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**M a l t a**

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**TITLE: Incorporation of the 1989 International Convention on Salvage into the Law  
on Maritime and Inland Navigation of the Federal Republic of Yugoslavia**

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## **PART VII**

### **Section 2**

#### **SALVAGE\***

##### **1. General provisions**

###### Article 806

The provisions of this section of the Law shall apply to salvage of persons, ships and other property in danger, at sea and in inland waters.

###### Article 807

The provisions of this section of the Law shall apply to all floating structures used in navigation, including boats and seaplanes.

The provisions of articles 811(b), and 818 of this Law shall not apply to war-ships.

###### Article 807(a)\*\*

Every master is bound, so far as he can do so without serious danger to his ship and persons thereon, to render assistance to any person in danger of being lost at sea.

###### Article 807(b)

In the case of pollution or threat of pollution of the coastline or related interests, following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, the competent Harbor Authority may take all measures that are necessary to eliminate or minimize the effects of

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\* In the Serbian language one word relates to both rescue of people and salvage of property. Therefore in this project "salvage" is also used within the context of rescue of people, without intention to change the meaning of salvage as defined by 1989 Convention.

\*\* The obligation to render assistance is already contained within the other provisions of the Law, as well as some of the rights relating to pollution. However, placing them within this Section, and establishing their direct relation to salvage, provides for consistency with the 1989 Convention.

such a pollution or to prevent it, including giving directions in relation to salvage operations related to that casualty.

## **2. Reimbursement of the expenses and the reward**

### Article 808

The expenses of search for, and salvage of property at sea, or in inland waters, shall be reimbursed from the value of the property salvaged.

If the expenses of search for, and salvage of property at sea, or in inland waters, exceed the value of the property salvaged, the difference shall be reimbursed from the Federal budget.

The local council in whose territory the accident giving rise to salvage occurs shall bear the expenses of search for and rescue of persons in danger at sea.

### Article 809

Every salvage operation which is successful gives right to a reward.

There shall be no reward for salvage of persons.

Notwithstanding the provisions of paragraph 2, a salvor of persons who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor of the salvaged ship or of other salvaged property.

### Article 810

The master shall have the authority to conclude contracts for salvage operations on behalf of the ship-owner.

The master or the ship-owner shall have the authority to conclude such contracts on behalf of the owner of the property on board the ship.

#### Article 810(a)

At the request of either party to a salvage contract the court may annul or modify the contract for salvage operations of ship or other property if it establishes that:

- 1) The contract has been entered into under the influence of danger and its terms are inequitable;
- 2) The party has been induced to enter into the contract by fraud or fraudulent concealment of facts;
- 3) The payment under the contract is not commensurate to the services actually rendered.

#### Article 811

If the parties have not entered into a contract for salvage operations, or have entered it without specifying the amount of the reward, in the case of a dispute the amount of the reward shall be fixed by the court.

In determining the amount of the reward the court shall take into account the following criteria, without regard to the order in which they are presented in this article:

- 1) the salvaged value of the vessel and other property;
- 2) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- 3) the measure of success obtained by the salvor;
- 4) the nature or degree of the danger;
- 5) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- 6) the time used and expenses and losses incurred by the salvors;
- 7) the risk of liability and other risks run by the salvors or their equipment;
- 8) the promptness of the services rendered;
- 9) the availability and use of vessels or other equipment intended for salvage operations;
- 10) the state of readiness and efficiency of the salvor's equipment and the value thereof.

The provisions of paragraph 2. of this article shall also apply to the modification of the contract of salvage, in accordance with the article 810(a), with regard to the amount of the reward.

#### Article 811(a)

The reward, exclusive of any interest and recoverable legal costs, shall not exceed the salvaged value of the ship and other property salvaged.

The net amount of the reward shall be the sum remaining after deduction of the costs of damage caused to the salvaging ship during the salvage operation, and the expenses incurred by the salvor through the salvage operation.

#### Article 811(b)

The crew of the salvaging ship shall be entitled to a share of the reward as determined in article 811(a).

#### Article 812

Payment of a reward shall be made by all the ship and other property interests in proportion to their respective salvaged values.

#### Article 813

If several salvors have been involved in a salvage operation without agreeing on the apportionment of the reward between them, the apportionment shall be determined by the court, on the basis of the criteria contained in article 811.

#### Article 814

The court may deprive the salvors of the whole or of part of the payment due for salvaging operation, if they have by their fault rendered the salvage operation necessary, or have been guilty of theft, embezzlement or fraud during the salvage operations.

#### Article 815

A salvor who has started the salvage of a ship or other property notwithstanding the express and reasonable prohibition of the master, or the owner of the ship, shall not be entitled to a reward.

#### Article 816

If the salvaging operation of the ship or other property has been conducted on the basis of a contract of salvage concluded by the master of a ship in danger, the person liable for payment shall be the ship-owner, unless the contract stipulates otherwise.

If a contract of salvage has been entered into, the owner of the cargo salvaged or the person entitled to its disposal shall be jointly and severally liable with the person liable to pay the reward for salvage of the ship for the share of the reward that relates to the cargo salvaged.

#### Article 817

Upon the request of the salvor, a person liable for payment of the reward shall provide satisfactory security for the claim, including interest and costs of the salvor.

