the event of a failure to pay the financial security as envisaged, the provisional order of detention shall be made final by the High Court and a copy shall be served on the parties aforementioned;

(10) The detention order so made shall subsist (until the conclusion of any investigation or trial) pending any further orders the High Court may make up to the conclusion of recovery proceedings or the payment into High Court of the financial security upon which it shall be set aside by the Court;

(11) The fact that an order as to any bond or financial security has been made by the High Court shall not be a bar to a trial being conducted in the Magistrate's Court and in such a case, nothing in this Act shall prevent the record of the detention proceedings in the High Court being transferred to the relevant Magistrate's Court at the conclusion of the trial for steps to be taken under section 25 and sub section (8) above;

(12) (a) The Authority shall ensure that all possible steps are taken to ensure that a ship is not unduly detained or delayed in the exercise of its powers and functions under this Act;

(b) Where any complaint of delay is made either orally or in writing to the High Court or the Magistrate's Court as the case may be, an order may be made for the payment of compensation by the Authority, if in the opinion of Court the circumstances justify the making of such an order having regard to the material adduced by both parties;

(c) In making such an order, the Court shall have regard to the loss or damage caused to the ship by such undue delay which in its opinion is reasonable having regard to all the circumstances of the case;

(d) No appeal shall lie against such an order.

- (13) The Authority shall delegate any power or function assigned or conferred upon it by the provisions of this Act or the regulations made there under.

Part VI

Prevention of Pollution by Oil

29. (1) The provision in this part is required to be read with Annex I to this Act, the relevant Appendices and Unified Interpretation annexed thereto;
- (2) Regulation 2 in Annex I is modified to the extent that Annex I shall only have application to ships that come within the jurisdiction of this Act, as provided for in Part II above.
- (3) Non compliance with regulations 15 and 34 in Annex I shall not constitute an offence where the discharge of harmful substances is proven to have been caused as a result of:
- (a) securing the safety of a ship or saving life at sea;
 - (b) damage to the ship or its equipment provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge;
 - (c) The discharge into the sea of substances containing oil approved by the Authority, when being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution.

30. The Appendices to Annex I herein include:

- (a) Appendix 1 – list of oils
- (b) Appendix II – form of IOPP certificate and supplement.
- (c) Appendix III – form of oil record book
- (d) Appendix IV – Unified Interpretations to Annex I

Part VII

Prevention of Pollution by Noxious Substances in Bulk

31. (1) The provision in this part is required to be read with Annex II to this Act, the relevant Appendices and the Unified Interpretation annexed thereto;
- (2) Regulation 2 in Annex II is modified to the extent that Annex II shall only have application to ships that come within the jurisdiction of this Act, as provided for in Part II above.
32. (1) Non compliance with regulation 5 in Annex II shall not constitute an offence where the discharge of harmful substances is proven to have been caused as a result of:
- (a) securing the safety of a ship or saving life at sea;
 - (b) damage to the ship or its equipment provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge;

(c)The discharge into the sea of substances containing oil approved by the Authority, when being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution.

(2)The Appendices to Annex II herein include Appendix A – D.

Part VIII

Miscellaneous

33. (1) The Minister shall make regulations where required to be prescribed under the provisions of this Act and where necessary to give effect to the principles and provisions of this Act.

(2) The Minister shall prescribe regulations for the use of reception facilities provided for under section 6 of this Act.

(3) Every such regulation shall be published in the Gazette and shall come into force from the date of such publication or on such later date as may be specified in such regulation.

(4) Every regulation published in the Gazette shall be brought before Parliament for approval not later than three months from the date of such publication or from the date of coming into force. Every regulation which is not approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done there under.

(5)Notice of the date from which any regulation is rescinded shall be published in the Gazette.

34. In the event of any inconsistency between the Sinhala and Tamil texts, the Sinhala text of this Act shall prevail.

**MARINE ENVIRONMENT PROTECTION
AUTHORITY BILL**

An Act to repeal the Marine Pollution Prevention Act No: 59 of 1981 and to provide for the establishment of the Marine Environment Protection Authority of Sri Lanka.

