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A Bill for the Implementation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004

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

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FORWARD

I'm the parliamentary draftsman
I compose the country's laws,
And of half the litigation
I'm undoubtedly the cause ...
I'm the parliamentary draftsman,
And they tell me it's a fact
That I often make a muddle
Of a simple little Act….

An Extract of J.P.C., "The Parliamentary Draftsman",
Poetic Justice (London: Stevens & Sons Ltd., 1947), pages 31-32

My late teacher in 'Legal Interpretation', who was the former Legal Draftsman and one of the finest draftsmen of his generation, gave this poem to me in year 2000 when I entered the Sri Lanka Law College. Over the years, I must confess, very humbly, the more I read it, the more it becomes a mirror!

Drafting a piece of legislation is an endlessly painful task, even for a mock task like this. It is not like writing an article on one or several legal points. Draftsmen has to envisage million or zillion different arguments against his intention being defeated by the present generation and those who are yet born. An article can be written even on one section of the legislation. Imagine drafting many sections to be put into use by a country and tested in court every day and many days to come!

This is the first time I had the occasion to draft a legislation of such comprehensive character. Whether it will be accepted by my country, I remain passionately, but cautiously, optimistic. I thank Justice Ratnayeke, former Judge of the Supreme Court and IMLI alumini, in advising me to select the correct structure for the Act; where an principal offence is created with exceptions and exemptions along with reporting requirements, which forms the 'holy trinity' of this Act.

On the Bill, I owe debt of gratitude for the following persons who shared their expertise.

Mr. Ajith Seneviratne, Director General of Merchant Shipping who was happy to skype with my for many long hours into late night to see that I turned out successful draft so that it can be made use of by the Lankans, Dr. Renuka Perera for the Marine Pollution Prevention Authority for incisive analysis on many provisions of the Bill, and also Dr. Hewawasam, Prof. Dr. Wimal Kulatunge, Dr. Hewawasam, Dr. H. Radika, Dr. Malaka, Prof. Madhanayeke.

Not forgetting the Hon. Solicitor General Mr. S. Gamlath for his overall support and encouragement, and former Attorney General Mr. Palitha Fernando, a fatherly figure to me, to whom this Draft is dedicated.

The Regulations on Reception Facilities was also a trying task. For this I thank, Dr. Harith Ukwatte, Marine Engineering Moratuwa University, Dr. Malika Gunesekara, Dr. W.R J. Peiris, Dr. Sriaya and Capt. Aluvihare.

And finally, and more personally, I got rid of the boredom of intense drafting by listening to the old song "Hungry Eyes" by the American artist Eric Carmen in the old film Dirty Dancing.

When drafting the more I learn my limitations, and more I admire those scared figures like Macaulay, Stevens, Chalmers, where I was told by my seniors to follow.

I thank the IMLI academic staff, Dr Martinez, Ms Belja – my supervisor who constantly advised me, Mr. Hamza, Ms. Jalloh – my reviewer. Also, I must thank Judge Attard for his dedication towards us.

Thank you very much Mrs. Vera Cole, our librarian, for her the help and kindness. And I must also thank the Nippon Foundation for the funding provided to complete this course. At last, for those examiners who are tiringly going through this Bill, I hope that I have not made a '*muddle of simple Act*'.

Nuwan Peiris
IMLI
01.05.2015

THE EXPLANATORY NOTE

A Bill for the Implementation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments
For
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Contents

1. Sri Lankan National Policy on Ocean Governance on Marine Pollution

Sri Lanka always considers its marine environment an integral part of the natural and cultural heritage of Sri Lanka and that of the planet, especially with its vital diversity of marine and estuarine animals, plants and communities, which are critical components of self-sustaining systems of national, regional and international significance. For this reason, for the last fifty years or so, Sri Lanka has been proactive in many areas relating to marine pollution. Sri Lanka contributed to the success of the Third Law of the Sea Conference, and played an instrumental role in the development of the aspects relating to marine protection. Simultaneously, Sri Lanka carried-out domestic law reforms and strengthened its institutional capability to protect its marine environment, which it considered to be part of its 'natural and cultural heritage' in ocean governance.

Sri Lanka realized that if it continues to live unsustainably, it risks the degeneration of the marine ecological systems that support our life and our nation's productivity. Sri Lanka also risk eroding the legacy to be left for the future generations.[1] Collectively, Sri Lanka began to emphasize the civic responsibility to help sustain its oceans.[2] Conserving biodiversity is central to living sustainably. Resultantly, Sri Lanka has begun to implement new initiatives in ocean governance with an aim to protect the marine environment specifically addressed to meet these new challenges. Such initiatives include protecting and restoring its exquisite oceans with a range of strategies including ecosystem-based approaches, integrated coastal management and expanding marine protected areas.[3] A range of effective tools have been piloted, such as, strict no fishing zones, elimination of fishing subsidies in some areas, and improved nutrient management in river basins feeding coastal zones.

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[1] *See generally;* Lelieveld, J. others, P. J. Crutzen, V. Ramanathan, M. O. Andreae, C. A. M. Brenninkmeijer, T. Campos, G. R. Cass et al. "The Indian Ocean experiment: widespread air pollution from South and Southeast Asia." Science 291, no. 5506 (2001): 1031-1036;

[2] *See generally;* Pernetta, John, ed. Marine Protected Area Needs in the South Asian Seas Region: Sri Lanka. Vol. 5. Iucn, 1993; Rajasuriya, Arjan, et al. "Status of coral reefs in South Asia: Bangladesh, India, Maldives, Sri Lanka." Proceedings of the Ninth International Coral Reef Symposium, Bali, 23-27 October 2000,. Vol. 2. 2002.

[3] *See generally;* Arin, Tijen, and Randall A. Kramer. "Divers' willingness to pay to visit marine sanctuaries: an exploratory study." Ocean & Coastal Management 45, no. 2 (2002): 171-183.

Ocean governance through marine environment protection meets an important international obligation under the 1993 Convention on Biological Diversity (CBD)[4] – especially the Jakarta Mandate. Sri Lanka has always used CBD as an umbrella framework to formulate its national policies on marine environment protection. This is done while keeping Sri Lanka's commitment to the 1982 United Nations Convention on the Law of the Sea (UNCLOS),[5] also called 'constitution of the oceans'.

2. Aquatic Invasive Species – A Challenge to Marine Protection and Ocean Governance

One such challenge, in the recent past is the aquatic invasive species carried in ballast water in the marine environment.[6] Is there any marine pollution risk posed by the aquatic invasive species in the marine environment? To answer this question, we need to answer the following questions.

2.1 What are aquatic invasive species?

Aquatic invasive species are plants and animals, or organisms, which evolve in one marine ecosystem and are introduced through a variety of means into another ecosystem. Such species have always used the oceans to move about the globe. According to scientists, they swim or hitch a ride on a log, leaf, or coconut, and have found new worlds in which to thrive and grow. Till recently, this process has been a natural phenomena and moderated by nature limited by the currents and the winds.

Since men began to sail the seas these organism got carried through ships' ballast water and their stowaways have had ever expanding means for dispersing themselves both faster and farther. The outcome is an increasing number of marine ecosystems, principally near shorelines, that are being compromised or wiped out by non-native species. Such marine invasive species flourish usually because their new habitat lacks natural predators to

[4] 1760 UNTS 79; 31 ILM 818 (1992).
[5] United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 United Nations Treaty. Series 396 (entered into force Nov. 16, 1994
[6] *See*, 'Accidental introduction of alien plankton into the Sri Lankan coastal zone through ballast water of cargo ships', Sri Lanka Journal of Aquatic Sciences, 14: 87-103.

control their population. Invasive species cause damage mainly by consuming native species, competing with them for food or space, or introducing disease.[7]

2.2 What is Ballast Water in a Ship?

Ballast is material which is used to give stability to a vehicle or a structure.[8] Ballast, other than cargo, may be placed in a ship (even in a balloon or an airship) to provide stability. The traditional ballast may take many forms depending on the type of water craft. The simplest type of ballast used in small boats is so-called 'live ballast', in other words, the weight of the crew. By sitting on the windward side of the hull, the heeling moment must lift the weight of the crew. However, on larger ships, the keel of the ship is constructed or filled with a high density material, such as concrete, iron, or lead. By providing the weight as low as possible (often in a large bulb at the bottom of the keel) the maximum righting moment can be extracted from the given mass. Hence, the traditional forms of ballast carried inside the hull were stones or sand. There are disadvantages to using high-density ballast like the increased mass of the ship increases the drag, and therefore less responsive to steering. But the times have now changed.

The modern method and the commonest type for vessels is to use sea water as ballast. This avoids many of the problems of high density ballast. The benefit of water ballast is that the tanks can be emptied, reduced or redistributed when she is cargo laden to maintain stability. This gives flexibility. Once the ship is empty, water is taken as ballast to increase propeller immersion, to improve steering, and to control trim and draft.[9] Also water as ballast reduces stress on the hull, and provides transverse stability.[10]

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[7] *See Generally*. Poff, N. L., M. M. Brinson, and J.W. Day Jr. 2002; 'Aquatic ecosystems & global climate change: potential impacts on inland freshwater and coastal wetland ecosystems in the United States. Pew Center on Global Climate Change,' Arlington, Virginia.

[8] *See Generally.,* Chapters 2 and 3, "Introduction to Naval Architecture: Formerly Muckle's Naval Architecture for Marine Engineers", E. C. Tupper, 2nd Edition; Quilez-Badia, Gemma, Tracy McCollin, Kjell D. Josefsen, Anthony Vourdachas, Margaret E. Gill, Ehsan Mesbahi, and Chris LJ Frid. "On board short-time high temperature heat treatment of ballast water: A field trial under operational conditions." Marine pollution bulletin 56, no. 1 (2008): 127-135.

[9] *Ibid. See also;* Hallegraeff, Gustaaf M. "Transport of toxic dinoflagellates via ships' ballast water: bioeconomic risk assessment and efficacy of possible ballast water management strategies." Marine Ecology Progress Series 168, no. 297-309 (1998): 10-53.