Without prejudice to paragraph 1 the owner of the salvaged ship shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them, including interest and costs of the salvor.

The salvaged ship and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations, until satisfactory security has been put up for the salvor's claim against the relevant ship or property.

#### Article 818

The salvor may not, without the consent of the crew of the salvaging ship, waive the share of the reward that is due to the crew.

#### Article 819

The provisions of this section relating to the reward shall also apply to salvage operations involving the ships of the same ship-owner.

#### Article 820

The limitation period for actions relating to the payment of the reward shall be two years, commencing on the day on which the salvage operations are completed.

### **3. Special Compensation**

#### Article 821

The salvor who has carried out salvage operations in respect of a ship which, by itself or its cargo, threatened damage to the marine environment, but has failed to earn a reward in accordance with article 809, shall be entitled to special compensation from the ship-owner.

The total special compensation under this article shall be paid only if, and to the extent that, such compensation is greater than any reward recoverable by the salvor under article 811(a).

If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole, or of the part, of the special compensation due under this article.

#### Article 821(a)

The amount of special compensation shall be assessed as equivalent to the salvor's expenses reasonably incurred in the salvage operation and to a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 811.

If the salvor, by his salvage operations, has prevented or minimized damage to the marine environment, the special compensation payable by the ship-owner under article 821, may be increased up to a maximum of 30% of the expenses incurred by the salvor.

The court may, on the basis of the criteria set out in article 811, increase the special compensation further, but not more than 100% of the expenses incurred by the salvor.

Article 821(b)

The provisions of article 821 and 821(a) shall not affect any right of recourse on the part of the ship-owner.

**[The above provisions shall replace the existing provisions of Section 2.]**



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## EXPLANATORY NOTE

The changes which occurred in the global economy inevitably reflected on maritime transport. Growth in the number of vessels, escalation in the size of ships and the use of specialized vessels, required both legal regimes and the salvage industry to follow.

The protection of the environment, as one of the main concerns of today's world, seems to have become especially important within the maritime context, due to the massive increase in the carriage by sea of substances which could endanger the marine environment.

The response of the international community to the above mentioned situation was, regrettably, accelerated through the occurrence of a substantial number of maritime casualties. The 1989 Salvage Convention is part of that response.

It is obvious that the main features of the Convention are the rules concerning the prevention of damage to the environment, and they certainly are its most important achievement.

Although Yugoslavia ratified the main conventions relating to environmental protection (International Convention for the Prevention of the Pollution of the Sea by Oil – OILPOL, 1954, International Convention on Civil Liability for Oil Pollution Damage-CLC, 1969, MARPOL with all of its annexes), the importance of the rules contained in the 1989 Salvage Convention cannot be overemphasized. Yugoslavia itself fell victim of one of the above mentioned casualties, when in 1984 the “Brigita Montanari”, carrying 1300 tons of vinyl-chloride monomer (VCM), a liquid gas with long-term carcinogenic effects, sank 15 km offshore in Yugoslavian waters at a depth of 80 meters. In 1987 the gas was still present in the water and air around the wreck and the salvage operations were completed in 1988. In this, as in some other cases where ships had to be salvaged to

protect the environment, the government was left to pay without much hope to recover the costs, which were extremely high.

It is therefore understandable that in salvage operations in such cases, which not only require skill, resources and a substantial degree of preparedness, but carry health and life hazards for participants, the salvors have to be adequately motivated if they are to undertake such operations. The 1910 Convention did not provide for such remuneration in its exclusive concept of “no cure – no pay”.

The need for changes within Yugoslav Law in accordance with the provisions of the 1989 Convention relating to “special compensation” are further emphasized by the orientation of Monte Negro, as a coastal part of Yugoslavia, to build the image of an “ecological state”.

The other changes brought by the 1989 Convention are also of importance for Yugoslavia, despite the unfortunate circumstances of the last decade, in order to maintain achievements of the former quite active approach towards positive developments brought by international conventions. Bearing in mind that Yugoslavia belongs to a group of states in transition, several solutions of the 1989 Convention should inevitably be incorporated in the Law, namely:

- Article 6. (2) – which gives the right to the master to conclude contracts for salvage operations on behalf of the ship-owner or the owner of property on board the ship;
- Article 9. – emphasizing the right of the coastal State to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution;

- Article 13. (1) (b) – which contains a new criterion for fixing the reward: “the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- Article 13.(2) – providing for all property interests to participate in payment of the reward in proportion to their respective values;
- Article 21. – establishing the duty to provide security for the payment of the reward, on the side of both the ship-owner and the owner of the cargo, with the additional right to retain possession of the salvaged property until security is paid.

Provisions on salvage within the existing Law on Maritime and Inland Navigation of Federal Republic of Yugoslavia, although being relatively new (the Law entered into force in March 1998), are based on the 1910 Salvage Convention. However, most of its other provisions support contemporary solutions of the international community in respect to maritime issues.

Therefore, adjusting salvage to the 1989 Convention should contribute to having a comprehensive, contemporary code, and at the same time ensuring that salvage operations in Yugoslav waters will be carried out successfully, preventing, or at least minimizing, the damage to the environment, and contributing to the rescue of people and property from dangers related to maritime casualties.