The Marine Environment Protection Authority shall be an incorporated body entrusted with the administration of all laws pertaining to the protection of the marine environment in particular laws giving effect to International Conventions to which Sri Lanka is signatory.

Be it enacted by the Democratic Socialist Republic of Sri Lanka as follows:

This Act may be cited as the Marine Environment Protection Authority Act No: ... 2009 and shall come into operation on such date as the Minister may appoint by Order published in the Gazette (hereinafter referred to as the appointed date).

Part I

Constitution of the Authority

- 1 (1) There shall be established an Authority to be called the Marine Environment Protection Authority (hereinafter referred to as the 'Authority') which shall consist of the members specified in paragraph (4).

- (2) Subject to the general direction and control of the Minister, the Authority shall be responsible for the administration of the provisions of the Laws specified in the first schedule to this Act.

- (3) The Authority shall by the name assigned to it by subsection (1) be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

- (4) The administration, management and control of the affairs of the Authority shall be vested in the Board consisting of the following:

(a) four members appointed by the Minister who are qualified and have experience in areas relating to shipping, port operations, marine science, environmental science, ecology or maritime law, who shall be known as the permanent members.

(b) Thirteen ex officio members comprising:

- i. The person for the time being holding the office of the Secretary to the Ministry of the Minister in charge of the subject of Environment and Natural Resources or his representative;
- ii. The person for the time being holding the office of the Secretary to the Ministry of the Minister in charge of the subject of Foreign Affairs or his representative;
- iii. The person for the time being holding the office of the Secretary to the Ministry of the Minister in charge of the subject of Defense or his representative;
- iv. The person for the time being holding the office of the Secretary to the Ministry of the Minister in charge of the subject of Finance or his representative;
- v. The person for the time being holding the office of the Secretary to the Ministry of the Minister in charge of the subject of Shipping or his representative
- vi. The person for the time being holding the office of the Secretary to the Ministry of the Minister in charge of the subject of Ports or his representative
- vii. The person for the time being holding the office of the Secretary to the Ministry of the Minister in charge of the subject of Fisheries or his representative
- viii. The person for the time being holding the office as Director of Merchant Shipping

- ix. The person for the time being holding office as the Chairman, Ports Authority
- x. The person for the time being holding the office as Director, Coast Conservation Department
- xi. The person for the time being holding the office of Chairman, Central Environmental Authority
- xii. The person for the time being holding the office of Director General, of Disaster Management
- xiii. The person for the time being holding the office of Commander of the Sri Lanka Navy or his representative

- (5) The Director General Merchant Shipping shall be the Chairman of the Board.
- (6) The meetings of the Board shall be held once a month at the premises of the Authority and shall be presided over by the Chairman.
- (7) The quorum for any meeting of the Board shall be 10 members which shall necessarily include two of the four permanent members.
- (8) The Board shall regulate the procedure with regard to the meetings and the transaction of business at such meetings
- (9) No act or proceeding of the Board shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the appointment of any member.
- (10) The seal of the board shall be with the Chairman.
- (11) The seal of the Board shall not be affixed to any instrument or document except in the presence of three members of the Board all of whom shall sign and date the instrument or document signifying their presence.