[10] *Ibid. See also;* Rigby, Geoff, and Gustaaf Hallegraeff. "The transfer and control of harmful marine organisms in shipping ballast water: behaviour of marine plankton and ballast water exchange trials on the MV Iron Whyalla." Journal of Marine Environmental Engineering 1, no. 2 (1994): 91-110.

2.3 Ballast Water and Sediment discharge and Shipping Industry?

Currently, the method commonly used for controlling the introduction of invasive aquatic marine species in ships' ballast water is the exchange of ballast water mid-ocean.[11] The view is that coastal aquatic organisms released at high sea are unlikely to survive there, and vice versa. Moreover, organism densities are significantly lower in the high seas. However, such an exchange is not always easy to perform. The safety critical significant wave height for open sea exchange is about three meters. An average ballast voyage by vessels engaged in seaborne trade is seven days, of which five are spent on the high seas.[12] Depending on the ballast water exchange method used, the exchange may take up to two days when larger ships are concerned.[13]

Most ships (around 75%) use sequential exchange of ballast water. The method called continuous flushing method is often a safer option, but it also considerably increases the exchange time and costs.[14] The calculations on the prospect of performing ballast water exchange under the three metre-wave height standard and five days reflect that of ships which need one day for ballast water exchange, 7% will not be able to perform open sea exchange in practice. That means that 93% of such ship are able to do the above. If a ship needs two days for the exchange, the chance of being able to exchange ballast water reduces to only 70%, leaving 30% of these ships not capable of performing exchange. Variations in seasonal traffic, geography and weather surroundings further impact the possibilities.[15]

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[11] *See generally;* Endresen, Øyvind, Hanna Lee Behrens, Sigrid Brynestad, Aage Bjørn Andersen, and Rolf Skjong. "Challenges in global ballast water management." Marine Pollution Bulletin 48, no. 7 (2004): 615-623.

[12] *See generally;* Champ, M.A. 2002. Marine testing board for certification of ballast water treating technologies.
Marine Poll. Bull. 44, pp. 1327-1335; Hallegraeff, Gustaaf M., et al. "Temperature tolerances of toxic dinoflagellate cysts: application to the treatment of ships' ballast water." Aquatic Ecology 31.1 (1997): 47-52; Padilla, Dianna K., and Susan L. Williams. "Beyond ballast water: aquarium and ornamental trades as sources of invasive species in aquatic ecosystems." Frontiers in Ecology and the Environment 2, no. 3 (2004): 131-138.

[13] *See generally;* David, Matej, and Stephan Gollasch. "EU shipping in the dawn of managing the ballast water issue." Marine Pollution Bulletin 56, no. 12 (2008): 1966-1972.

[14] *See generally;* Anil, A.C., Venkat, K., Sawant, S.S., Dileepkumar, M., Dhargalkar, V.K., Ramaiah, N., Harkantra, S.N. & Ansari, Z.A., 2002. Marine bioinvasion: Concern for ecology and shipping. Current Science, 83, pp. 214-218.

[15] *See generally;* Ruiz G.M., Rawlings T.K., Dobbs F.C., Drake L.A., Mullady T., Huq A. & Colwell R.R. 2000; Gupta, R. Sen, and Tariq W. Kureishy. "Present state of oil pollution in the northern Indian Ocean." Marine Pollution Bulletin 12, no. 9 (1981): 295-301; Global spread of microorganisms by ships - Ballast water discharged from vessels harbours a cocktail of potential pathogens. Nature 408, pp. 49-50; Sheppard,

2.4 Is it harmful to the environment to discharge ballast water?

The US General Accounting Office in 2003 has identified biological invasions as one of the greatest environmental threats of the 21st Century.[16] The problem of aquatic invasive species, including the transfer of harmful organisms in ships' ballast water, is considered to be one of the paramount threats to world marine bio-diversity and ecosystems; and current researches also state that there is a significant threat to coastal economies and even to public health. US General Accounting Office observed,

> *Invasive species–nonnative plants and animals–have caused billions of dollars in damage to natural areas, businesses, and consumers. In 2001, the federal government issued a National Management Plan to coordinate a national control effort involving the 20 or so federal agencies that are responsible for managing invasive species. In October 2002, GAO reported on the implementation of the management plan and efforts to manage ballast water, among other things.*[17]

The proportions of this problem should never be underestimated since global economiy impacts from invasive aquatic species, including the disruption of fisheries, fouling of coastal industry and infrastructure and interference with human amenity, are assessed to exceed tens of billions of Euros per year.

The gravity of this problem was stated in very clear terms by the United Nations Environment Programme (UNEP) and World Conservation Union (IUCN) reported at the World Summit on Sustainable Development 2002 that the invasive species are the *second greatest* threat to global bio-diversity after habitat loss.[18] It was observed that the threat is set to increase in coming years with a three-fold increase in shipping activity. Developing

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Charles RC, et al. "Reefs and islands of the Chagos Archipelago, Indian Ocean: why it is the world's largest no-take marine protected area." Aquatic conservation: marine and freshwater ecosystems 22.2 (2012): 232-261.

[16] *See*; Firestone, Jeremy, and James J. Corbett. "Coastal and port environments: international legal and policy responses to reduce ballast water introductions of potentially invasive species." *Ocean Development & International Law* 36, no. 3 (2005): 291-316; Taylor, Alan, Geoff Rigby, Stephan Gollasch, Matthias Voigt, Gustaaf Hallegraeff, Tracy McCollin, and Anders Jelmert. "Preventive treatment and control techniques for ballast water." In Invasive Aquatic Species of Europe. Distribution, Impacts and Management, pp. 484-507. Springer Netherlands, 2002.

[17] Invasive Species: Clearer Focus and Greater Commitment Needed to Effectively Manage the Problem [Oct. 2002, GAO-03-1]

[18] *See generally;* Gray, Derek K., Thomas H. Johengen, David F. Reid, and Hugh J. MacIsaac. "Efficacy of open-ocean ballast water exchange as a means of preventing invertebrate invasions between freshwater ports." Limnology and Oceanography 52, no. 6 (2007): 2386-2397.

countries in Africa, Asia and South America, as well as Small Island Developing States, are at particular risk, given the expansion of their economies, ports and shipping routes.[19] Sri Lanka, given its strategic location in the Indian Ocean for shipping, may require marine pollution legislation to address such problems.[20] Given the significant impacts, both present and future, of the need to have new ballast water management and treatment technologies represents a critical commitment if it is to meet the ocean sustainability challenge.[21]

3. The Necessity to have a Law to address Ballast Water Discharge

Leading researches carried out by Sri Lankan Government Institutions such as Marine Environment Protection Authority on this threat have found out the presence of aquatic invasive species in Sri Lankan ports, coasts and ships visiting Sri Lanka.[22] It seems that Sri Lanka needs to equip itself with ballast water treatment facilities, and provide an effective legal framework.[23] It is observed hence that an effective legal framework will help coordinate many matters locally, regionally and internationally.[24] It will provide the basic

[19] *See generally;* Jayasuriya, Sisira, and Dushni Weerakoon. "India-Sri Lanka Trade and Investment Links." India and Economic Cooperation in South Asia, Indian Council for Research on International Economic Relations, New Delhi (2001); Rathnayake, Jayantha, and A. W. Wijeratne. "Second container port in Sri Lanka; Hambanthota or Trincomalee: an analysis using the game theory." International Journal of Logistics Systems and Management 13.3 (2012): 358-378.

[20] *See generally;* Flagella, Maria Monia, Marc Verlaque, Alessio Soria, and Maria Cristina Buia. "Macroalgal survival in ballast water tanks." Marine pollution bulletin 54, no. 9 (2007): 1395-1401.

[21] *See generally;* Glasby, G. P., and G. S. Roonwal. "Marine pollution in India: an emerging problem." Current Science 68, no. 5 (1995): 495-497; Zingde, M. D. "Marine pollution-What are we heading for?." Ocean science (1999); Dobbs, Fred C., and Andrew Rogerson. "Ridding ships' ballast water of microorganisms." Environmental science & technology 39, no. 12 (2005): 259A-264A.

[22] *See generally;* Rathnayake, Jayantha, and A. W. Wijeratne, 'Accidental introduction of alien plankton into the Sri Lankan coastal zone through ballast water of cargo ships', Sri Lanka Journal of Aquatic Sciences, 14: 87-103.

[23] *See generally;* Gollasch, Stephan, Jürgen Lenz, Mark Dammer, and Hans-Georg Andres. "Survival of tropical ballast water organisms during a cruise from the Indian Ocean to the North Sea." Journal of Plankton Research 22, no. 5 (2000): 923-937; Guruge, K. S., and S. Tanabe. "Contamination by persistent organochlorines and butyltin compounds in the west coast of Sri Lanka." Marine Pollution Bulletin 42, no. 3 (2001): 179-186.

[24] *See generally;*, Lelieveld, J. others, P. J. Crutzen, V. Ramanathan, M. O. Andreae, C. A. M. Brenninkmeijer, T. Campos, G. R. Cass et al. "The Indian Ocean experiment: widespread air pollution from South and Southeast Asia." Science 291, no. 5506 (2001): 1031-1036; Gupta, R. Sen, and Tariq W. Kureishy. "Present state of oil pollution in the northern Indian Ocean." Marine Pollution Bulletin 12, no. 9 (1981): 295-301; Gollasch, S., Harald Rosenthal, H. Botnen, J. Hamer, I. Laing, E. Leppäkoski, E. Macdonald et al. "Fluctuations of Zooplankton Taxa in Ballast Waterduring Short-Term and Long-Term Ocean-Going Voyages." International Review of Hydrobiology 85, no. 5-6 (2000): 597-608.

structure to help Sri Lanka to effectively utilize its ballast water treatment facilities in harmony with the associated interests of ships, flag States and other port States.