- (12) The Board shall maintain a register of the instruments and documents to which the seal of the authority has been affixed.
- (13) The four permanent members shall hold office for a term of three years and be eligible for reappointment for a further term of three years.
- (14) The Minister shall remove from office a member if such a person:
- (a) becomes a member of Parliament, a member of a Provincial Council or a member of a Local Authority;
 - (b) ceases to be a citizen of Sri Lanka;
 - (c) is declared an insolvent or un-discharged bankrupt under any law in Sri Lanka or any other country;
 - (d) is found to be of unsound mind or under any law of Sri Lanka or any other country;
 - (e) is serving or has served a sentence of imprisonment imposed by a Court in Sri Lanka or any other country;
 - (f) becomes permanently incapable of performing his duties and responsibilities under this Act;
 - (g) does any act which in the opinion of the Minister brings the Authority into disrepute.
- (15) In the event of the removal, vacation or resignation from office of a permanent member, the Minister shall make a new appointment in accordance with the criteria stated in sub paragraph 4(a) of section 1.
- (16) Such a member shall hold office for a period of three years commencing from the date of appointment and shall be eligible for reappointment as provided in sub section (13) of section 2.

- (17) In the absence of the Chairman, the Director General shall chair the meetings of the Board and in the absence of them both, a permanent member voted by the Board;
- (18) The four permanent members shall be remunerated out of the fund of the Authority in such manner and amounts as may be determined by the Minister, with the concurrence of the Minister of Finance;
- (19) (1) There shall be a Secretary to the Board appointed by the Authority who shall have qualification and adequate experience Company secretarial practice.
- (2) The functions of the Secretary shall include the duty to be present at every Board meeting and to maintain proper minutes of the meetings of the Board.
2. (1) The Authority may appoint such other officers and servants as it may consider necessary for the efficient discharge of its functions.
- (2) The officers and servants appointed under subsection (1) shall be remunerated in such manner and at such rates and shall be subject to such conditions of service as may be determined by the Authority.
- (3) At the request of the Authority any officer in the public service may, with the consent of that officer and the Head of Department of that officer and the Secretary to the Ministry of Public Administration, be temporarily appointed to the Authority for such period as may be determined by the Authority with like consent, or be permanently appointed to such staff.

Part II

The Director General and the Secretariat

3. (1) The Minister shall, on the recommendation of the Board, appoint a Director-General of the Authority, who shall be its chief executive officer. The conditions of employment including remuneration of the Director-General shall be determined by the Minister.
- (2) The Director-General shall, subject to the general direction and control of the Board, be charged with the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its powers, functions and duties, and the supervision of the employees of the Authority.
- (3) The Director-General may, with the approval of the Board, whenever he considers it necessary to do so, delegate to any employee any power, function or duty conferred or imposed on or assigned to him by this Act and such employee shall exercise, discharge and perform such power, function or duty subject to the supervision of the Director-General.
- (4) The Minister may on the recommendation of the Board, supported by two thirds of the members present and voting, remove from office the Director-General appointed under subsection (1) and such removal shall not be called in question in any Court.

Part III

Powers of the Authority

4. The Authority shall have the power to:
- (1) acquire, hold, take or give on lease or hire mortgage, pledge, sell or otherwise dispose of any movable or immovable property;
 - (2) employ such officers and servants as may be necessary for the purpose of discharging the functions of the Authority;
 - (3) enter into any contract as may be necessary for the discharge of the functions of the Authority;
 - (4) open, operate and maintain accounts in any bank or financial institution approved by the Board;
 - (5) borrow such sums of money as may be necessary for the purpose of discharging the functions of the Authority;
 - (6) accept and receive grants, donations and bequests of property both movable and immovable from Sri Lanka and abroad for purposes of utilization for the functions of the Authority;
 - (7) make rules in respect of the administration and management of the Authority;
 - (8) charge fees for any services provided by the Authority for any person or body of persons;

- (9) file or defend any action instituted against it by any person or body of person;
- (10) do all such acts and things are necessary for the proper discharge of its powers or which are incidental thereto, under this Act or conferred on or assigned to the Authority under any Law specified in the first schedule to this Act ;
- (11) The Authority may appoint with the approval of the Minister any person by name or by office for the purpose of carrying out all or any of the powers conferred on the Authority under this Act.