3.1. Is there a feasible international legal model that Sri Lanka can adopt?

The International Maritime Organization (IMO) has responded to the ballast water 'risk' by developing a new international legal instrument on ballast water management called the *International Convention for the Control and Management of Ships' Ballast Water and Sediments*, (hereinafter referred to as the BWM Convention), which was adopted by IMO member States in February 2004.[25] This Convention provides flexible possibilities and develop on the complimentary roles of coastal, port and flag States in protecting the marine environment which the States are obligated under Part XII of the UNCLOS.

In summary, the BWM Convention provides global performance standards for ballast water and sediments management. The Convention requires phased implementation of its standards to replace ballast water exchange (D-1 Performance Standard) with ballast water treatment (D-2 Performance Standard) as suitable technologies become available. All ships will have to implement a Ballast Water and Sediments Management Plan (Regulation B-1), and have a Ballast Water Record Book (Regulation B-2). The same requirements apply to existing ships, after a phase-in period. However, the standards of the BWM Convention have been described as a 'minimum standard' and thus necessitating further development.[26] This is provided for in the Convention where Article 2(3) provides States to take 'more stringent measures' if necessary to protect the environment. The Convention establishes a

[25] *See*; Gollasch, Stephan, Matej David, Matthias Voigt, Egil Dragsund, Chad Hewitt, and Yasuwo Fukuyo. "Critical review of the IMO international convention on the management of ships' ballast water and sediments." Harmful algae 6, no. 4 (2007): 585-600; Hewitt, Chad L., Stephan Gollasch, and Dan Minchin. "The vessel as a vector–biofouling, ballast water and sediments." In Biological invasions in marine ecosystems, pp. 117-131. Springer Berlin Heidelberg, 2009; Mackey, Thomas P., Robert D. Tagg, and Michael G. Parsons. "Technologies for ballast water management." In 8th ICMES/SNAME New York metropolitan section symposium in New York, May, pp. 22-23. 2000.

[26] *See*; Tsimplis, Michael. "Alien species stay home: the International Convention for the control and management of ships' ballast water and sediments 2004." The International Journal of Marine and Coastal Law 19, no. 4 (2004): 411-482. *See also*; de Souza Rolim, Maria Helena Fonseca, Erkki Leppäkoski, and Gaetano Librando. The international law on ballast water: preventing biopollution. Vol. 63. Martinus Nijhoff, 2008; Bowmer, Tim, and Jan Linders. "A summary of findings from the first 25 ballast water treatment systems evaluated by GESAMP." WMU Journal of Maritime Affairs 9, no. 2 (2010): 223-230.

review process for assessing whether its standards are achievable and if more progress could be made.

4. What are the salient features of the Convention?

The Convention is divided into Articles and an Annex which forms part of the said Convention. The latter includes technical standards and requirements in the *Regulations for the control and management of ships' ballast water and sediments.* The main features of the Convention are explained below.[27]

4.1 Preamble

The Preamble to the Convention refers to the 1992 United Nations Conference on Environment and Development (UNCED) and its request that IMO develops rules on ballast water discharge. Further, it notes the need for a precautionary approach called for by Principle 15 of the "Rio Declaration on Environment and Development"; States' obligations under UNCLOS to prevent the spread of alien species;[28] and the conservation and sustainable use of marine biodiversity obligations under the "Convention on Biological Diversity"[29] regime.

Reference is further made to the 2002 World Summit on Sustainable Development (WSSD), which in paragraph 34(b) of its Plan of Implementation, calls for action at all levels to accelerate the development of measures to address invasive alien species in ballast water. This Preamble also achieves the IMO's objective of ship safety, cleaner seas and provides for internationally agreed standards for harmonization and cooperation. The Preamble also clearly reiterates the sustainable development agenda and integrated management practices advocated at UNCED and WSSD, reflecting the increasing

[27] *See generally;* Ming-sheng, L. I. A. O. "Brief Introduction of the International Convention for the Control and Management of Ship's Ballast Water and Sediments Newly Adopted by IMO." Environmental Protection In Transportation 5 (2004): 017.
[28] Art.196 of the UNCLOS
[29] [1993] ATS 32 / 1760 UNTS 79 / 31 *ILM* 818 (1992).

integration of activities and synergy within, rather than fragmentation of, the various United Nations agencies.[30]

4.2 General Obligations of the Convention

Article 2 which deals with the "General Obligations": requires Parties to undertake comprehensive actions in order to prevent, reduce and if possible eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments. States are given the right to take, individually or in cooperation with other Parties, more stringent measures in order to control alien species discharge where Annex Section C "Additional measures" are contained in this regard. This obligation is extended to the flag States under Article 4.

4.3 Other features of the Convention

a. Reception facilities

Article 5 on *Sediment Reception Facilities,* ensures that ports and terminals where cleaning or repair of ballast tanks are done have adequate reception facilities for the reception of sediments.

b. Research and monitoring

Article 6 *Scientific and Technical Research and Monitoring* requests for Parties individually or jointly to promote and facilitate scientific and technical research on ballast water management; and monitor the effects of ballast water management in waters within their jurisdiction.

c. Survey and certification

Ships are required to be surveyed and certified (Article 7: *Survey and certification*) and will also be inspected by port State control officers (Article 9: *Inspection of Ships*) who is

[30] *See generally*; Tsolaki, Efi, and Evan Diamadopoulos. "Technologies for ballast water treatment: a review." Journal of Chemical Technology and Biotechnology 85, no. 1 (2010): 19-32; Barry, Simon C., Keith R. Hayes, Chad L. Hewitt, Hanna L. Behrens, Egil Dragsund, and Siri M. Bakke. "Ballast water risk assessment: principles, processes, and methods." ICES Journal of Marine Science: Journal du Conseil 65, no. 2 (2008): 121-131.

authorized to verify that the ship has a valid certificate, inspect the Ballast Water Record Book, and/or sample the ballast water.

d. Inspection, Detection and Notification

Articles 9, 10 and 11 of the BWM Convention covers the above aspects. If there are concerns, a detailed inspection may be carried out and "the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources." (Regulation E-1/9) However, all efforts shall be made to avoid a ship being unduly detained or delayed (Article 12: *Undue Delay to Ships).* In the inspection, a foreign ship which is required to hold Certificate, and which is in a port or an offshore terminal under the jurisdiction of the port State, any such inspection should be limited to verifying that there is on board a valid certificate and other applicable documentation and the port State forming a view of the entire condition of the ship, its equipment and its crew, unless there are 'clear grounds' for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate.

If the ship does not carry valid certificates or the port State control officer from general observations on board, has clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificates or the Convention, or that the master or designated crew is not familiar with, or have not implemented essential shipboard procedures, a more detailed inspection should be carried out. Where a more ***detailed inspection*** is to be carried out, the port State will take such steps to ensure the ship will not discharge ballast water until it can do so in accordance with Article 9(3).

A PSCO (Port Sate Control Officer) is permitted to first carry out an indicative analysis. However, the time required to conduct the indicative analysis should not unduly delay the operations, movement or leaving of the ship. If the result of indicative analysis for the D-2 standard exceeds the D-2 standard by a threshold specific to the validated indicative analysis method being used as set out in the Guidance on ballast water sampling and analysis for trial use in accord with the Convention and Guidelines (G2) [(BWM.2/Circ.42)1], a detailed examination can be carried out.

In the event of a violation being detected as per Article 10, "… the Party whose flag the ship is entitled to fly, and/or the Party in whose port or offshore terminal the ship is operating, may – in addition to any sanctions described in Article 8 or any action described in Article 9. The port State may take steps to warn, detain or exclude the ship. The port State, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging ballast water or proceeding to the nearest appropriate repair yard or reception facility available, provided that in doing so it does not present a threat of harm to the environment, human health, property or resources. In essence, the ship should have evidence that the ballast water management system is type approved and has been maintained and operated in accordance with the ships' Ballast Water Management Plan.

Port State authorities should ensure that, at the completion of an inspection, the master of the ship is provided with a document showing the results of the inspection, details of any action taken by the PSCO and a list of any corrective action to be initiated by the master and/or company. Such reports should be made in accordance with the format in appendix 13 of the Procedures for port State Control (*vide* resolution A.1052(27), paragraph 4.1.1). If a ship has been inspected as a result of a request for investigation from another State, the inspection report should be sent to the requesting State and the flag State (Article 10(4)).

The port State should inform, in writing, the flag State of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship, of all the circumstances in which the action was deemed necessary. In addition, the recognized organization responsible for the issue of certificates should be notified (Article 11(2)). In the event that the PSCO is unable to take the intended action, or if the ship has been allowed to proceed to the next port of call, the authorities of the port State should communicate all the facts to the authorities of the country of the next appropriate port of call, to the flag State, and to the recognized organization, where appropriate (Article 11.3; resolution A.1052(27), paragraph 4.1.4).

Where, in the exercise of port State control, a Party denies a foreign ship entry to the ports or offshore terminals under its jurisdiction, whether or not as a result of information about a substandard ship, it should forthwith provide the master and flag State with reasons for the denial of entry (resolution A.1052(27), paragraph 4.1.2). In the case of a detention, at least an initial notification should be made to the flag State as soon as practicable. If such

notification is made verbally, it should subsequently be confirmed in writing. At least, the notification should include details of the ship's name, the IMO number, copies of Forms A and B as set out in appendix 13 of the Procedures for port State Control, time of detention and copies of any detention order. Similarly, the recognized organizations which have issued the relevant certificates on behalf of the flag State should be notified, where necessary. The parties above should also be notified in writing of the release of detention. In this regard, this information should include the ship's name, the IMO number, the date and time of release and a copy of Form B as set out in appendix 13 of the Procedures for Port State Control (resolution A.1052(27), paragraph 4.1.3).

e. Technical assistance

Article 13, *Technical Assistance, Co-operation and Regional Co-operation*, requires parties to undertake, directly or through the Organization and other international bodies, as suitable, in respect of the control and management of ships' ballast water and sediments, to give support for those Parties which request technical assistance to train personnel, to warrant the availability of relevant technology, equipment and facilities, to initiate joint research and development programmes, and to undertake other process aimed at the effective implementation of this Convention and of guidance developed by the Organization.

f. Annex – Section A: General Provisions

It is observed that the Convention lays down the main obligations while the Annexes lays down the specific application of such provisions. This includes definitions, application and exemptions. Under Regulation A-2 General Applicability; “Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management, in accordance with the provisions of this Annex.”