Part IV

Supplementary Provisions

- 5. (1) The Authority shall carry out all the powers and functions conferred upon it by any Law specified in the first schedule to this Act;
 - (2) No suit or prosecution shall lie against the Authority for any damage caused or likely to be caused by any act which in good faith is done, or purported to be done, Under this Act or any Law specified in the first schedule to this Act;
 - (3) No suit or prosecution shall lie against any person in the employment of the Authority for any act which in good faith is done, or purported to be done, under this Act or any Law specified in the schedule to this Act;
6. (1) the Minister may give to the Authority general or special directions in writing for the purpose of giving effect to the principles and provisions of this Act or any Law specified in the first schedule to this Act;

- (2) The Minister may from time to time direct the Authority to furnish to him in such form as he may require returns, accounts and other information with respect of the property and business of the Authority and the Authority shall carry out every such direction;
- (3) The Minister may order all or any of the activities of the Authority to be investigated and reported upon by such person or persons as he may specify and upon such order being made, the Authority shall afford all such facilities to carry out such order.

Part V

Finances

7. (1) The Authority shall maintain a fund to which shall be credited:
- (a) all such sums of money as may be voted from time to time by Parliament for the use of the Authority;
 - (b) all such sums of money as may be received by the Authority in the exercise and performance of its powers, duties and functions;
 - (c) all such sums as may be received by the Authority by way of loans, donations, gifts bequests or grants from any source whatsoever whether in or outside Sri Lanka;
 - (d) all such sums of money lying to the credit of the Marine Pollution Prevention Authority established under the Marine Pollution Prevention Authority under Act no; 59 of 1981;

- (e) all such sums of money as may be received by the Authority by way of fees, fines, charges, levies or penalties.
- (2) There shall be paid out of the fund of the Authority all such sums of money as are require to defray any expenditure incurred by the Authority in the exercise, performance and discharge of its powers, duties and functions.
- (3) The Authority shall cause proper accounts to be kept of its assets and liabilities, income and expenditure and all other transactions.
- (4) The financial year of the Authority shall be the calendar year.
- (5) The provisions of Article 154 of the Constitution shall apply to the audit of the accounts of the Authority.

Part VI

Repeal of the Marine Pollution Prevention Act No: 59 of 1981

8. (1) The Marine Pollution Prevention Act No: 59 of 1981, is hereby repealed.

(2) Notwithstanding the repeal of the said Act:

- a. all movable and immovable property which on the day preceding the appointed date is vested in the Marine Pollution Prevention Authority, shall vest with effect from that date in the Authority;
- b. All contracts and Agreements entered into by or with the Marine Pollution Prevention Authority and subsisting on the day preceding the appointed date shall be deemed, with effect from

the appointed date, to be contracts and agreements entered into by the Authority;

- c. All actions and proceedings instituted by or against the Marine Pollution Prevention Authority and pending on the day preceding the appointed date, shall be deemed with effect from the appointed date, to be actions and proceedings instituted by or against the Authority as the case may be;
- d. All members, officer and servants of the Marine Pollution Prevention Authority immediately preceding the appointed date shall be deemed with effect from the appointed date to be members, officers and servants of the Authority;
- e. All judgments and orders made in favor or against the Marine Pollution Prevention Authority and remaining unsatisfied on the day preceding the appointed date, shall be deemed with effect from the appointed date to be judgments and orders made in favor or against the Authority as the case may be;
- f. All interests, rights, assets and obligations, debts and liabilities of the Marine Pollution Prevention Authority on the day immediately preceding the appointed day, shall be deemed with effect from the appointed day to be interests, rights, assets, obligations, debts and liabilities of the Authority.

(3) All members, officers and servants of the Authority shall be deemed to be public officers within the meaning and for the purposes of the Penal Code.

(4) The Authority shall be deemed to be a scheduled institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly.

(5) In this Act unless the context otherwise requires:

“Authority” shall mean the Marine Environment Protection Authority

“Minister” shall mean the person holding the office of the Ministry of Environment and Natural Resources.

(6) In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

FIRST SCHEDULE

1. Marine Pollution Prevention Act No: ... 2009 of Sri Lanka