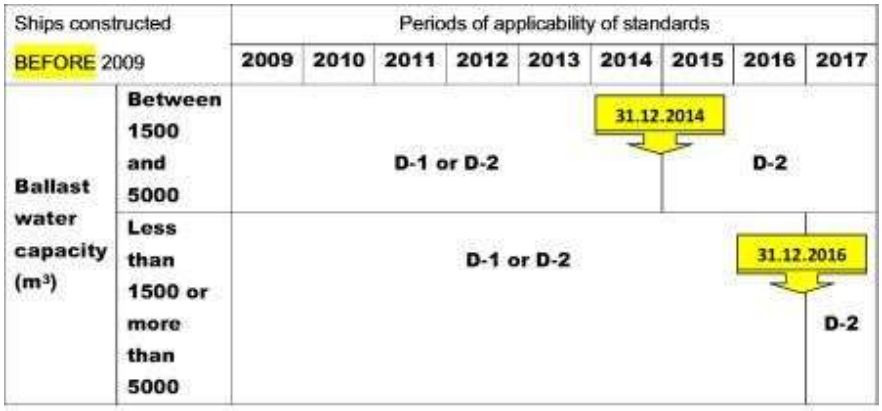
g. Annex – Section B: Management and Control Requirements for Ships

Ships are required to have on board and implement a Ballast Water Management Plan approved by the Administration as per Regulation B-1. The Ballast Water Management

Plan is specific to each ship and includes a meticulous description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices. Ships must have a Ballast Water Record Book (Regulation B-2) to record when ballast water is taken on board; circulated or treated for Ballast Water Management purposes; and discharged into the sea. It should also record when Ballast Water is discharged to a reception facility and accidental or other exceptional discharges of Ballast Water.

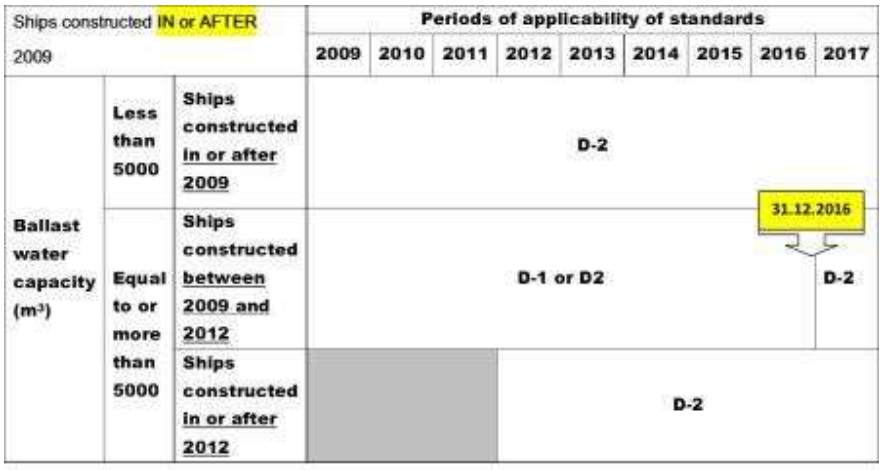
The specific requirements for ballast water management are contained in regulation B-3 *Ballast Water Management for Ships:*

- Ships constructed before 2009 with a ballast water capacity of between 1500 and 5000 cubic metres must conduct ballast water management that at least meet the ballast water exchange standards or the ballast water performance standards until 2014, after which time it shall at least meet the ballast water performance standard.
- Ships constructed before 2009 with a ballast water capacity of less than 1500 or greater than 5000 cubic metres must conduct ballast water management that at least meets the ballast water exchange standards or the ballast water performance standards until 2016, after which time it shall at least meet the ballast water performance standard



(See the Above Table: http://globallast.imo.org/index.asp?page=mepc.htm)

- Ships constructed in or after 2009 with a ballast water capacity of less than 5000 cubic metres must conduct ballast water management that at least meets the ballast water performance standard.
- Ships constructed in or after 2009 but before 2012, with a ballast water capacity of 5000 cubic metres or more shall conduct ballast water management that at least meets the ballast water performance standard.
- Ships constructed in or after 2012, with a ballast water capacity of 5000 cubic metres or more shall conduct ballast water management that at least meets the ballast water performance standard.



(See the above Table: http://globallast.imo.org/index.asp?page=mepc.htm)

Given the uncertainties on the immediate availability of ballast water treatment technology to ships to which regulation B-.3.3 would first apply, i.e. ships constructed in 2009, the IMO Assembly adopted, on 29 November 2007, Resolution A.1005 (25) which was revoked by Res.A.1088(28).

Comparative table between IMO BWM B-3 and Res.A.1088(28)

B-3/ A.1088	Keel laying	ballast water capacity m^3	2013	2014	2015	2016	2017~ 2021
Ships constructed(K/L) before 2009							

B-3.1.2	before 2009	< 1,500㎥			D-2*1
A.1088					D-2*2

B-3.1.1	before 2009	1,500㎥ ~ 5,000㎥			D-2*3
A.1088					D-2*4
B-3.1.2	before 2009	> 5,000㎥			D-2*1
A.1088					D-2*2
Ships constructed(K/L) on or after 2009					
B-3.3	on or after 2009	< 5,000㎥			D-2*5
A.1088					D-2*6
B-3.4	2009 ~ 2011	≥ 5,000㎥			D-2*1
A.1088					D-2*2
B-3.5	on or after 2012				D-2*5
A.1088					D-2*6

*1 : by the first BWM intermediate or renewal survey, whichever occurs first, after anniversary date of delivery of the ship in 2016

*2 : by the first IOPP renewal survey after anniversary date of delivery of the ship in 2016

*3 : by the first BWM intermediate or renewal survey, whichever occurs first, after anniversary date of delivery of the ship in 2014

*4 : by the first IOPP renewal survey after the date of entry into force of the Convention *5 : Immediately after the entry into force of the Convention

*6 : by the first IOPP renewal survey after the date of entry into force of the Convention

(See the above Table: http://www.krs.co.kr/TECHNICAL_FILE/2014-IMO-03(E).PDF)

Other methods of ballast water management may also be accepted as alternatives to the ballast water exchange standard and ballast water performance standard, as long as such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by IMO's Marine Environment Protection Committee (MEPC).

Under Regulation B-4 *Ballast Water Exchange*, all ships using ballast water exchange should:

- Whenever possible conduct ballast water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account Guidelines developed by IMO;
- Where the ship is unable to conduct ballast water exchange as above, this should be as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

If the above requirements are unable to be met specific areas may be designated where ships can conduct ballast water exchange. All ships shall remove and dispose of sediments from spaces designated to carry ballast water in accordance with the provisions of the ships' Ballast Water Management Plan (Regulation B-5).

h. Annex - Section C Additional measures

A Party, individually or jointly with other Parties, may impose on ships additional measures to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments.

In this event, the State Parties should consult with adjoining or nearby States that may be affected by such standards or requirements and should communicate their intention to establish additional measure(s) to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). When appropriate, Parties will have to obtain the approval of IMO.

i. Annex – Section D Standards for Ballast Water Management

There is a ballast water exchange standard and a ballast water performance standard.

i) Regulation D-1 *Ballast Water Exchange Standard* - Ships performing Ballast Water exchange shall do so with an efficiency of 95 per cent volumetric exchange of Ballast Water. For ships exchanging ballast water by the pumping-through method, pumping through three times the volume of each ballast water tank shall be considered to meet the standard described. Pumping through less

than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met,

ii) Regulation D-2 *Ballast Water Performance Standard* - Ships conducting ballast water management shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometers in minimum dimension and less than 10 viable organisms per milliliter less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometers in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations.

The indicator microbes, as a human health standard, include, but are not be limited to:

a. Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 milliliters or less than 1 cfu per 1 gram (wet weight) zooplankton samples;
b. *Escherichia coli* less than 250 cfu per 100 milliliters;
c. Intestinal *Enterococci* less than 100 cfu per 100 milliliters.

iii) Regulation D-3 *Approval requirements for Ballast Water Management systems* provides that Ballast Water Management systems must be approved by the Administration in accordance with IMO Guidelines (G8 *Guidelines for the approval of Ballast Water Management Systems*). These include systems which make use of chemicals or biocides; make use of organisms or biological mechanisms; or which alter the chemical or physical characteristics of the Ballast Water.

To reinforce the Type Approval requirements of the G8 Guidelines, MEPC has approved guidance on interpretation of the said Guidelines for Administrations on the procedure for evaluating an application for Type approval of a BWMS. The latest guidance is contained in BWM.2/Circ.43 (*which superseded BWM.2/Circ.28*).

To improve the transparency of the Type Approval (TA) documentation, MEPC has approved Resolution MEPC.228(65) (*which superseded Resolution MEPC.175(58)*) which lists the information to report to the Organization when approving a ballast water management system in accordance with the Guidelines for approval of ballast water management systems (G8).

j. Prototype technologies

Regulation D-4 covers *Prototype Ballast Water Treatment Technologies.* It provides for ships participating in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies to have a margin of five years before having to comply with the requirements of Regulation D-2.

k. Review of standards

Under Regulation D-5 *Review of Standards by the Organization*, IMO is required to review the Ballast Water Performance Standard, taking into account a number of criteria including safety considerations; environmental acceptability, i.e., not causing more or greater environmental impacts than it solves; practicability, i.e., compatibility with ship design and operations; cost effectiveness; and biological effectiveness in terms of removing, or otherwise rendering inactive harmful aquatic organisms and pathogens in ballast water. The review should include a determination of whether appropriate technologies are available to achieve the standard, an assessment of the above mentioned criteria, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States.

l. Annex - Section E Survey and Certification Requirements for Ballast Water Management

Provides for the requirements for initial renewal, annual, intermediate and additional surveys and certification requirements. Appendices give form of Ballast Water Management Certificate and Form of Ballast Water Record Book.

L. **Regulation E-1 Surveys**

The Convention requires vessels to undergo specific ballast water surveys that demonstrate compliance with its ballast water management approach, and confirm that the vessel corresponds to its Management Plan. Based on these surveys, an international Convention Certificate is issued, to be carried onboard the vessel.

i. Ships of 400 gross tonnage and above to which this Convention applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys where an initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Convention.

ii. Secondly, a renewal survey at intervals specified by the Administration, but not exceeding five years, except where regulation E-5.2, E-5.5, E-5.6, or E-5.7 is applicable. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of this Convention.

iii. Thirdly, an intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Annex and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

iv. Fourthly, an annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by regulation B-1 to ensure that they have been maintained in accordance

with paragraph 9 and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3. Fifthly, an additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Convention. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of this Convention. Such surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3. Regulation E.1/10 states, 'after any survey of the ship under paragraph 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by regulation B-1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.'

m. Resolutions adopted by the Conference

The Conference adopts Resolutions from time to time as indicated and referred to above which is non-binding, and provides, for example, Guidelines on various standards indicated above.

5. Recommendation to accede to the Convention

For the above reasons, and given the fact that it is a sustainable and an evolving legal template through the work of IMO, it is humbly submitted that the Government of Sri Lanka would gain by acceding to the said Convention.

5.1 The Procedure to be followed in accession

What is the procedure that should be followed in the event of an accession of a Convention? The Sri Lankan President by virtue of him being the Head of State as per Article 30 and the Keeper of the Public Seal of the Republic under Article 33(d) of the Constitution of Sri Lanka, he has the power to conclude or sign an international treaty or an agreement. This power is exercised in delegation by the Minister in charge of Foreign Affairs as a Westminster constitutional practice. Once the signature of the Minister in charge of Foreign Affairs is placed on the instrument in question it is deemed acceded and it is binding on the Republic of Sri Lanka.

As far as the prior authorization is concerned, there is no necessity to obtain prior approval from the Parliament. Also there is no necessity in the Constitution of Sri Lanka to seek the Parliamentary approval for the purpose of ratification of an instrument.

5.2 The necessity of enabling legislation

Sri Lanka is a dualist regime and its Constitution is the supreme law, and it does not give primacy of international over domestic law. Therefore, an enabling legislation is required to implement it. However, the Sri Lankan Constitution requires the President, the Head of State, as per Article 33(f) '… to do all such acts and things, not being inconsistent with the provisions of the Constitution or written law as by international law, custom or usage he is required or authorized to do…' However, that may not be the case in this matter. Therefore, deposition of an instrument of accession by the Minister of External Affairs in the IMO is sufficient, and thereafter promulgate an enabling legislation to enforce the Convention in the country.

6. Who are main stakeholders in Sri Lankan Government obliged to carry out the functions of the Convention?

The Marine Environment Protection Authority (MEPA) is the central body established by the Government of Sri Lanka, under **Marine Pollution Prevention Act No. 35 of 2008**, with the responsibility to prevent, control, and manages the pollution of Sri Lanka's marine environment. It conducts research jointly with other Departments, Agencies and Government and Private sector Institutions to prevent and reduce the sea from being polluted by ship based activities. MEPA formulates and implement the national oil pollution contingency plan. It also regulates and supervises the conduct of contractors, sub-contractors and persons conducting or engaged in exploration of natural resources including petroleum or related activities to create awareness of the need to preserve the marine environment.

The MEPA has introduced various mechanisms to effectively safeguard and preserve the territorial waters of Sri Lanka. MEPA carriers out investigations, inquiries and institutes legal action in relation to any pollution, arising due to ship based activities or shore based maritime related activities, supervise all sea transport of oil, and bunkering operations that takes place in the territorial waters or any other maritime zone declared under the maritime zones law. It is therefore important that MEPA becomes the *coordinating, implementing* and *reporting* Authority or agency for this Convention.

GUIDELINES FOR THE PROVISIONS IN THE BILL

General Structure and the Approach of the Bill

Why a Special Provisions Bill?

1. The Marine Pollution Prevention Authority is set up under Marine Pollution Prevention Authority Act No Act No. 35 of 2008 (hereinafter known as 2008 Act). It is urged that, rather than formulating a separate and a distinct Bill for the Ballast Water Convention, (BWC), a special provisions' legislation will to the 2008 Act which will avoid fragmentation. A special provisions' Bill in essence ensures continuity of the existing marine pollution regime established under the 2008 Act and develops on the practices and the legal approach ingrained in this Act. Hence a legal amalgam of the 2008 Act and the instant Special Provisions Bill would create legal cohesiveness, synergy and safeguard the operational continuity of the Authority already established.

2. However, the Bill substantially deviates from the above laws in many respects, especially, given the novel aspects like guiding principals embodied in the Preamble, speedy mechanisms for administration of justice to strike a balance between a maritime commerce and protection of the environment, mandatory but a flexible reporting system etc.

Language of the Bill

3. The Bill follows a simple approach to make it less legalistic and more accessible to the technicians and other stakeholders who are mandated to comply with it. The main body of the Bill is grounded in the main principals of the Preamble, and provides flexibility to adapt into changing circumstances by promulgating regulations from time to time. This will ensure the certainty of the principals while balancing it with the need to accommodate new challenges to the marine

environment with the aim of following the principals of precautionary approach and intergenerational equity. It is believed that an approach will prevent fossilization of law and ensure the durability and the robustness of the Bill.

4. The Bill, nevertheless, follows its traditional commitment to the language of drafting by providing explanations and illustrations wherever necessary to ensure the integrity of the Bill. This is a practice which is ancient and originates to the much cherished Penal Code which was promulgated over a century and half ago by the brilliant and the consummate work of Lord Macaulay.

Preamble: The Guiding Principals

5. The preamble of the Bill underlies the founding principals of the Bill in which it is based. It clearly states its intention to incorporate the BWC 2004 along with its Annexes. The Bill also highlights the essence of the BWC that a mere regime based on the BWC cannot exist in a legal vacuum unless its guiding principals are clearly sorted out an enshrined in the Bill properly. The preamble incorporates the guiding principals of the Bill, that is the precautionary approach to protect the marine environment from the threats of serious or irreversible environmental damage and reiterates intergenerational equity to all generations to ensure the health, diversity and productivity of the marine environment for the benefit of future generations. The precautionary and the intergenerational equity approaches lays the basis for the Bill. It provides the basis for the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 – for which Sri Lanka is a party – to '*recall[s]*' its commitments.

6. It has to be kept in mind that the implementation of the Bill will encompasse a wide range of stakeholders and the judiciary; and a clear pronouncement of the intention of the Parliament and its commitment to the guiding principals to which it subscribe will give the judiciary the scope of its application, and the provisions of the Bill will be understood and applied in that light.

7. The Authority's collective experience recalls, especially in more than one instance, the dire necessity to enforce regulations to immediately cater for the new marine challenges and threats; as opposed to the need to go through the formal and the rigorous process of scrutiny of passing legislation. The regulations play a critical, if not an decisive role, in the enforcement of rule of law, especially, in the marine environment, where Sri Lankan seas amounts to 96% of its total territory; and the marine threats posed to such vast territory from within and outside is almost incalculable. This further fortifies the necessity for robust guiding principals, if not an inevitable corollary would be that the regulation may tend to become conservative and less inclined to be proactive, and relegated to being reactive.

8. The preamble also *reaffirms* its fundamental commitment to the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, (UNCLOS) which is considered as the 'constitution of the oceans'[31], which already provides the fundamental basis to other marine laws like bio-diversity legislations (hence uses the term '*reaffirming*' rather '*recalling*') and the Bill inter-relates the significance and the harmonious relationship between the two instruments, as applicable in Sri Lanka, in Clause 2(2).

The Application of the Bill

The Scope of Application

9. Clause 2 underlies the scope of application of the Bill. It states that the '*The Act to apply consistently with Ballast Water Convention'* along with the 'Resolutions passed by the International Maritime Organization of the United Nations'. The same position is taken with regard to UNCLOS. Latter provides for two incisive Explanations which clarifies the harmonious legal interrelationship between the UNCLOS and the Bill. This in a way avoids doubts and clears many problems. The Explanations are supplemented by the two Illustrations to further broaden the understanding and smoothen the application of the two legal bodies. The reason is

[31] As remarked by Tommy Koh, President of The Third Law of the Seas Conference, <www.un.org/depts/los/convention_agreements/texts/koh_english.pd>

that the BWC, the way it is drafted, is more akin to a policy document in relation to some of the critical issues like this one, and Sri Lanka when applying such international regimes must pass enabling legislation precisely clarifying these unexplained areas so that the objective of the BWC is not defeated.

10. The Bill extends to all Sri Lankan waters as per Maritime Zones Law No. 22 of 1976 and a vessel that is in dry dock or in internal waters in Sri Lanka is deemed to be in Sri Lankan seas. The reason is when vessel enters ports or rivers, or for that matter put in dry docks, the threat of invasive marine species is not eliminated. The continuous supervision and regularity framework is needed to achieve the objectives of the BWC. Further, general exclusions include '*Permanent ballast water in sealed tanks', 'Vessels not constructed to take ballast water'.*

Reporting and related Offences in the Bill

Reporting ballast water discharges

11. The operator of a vessel must give a report if there is an accidental discharge of ballast water in Sri Lankan waters. If the operator later finds out that the report was incomplete or incorrect, the operator must give additional or corrected information. A person may commit an offence if the person provides false or misleading information or documents. The obligation in this sub-clause applies whether or not the operator of the vessel is in Sri Lankan territory when the operator is required to give the report. The Report must be given in the manner provided in the Regulations. As observed in Part 13 these forms will be part of regulations until such time the Minister promulgates Regulations.

12. There are exceptions to the requirement to give a report under this clause. As far as the evidential burden is concerned Part 13 casts the burden on the defendant to prove that he comes within the exception. This burden applies to exception in the Regulations, since the definition of Amendment includes Regulations.

13. A person may commit an offence if the person provides false or misleading information or documents. Like the clause above, this obligation applies whether

or not the operator of the vessel is in Sri Lankan territory when the person in charge or the operator of the vessel becomes aware that the information included in a report given was incomplete or incorrect (see sub-clause (5)).

Offence of discharging ballast water

14. Clause 5 provision deals with the offence of discharging ballast water in Sri Lankan seas. (sometimes referred to as the ***principal offence***). This is the central provision of the whole Bill. The Bill makes the discharge of ballast water entirely illegal. This is a blanket provision where the exceptions and exemptions needs to be proved by the person who denies the application of the principal offence. The BWC in Regulation B-4 is implemented to give full effect, in the sense, that more stringent measures are contemplated for the protection of the seas. The locations within Sri Lankan seas can be declared, if any, under Clause 10. In keeping with the marine bio-protection policy and precautionary principal in international law this Clause is formulated as a strict liability offence. Further, this is consistent with the BWC regime since Article 2(3) provides for 'more stringent measures' in line with the precautionary principal in international law.

15. The principal offence carries several exceptions and exemptions. Those clauses deal with ballast water that has been managed for discharge, ballast water discharged as part of an acceptable ballast water exchange, ballast water discharged to a ballast water reception facility, discharges covered by exemptions and ballast water taken up and discharged at the same place.

Exceptions and Exemptions in the Bill

Exceptions to the Principal Offence

16. That the burden of proof that an accused person comes within an exception falls on him. It is an exception that the ballast water has been managed using a method of ballast water management approved by the Authority under Clause 8 or 9.

17. Clause 5 will not apply to a discharge of ballast water from a vessel if the ballast water has been managed for discharge in accordance with this Amendment. (Clause 6). However, the evidential burden of proving that a person comes within an exception falls on the person who is so accused.

18. An application may be made, in accordance with the regulations, for the Authority to approve a method of ballast water management. (Clause 8) The Authority may, by Directive, approve a method of ballast water management if the method has been approved by a foreign country in accordance with the BWC as if it were in force for the foreign country. (Clause 9).

19. Ballast water discharged from a vessel has been managed for discharge if the ballast water has been managed using a method of ballast water management approved by the Authority under Clause 8 or 9. (Clause 7)

20. Clause 10 deals with management of ballast water discharge. Ballast water discharged from a tank on a vessel has been managed for discharge if at least the prescribed proportion (by volume) of the ballast water in the tank immediately before the discharge had been taken up in an acceptable ballast water exchange. The regulations may prescribe a method for working out whether, for the purposes of Clause 10(1), the prescribed proportion of the ballast water in the tank of a vessel has been taken up. Clause 10(3) states that ballast water exchange is an acceptable ballast water exchange if it is conducted in an area declared by the Authority under sub-clause (4) to be an acceptable location for ballast water exchange; and in the circumstances (if any) specified in the declaration for that area; and in accordance with the requirements (if any) prescribed by the regulations. A person does not commit an offence under Clause 5 for discharging ballast water as part of an acceptable ballast water exchange, even if that ballast water has not been managed for discharge (see Clause 11). The Authority may, by Directive, declare that a specified area is an acceptable location for ballast water exchange; or an area that meets requirements specified in the declaration is an acceptable location for ballast water exchange.

21. Clause 5 will not apply to a discharge of ballast water from a vessel if the discharge is part of an acceptable ballast water exchange. (Clause 11) A defendant bears an evidential burden in relation to the matter in this Clause. Clause 5 does not apply to a discharge of ballast water from a vessel if the ballast water is discharged to a ballast water reception facility in accordance with an approval given by the Authority under Clause 13; and the ballast water is treated or disposed of at the facility in accordance with the said approval. (Clause 11) An application may be made, in accordance with the regulations, for the Authority to approve a discharge of ballast water to a ballast water reception facility in Sri Lankan territory, and the manner in which the ballast water is to be treated or disposed of at the facility. (Clause 13)

22. Clause 5 will not apply to a discharge of ballast water from a vessel if the discharge is covered by an exemption granted under Clause 15; and the conditions of the exemption (if any) have been complied with. (Clause 14)

Exemptions

23. An application may be made, in a manner acceptable to the Authority, for an exemption for one or more discharges of ballast water from a vessel that are to be connected with one or more of the vessel's voyages between specified ports or locations; and are to occur within a specified period of not more than 5 years; and the Authority may charge an application and processing fee. The Authority may, at any time, vary or revoke an exemption granted under Clause 15, by writing given to the owner, person in charge or operator of the vessel to which the exemption relates.

24. Clause 5 will not apply to a discharge of ballast water from a vessel if all the ballast water discharged was taken up at a port or another point; and that ballast water was not mixed with other ballast water that had not been managed for discharge in accordance with Part 7; and the discharge occurs at the port, or within 2 nautical

mile of the other point, where the ballast water was taken up. (Clause 17) In view of this Clause, Sri Lankan vessels must also comply with the same.

Safety, accidents and pollution

25. Exceptions and reporting requirements relating to safety, accidents and pollution is contained in Clause 18 and shall be reported to the Authority under Clause 19.

Ballast water management plans, certificates and records

Ballast water management plans and ballast water Management certificates

26. Part 9 provides for ballast water management plans and ballast water management certificates for vessels to be issued, endorsed and recognized. Chapter 1 sets out what a ballast water management plan is, and provides for the regulations to prescribe a scheme for the Authority to approve ballast water management plans for Sri Lankan vessels. Chapter 2 sets out what a ballast water management certificate is, and provides for the regulations to prescribe a scheme for the Authority and survey authorities to survey vessels for the purposes of certification.

Ballast water records

27. Part 10 sets out how vessels are to keep records, especially a book, of their ballast water operations. Chapter 1 sets out record keeping requirements for Sri Lankan vessels, and the circumstances in which a Sri Lankan vessel has appropriate ballast water records for the purposes of using certain methods of ballast water management. Chapter 2 sets out the circumstances in which a foreign vessel has appropriate ballast water records for the purposes of using certain methods of ballast water management.

Offence of disposing of sediment

28. Part 11 provides an offence of disposing of sediment in Sri Lankan seas, and sets out exceptions in relation to safety, accidents, and avoiding or minimising pollution.

Compliance and enforcement

29. Part 12 gives the Authority and its' officers powers to enforce the provisions of this Amendment. Under Chapter 1, an officer may require the owner of a Sri Lankan vessel to produce records from the vessel's ballast water record system. Under Chapter 2, the person in charge of a vessel may be given a direction not to discharge ballast water, or a direction in relation to the movement of the vessel.

General Matters in the Bill

Miscellaneous

30. There are many clauses on compensation, offences for hindering compliance with the Amendment, Privilege against self-incrimination. If a vessel is unduly detained or delayed under this Amendment, the State is liable to pay the owner of the vessel a reasonable amount of compensation for any loss or damage suffered by the owner as a result of the undue detention or delay. A person is not excused from answering a question, providing information on the ground that the representation might tend to incriminate or make the person liable in a civil proceedings. This Amendment applies to a partnership, unincorporated association or an incorporate association as if it were a person. The Authority may appoint a person to be an analyst and his certificate given under Clause 47 is admissible is *prima facie* evidence. Entries by an officer is prima facie evidence before any court or tribunal unless the contrary is proved on the balance of probabilities by a party who disputes it. The defence of inaccuracy of ballast water records is removed unless fraud is proved or the originals of the said records are produced by the disputing party under Clause 32.

Regulations on ballast water and sediment reception facilities

31. Further, regulations on ballast water and sediment reception facilities are provided. The the Authority is empowered to grant an approval under regulation 9, issue a certificate of compliance under regulation 15; or grant permits to operate an reception facilities under regulation 18. These regulations are comprehensively drafted, and in the future, can be supplemented by directions issues by the Authority.

Contents

Marine Pollution Prevention Authority (Control and Management of the Discharge of Ballast Water and Sediment) (Special Provisions) Bill No. …. of 2015

(Certified on ……, 2015)

L.D. – O, …..

MARINE POLLUTION PREVENTION AUTHORITY (CONTROL AND MANAGEMENT OF THE DISCHARGE OF BALLAST WATER AND SEDIMENT) (SPECIAL PROVISIONS) ACT NO. …. OF 2015

AN ACT TO PREVENT, MINIMIZE AND ULTIMATELY ELIMINATE THE TRANSFER OF HARMFUL AQUATIC ORGANISMS AND PATHOGENS THROUGH THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS: TO GIVE EFFECT TO INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS, DONE AT LONDON ON 13 FEBRUARY 2004: AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS it is necessary to make comprehensive legal provisions for the Control and Management of Ships' Ballast Water and Sediments and the enforcement thereunder:

AND WHEREAS it is necessary to make legal provision to give effect to the principles of the International Convention for the Control and Management of Ships' Ballast Water and Sediments:

AND WHEREAS it is necessary to adopt a precautionary approach to protect the marine environment from the threats of serious or irreversible environmental damage:

AND WHEREAS it is necessary to reiterate intergenerational equity to ensure that the health, diversity and productivity of the marine environment for the benefit of future generations:

AND WHEREAS by recalling its commitment to the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992:

AND WHEREAS by reaffirming its commitments to the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982:

BE It therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

Part 1

INTRODUCTION AND APPLICATION

Chapter 1

Introduction

1. Preliminary

This Act may be cited as the Marine Pollution Prevention Authority (Control and Management of the Discharge of Ballast Water and Sediment) (Special Provisions) Act no. … of 2015.

2. Commencement

This Act comes into operation on such date as the Minister may appoint may appoint by Order published in the *Gazette*.

3. Application of this Act

Extension of Act to the Sri Lankan Waters

(1) This Act extends to the all Sri Lankan waters mentioned in Maritime Zones Law No. 22 of 1976.

Application of Act to Sri Lankan vessels

(2) This Act extends to the all Sri Lankan vessels including those which operates within the jurisdiction of Sri Lankan waters.

Permanent ballast water in sealed tanks not subject to this Act

(3) This Act does not apply in relation to permanent ballast water that is in a sealed tank on a vessel and is not discharged from the vessel.

Vessels in dry dock or internal waters in Sri Lanka

(4) For the purposes of this Act, a vessel that is in dry dock or in internal waters in Sri Lanka is deemed to be in Sri Lankan waters.

Vessels not constructed to take ballast water not subject to this Act

(5) This Act does not apply in relation to vessels not designed or constructed to take ballast water.

References to the person in charge of a vessel do not include persons exercising certain powers

(6) For the purposes of this Act, a reference to the person in charge of a vessel does not include a reference to a person exercising powers under Sri Lankan law.

Warship, naval auxiliary and similar vessels excluded

(7) For the purposes of this Act, this Act does not apply to any warship, naval auxiliary or other vessel owned or operated by a foreign State and used, for the time being, only on government non-commercial service.

4. The relationship with international law

The Act to apply consistently with Ballast Water Convention

(1) This Act applies to the extent of the rights and obligations recognized under the Ballast Water Convention and the Resolutions passed by the International Maritime Organization of the United Nations.

The Act to apply consistently with The United Nations Convention on the Law of the Sea

(2) This Act applies to the extent of the rights and obligations recognized under The United Nations Convention on the Law of the Sea and the customary international law as reflected in the said Convention.

5 Objects of this Act

The objects of this Act are the following:

(1) to provide for managing the following:

- (a) bio-pollution risks associated with ballast water and sediment;
- (b) ballast water and sediment reception facilities;
- (c) reporting of matters associated in this Act with ballast water and sediment emergencies;

(2) to give effect to Sri Lanka's international rights and obligations, including the International Convention for the Control and Management of Ships' Ballast Water and Sediments.

PART 2

OFFENCE OF DISCHARGING BALLAST WATER

Chapter 1

Offence of discharging ballast water

5. Offence of discharging ballast water in Sri Lankan waters

(1) A person contravenes this subsection if:
   (a) the person is the person in charge or the operator of a vessel; and
   (b) the vessel is in Sri Lankan waters ; and
   (c) the vessel discharges ballast water.

(2) Any person who acts in contravention of the above subsection (1), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding fifty million rupees or to an imprisonment of either description for a period not exceeding two year, or to both such fine or imprisonment.

PART 3

EXCEPTIONS: BALLAST WATER MANAGEMENT

Chapter 1

Exception

6. Exception—ballast water has been managed for discharge

Section 5 does not apply to a discharge of ballast water from a vessel if the ballast water has been managed for discharge in accordance with this Act.

Chapter 2

Methods of ballast water management

7. Approved method of ballast water management

(1) Ballast water discharged from a vessel has been ***managed for discharge*** if:

(a) the ballast water has been managed using a method of ballast water management approved by the Authority under section 8 or 9; and

(b) at the time the ballast water is discharged:

(i) the vessel has a ballast water management plan; and

(ii) a ballast water management certificate is in force for the vessel; and

(iii) the vessel has appropriate ballast water record book ; and

(c) the management of the ballast water was carried out in accordance with the ballast water management plan; and

(d) the requirements (if any) prescribed by the regulations are met in relation to the management and discharge of the ballast water.

8. Method of ballast water management—application for approval

(1) An application may be made, in accordance with the regulations, for the Authority to approve a method of ballast water management.

(2) The Authority may, by written notice to the applicant:

(a) grant the approval; or

(b) refuse to grant the approval.

(3) The Authority must make a decision under subsection (2) in accordance with the regulations.

(4) The Authority must make a decision and give notice under subsection (2) before the end of 28 days after the application was made.

(5) If the Authority does not give notice under subsection (2) within the 28-day period referred to in subsection (4), the Director is taken to have refused to grant the approval at the end of that period.

(6) A copy of a notice granting an approval under subsection (2) must be published on the Authority's website.

Authority may require further information

(7) The Authority may, by written notice, require a person who has made an application under subsection (1) to give the Director further information about the application.

(8) If a notice is given under subsection (7):

(a) the 28-day period referred to in subsection (4) stops on the day the notice is given; and

(b) that period begins again on the day after the information is given to the Authority.

9. Method of ballast water management—approval of method approved by foreign country

(1) The Authority may, by directive, approve a method of ballast water management if the method has been approved by a foreign country in accordance with the Ballast Water Convention as if it were in force for the foreign country (whether or not the foreign country has signed the Convention).

(2) The Authority must make a decision to approve a method of ballast water management under subsection (1) in accordance with the regulations.

Chapter 3

Ballast water exchange

10. Management by ballast water exchange

(1) Ballast water discharged from a tank on a vessel has been ***managed for discharge*** if:

(a) at least the prescribed proportion (by volume) of the ballast water in the tank immediately before the discharge had been taken up in an acceptable ballast water exchange; and

(b) at the time the ballast water is discharged, the vessel has appropriate ballast water record book .

(2) The regulations may prescribe a method for working out whether, for the purposes of subsection (1), the prescribed proportion of the ballast water in the tank of a vessel has been taken up.

(3) A ballast water exchange is an ***acceptable ballast water exchange*** if it is conducted:

(a) in an area declared by the Authority under subsection (4) to be an acceptable location for ballast water exchange; and

(b) in the circumstances (if any) specified in the declaration for that area; and

(c) in accordance with the requirements (if any) prescribed by the regulations.

Directive

(4) The Authority may, by directive, declare that:

(a) a specified area is an ***acceptable location*** for ballast water exchange; or

(b) an area that meets requirements specified in the declaration is an ***acceptable location*** for ballast water exchange.

(5) A directive of an area under subsection (4) may specify, for the purposes of paragraph (3)(b), circumstances in which an acceptable ballast water exchange may be conducted in the area.

PART 4

ACCEPTABLE BALLAST WATER EXCHANGE

Chapter 1

Exception: discharge as part of acceptable ballast water exchange

11. Exception—discharge as part of acceptable ballast water exchange

Section 5 does not apply to a discharge of ballast water from a vessel if the discharge is part of an acceptable ballast water exchange.

PART 5

APPROVED DISCHARGE

Chapter 1

Exception: approved discharge to ballast water reception facility

12. Exception—approved discharge to ballast water reception facility

Section 5 does not apply to a discharge of ballast water from a vessel if:

(a) the ballast water is discharged to a ballast water reception facility in accordance with an approval given by the Authority under section 13; and

(b) the ballast water is treated or disposed of at the facility in accordance with the approval.

13. Discharge to ballast water reception facility—application for approval

(1) An application may be made, in accordance with the regulations, for the Authority to approve:

(a) a discharge of ballast water to a ballast water reception facility in Sri Lankan territory; and

(b) the manner in which the ballast water is to be treated or disposed of at the facility.

(2) The Authority may, by written notice to the applicant:

(a) grant the approval; or

(b) refuse to grant the approval.

(3) The Authority:

(a) must make a decision under subsection (2) in accordance with the regulations; and

(b) must not approve a manner of treating or disposing of the ballast water that would contravene a law of Sri Lanka.

(4) The Authority must make a decision and give notice under subsection (2) before the end of 24 hours after the application was made.

(5) If the Authority does not give notice under subsection (2) within the 24 hour period referred to in subsection (4), the Authority is taken to have refused to grant the approval at the end of that period.

Authority may require further information

(6) The Authority may, by written notice, require a person who has made an application under subsection (1) to give the Authority further information about the application.

(7) If a notice is given under subsection (6):

(a) the 24 hour period referred to in subsection (4) stops on the day the notice is given; and

(b) that period begins again on the day after the information is given to the Authority.

PART 6

EXEMPTIONS

Chapter 1

Exception: discharge covered by exemption

14. Exception—discharge covered by exemption

Section 5 does not apply to a discharge of ballast water from a vessel if:

(a) the discharge is covered by an exemption granted under section 15; and

(b) the conditions of the exemption (if any) have been complied with.

15. Authority may grant exemptions

(1) An application may be made, in a manner acceptable to the Authority, for an exemption for one or more discharges of ballast water from a vessel that:

(a) are to be connected with one or more of the vessel's voyages between specified ports or locations; and

(b) are to occur within a specified period of not more than 5 years; and

(c) the Authority may charge an application and processing fee.

(2) The Authority may, by written notice to the applicant:
  (a) grant the exemption:
    (i) in whole or in part; and
    (ii) subject to the conditions (if any) specified in the notice; or
  (b) refuse to grant the exemption.

(3) The Authority must make a decision under subsection (2) in accordance with the regulations.

(4) The Authority must make a decision and give notice under subsection (2) before the end of 28 days after the application was made.

(5) If the Authority does not give notice under subsection (2) within the 28-day period referred to in subsection (4), the Authority is taken to have refused to grant the exemption at the end of that period.

Decisions made by computer

(6) The Authority may arrange for the use, under the Authority's control, of computer programs for making decisions on the granting or refusal of exemptions or the conditions to be imposed on exemptions.

(7) A decision made by the operation of a computer program under an arrangement made under subsection (6) is taken to be a decision made by the Authority.

16. Variation and revocation of exemption

The Authority may, at any time, vary or revoke an exemption granted under section 15, by writing given to the owner, person in charge or operator of the vessel to which the exemption relates, or to an agent of the vessel, if the Authority is satisfied that:
  (a) a condition of the exemption has been contravened; or
  (b) the exemption would not be granted if an application for the exemption were made at that time.

PART 7

TAKING UP AND DISCHARGING BALLAST WATER AT SAME PLACE

Chapter 1

Exception: taking up and discharging ballast water at same place

17. Exception—taking up and discharging ballast water at same place

Section 5 does not apply to a discharge of ballast water from a vessel if:
  (a) all the ballast water discharged was taken up at a port or another point; and
  (b) that ballast water was not mixed with other ballast water that had not been managed for discharge in accordance with Part 3; and

(c) the discharge occurs at the port, or within 2 nautical miles of the other point, where the ballast water was taken up.

PART 8

SAFETY, ACCIDENTS AND POLLUTION

Chapter 1

Exceptions and reporting requirements relating to safety, accidents and pollution

18. Exceptions—safety, accidents and pollution

Safety

(1) Section 5 does not apply to a discharge of ballast water from a vessel if the discharge is necessary for the purpose of:
  (a) ensuring the safety of the vessel in an emergency; or
  (b) saving life at sea.

Accidents

(2) Section 5 does not apply to a discharge of ballast water from a vessel if:
  (a) the discharge is accidental and results from damage to the vessel or its equipment; and
  (b) all reasonable precautions to prevent or minimise the discharge are taken at the following times:
    (i) before and after the occurrence of the damage;
    (ii) before and after the discovery of the damage;
    (iii) before and after the discovery of the discharge; and
  (c) none of the following intentionally caused the damage, or was reckless as to the occurrence of the damage:
    (i) the person in charge of the vessel;
    (ii) the owner of the vessel;
    (iii) the operator of the vessel.

Avoiding or minimising pollution

(3) Section 5 does not apply to a discharge of ballast water from a vessel if the discharge is for the purpose of avoiding or minimising pollution from the vessel.

19. Report of discharge relating to safety, accident or pollution

Report of discharge must be made to Authority

(1) The person in charge or the operator of a vessel must make a report to the Authority if:

(a) the vessel discharges ballast water in Sri Lankan waters ; and

(b) the discharge is:

(i) for the purpose of ensuring the safety of the vessel in an emergency or saving life at sea; or

(ii) accidental; or

(iii) for the purpose of avoiding or minimising pollution from the vessel.

(2) The report must:

(a) set out the reason for the discharge; and

(b) be made as soon as practicable, and in any case within 24 hours, after a member of the vessel's crew becomes aware of the discharge.

(3) Subsection (1) does not apply in relation to a discharge of ballast water if the discharge is covered by an exception referred to in section 6, 11, 12, 14 or 17.

20. Offence – failure to report in accordance with this section

(1) A person, irrespective of intention or knowledge, commits an offence if:

(a) the person is the person in charge or the operator of a vessel; and

(b) a report under subsection (1) is required to be made in relation to the vessel; and

(c) the report is not made in accordance with this section.

(2) Any person who acts in contravention of the above subsection (1), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding forty million rupees or to an imprisonment of either description for a period not exceeding two year, or to both such fine or imprisonment.

Part 9

BALLAST WATER MANAGEMENT PLANS AND BALLAST WATER MANAGEMENT CERTIFICATES

Chapter 1

Ballast water management plans

21. Ballast water management plan

(1) A ***ballast water management plan*** for a Sri Lankan vessel is a document:

(a) that deals with ballast water management for the vessel and the disposal of sediments from the vessel's ballast water; and

(b) for which an approval by the Authority is in force under section 22.

(2) A ***ballast water management plan*** for a foreign vessel is a document:

(a) that deals with ballast water management for the vessel and the disposal of sediments from the vessel's ballast water; and

(b) that meets the requirements prescribed by the regulations; and

(c) for which an approval by the Administration of the vessel is in force.

22. Approval of ballast water management plan for Sri Lankan vessel

The regulations may prescribe a scheme for the Authority to do any of the following in relation to a Sri Lankan vessel:

(a) approve a ballast water management plan for the vessel;

(b) approve an amendment of the vessel's ballast water management plan;

(c) cancel the approval of the vessel's ballast water management plan.

Chapter 2

Ballast water management certificates

23. Ballast water management certificate

(1) A ***ballast water management certificate*** for a Sri Lankan vessel is a document that:

(a) certifies that the vessel has a ballast water management plan for which an approval by the Authority is in force under section 22; and

(b) certifies that the vessel, and any equipment on the vessel, is capable of giving effect to the plan; and

(c) is issued or endorsed by the Authority, or a survey authority under section 25

(2) A ***ballast water management certificate*** for a foreign vessel is a document that:

(a) certifies that the vessel has a ballast water management plan for which an approval by the vessel's Administration is in force; and

(b) certifies that the vessel, and any equipment on the vessel, is capable of giving effect to the plan; and

(c) is issued or endorsed:

(i) by or on behalf of the vessel's Administration; or

(ii) by the Authority, or a survey authority, under section 25 on request by the vessel's Administration; and

(d) meets the requirements prescribed by the regulations.

(3) A vessel's ballast water certificates must be readily accessible for inspection in Sri Lankan waters .

24. Authority may authorise person to be survey authority

(1) The Authority may, in writing, authorise a person to be a survey authority if the Authority is satisfied the person has suitable qualifications to perform the functions of a survey authority under section 25.

(2) A survey authority may charge a separate fee in relation to anything done under this Chapter.

(3) A survey authority may delegate the survey to a recognized private organization approved by the Authority or the Director General of Merchant Shipping where the fee in relation to such a survey shall be borne by the relevant party for whose benefit the certificate or any other service is rendered.

(4) The Authority may proceed under the provisions of this Act only if the survey is carried out by a recognized private origination to the satisfaction of the Authority.

25. Issue or endorsement etc. of ballast water management certificate – Sri Lankan vessels

The regulations may prescribe a scheme for the Authority or a survey authority to do any of the following in relation to a Sri Lankan vessel:

(a) survey the vessel to determine whether a ballast water management certificate should be issued or endorsed for the vessel;

(b) issue a ballast water management certificate for the vessel;

(c) endorse a ballast water management certificate for the vessel;

(d) withdraw a ballast water management certificate for the vessel;

(e) extend the period during which a ballast water management certificate for the vessel is in force;

(f) amend the expiry date on a ballast water management certificate for the vessel.

26. Issue or endorsement etc. of ballast water management certificate – foreign vessels

(1) The scheme prescribed for the purposes of section 25 may also provide for the Authority or a survey authority to do any of the following in relation to a foreign vessel on request by the vessel's Administration:

(a) survey the vessel to determine whether a ballast water management certificate should be issued or endorsed for the vessel;

(b) issue a ballast water management certificate for the vessel;

(c) endorse a ballast water management certificate for the vessel.

(2) A vessel's ballast water certificate must be readily accessible for inspection in Sri Lankan waters .

Part 10

BALLAST WATER RECORD BOOK

Chapter 1

Sri Lankan vessels

27. Sri Lankan vessel must have ballast water record

(1) A Sri Lankan vessel that is capable of carrying ballast water must have on board a ballast water record which may be electronic in form that complies with the requirements prescribed by the regulations.

(2) A person, irrespective of intention or knowledge, commits an offence if:

(a) the person is the person in charge of a Sri Lankan vessel; and

(b) the vessel is capable of carrying ballast water; and

(c) the vessel does not have a ballast water record book as required by subsection (1).

(3) Any person who acts in contravention of the above subsection (2), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding twenty million rupees or to an imprisonment of either description for a period not exceeding one year, or to both such fine or imprisonment.

28. Recording ballast water operations and disposal of sediment

(1) A record must be made if a Sri Lankan vessel (whether in or outside Sri Lankan waters):
   (a) conducts a ballast water operation; or
   (b) disposes of sediment.

(2) A record required under subsection (1) must:
   (a) be made using the vessel's ballast water record system; and
   (b) be made as soon as practicable after the ballast water operation is conducted or the sediment is disposed of; and
   (c) comply with the requirements (if any) prescribed by the regulations.

(3) A person, irrespective of intention or knowledge, commits an offence if:
   (a) the person is the person in charge of a Sri Lankan vessel; and
   (b) subsection (1) requires a record to be made; and
   (c) the record is not made in accordance with this section.

(4) Any person who acts in contravention of the above subsection (3), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding ten million rupees or to an imprisonment of either description for a period not exceeding six months, or to both such fine or imprisonment.

Making a false or misleading record

(5) A person commits an offence if:
   (a) the person makes a record using a Sri Lankan vessel's ballast water records; and
   (b) the record or entry entered is false or misleading in a material particular.

(6) Any person who acts in contravention of the above subsection (3), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding ten million rupees or to an imprisonment of either description for a period not exceeding six months, or to both such fine or imprisonment.

29. Record book must be retained

(1) Each record made using a Sri Lankan vessel's ballast water record, including the entire system (if any), must be retained on board the vessel for 2 years after the record is made.

(2) Each record made using a Sri Lankan vessel's ballast water record system must be retained:
   (a) on board the vessel; or
   (b) in the control of the owner of the vessel;
   for a further 3 years starting at the end of the 2-year period referred to in subsection (1).

(3) For the purposes of subsections (1) and (2), if a Sri Lankan vessel is being towed by another vessel and has no crew on board, a record that is on board the other vessel is taken to be on board the Sri Lankan vessel.

(4) A person, irrespective of intention or knowledge, commits an offence if:

(a) the person is the owner of a Sri Lankan vessel; and
(b) subsection (1) or (2) requires a record to be retained; and
(c) the record is not retained in accordance with this section.

(5) Any person who acts in contravention of the above subsection (4), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding twenty million rupees or to an imprisonment of either description for a period not exceeding one year, or to both such fine or imprisonment.

(6) Subsections (1) and (2) do not apply in relation to a record if:
(a) the record was lost or destroyed; and
(b) the loss or destruction of the record was beyond the control of:
(i) the present owner of the vessel; and
(ii) if the present owner was not the owner when the record was lost or destroyed—the person who was the owner of the vessel at that time.

30. Appropriate ballast water record book for Sri Lankan vessel

(1) A Sri Lankan vessel has ***appropriate ballast water record book*** if:
(a) the vessel has on board record book, made in accordance with section 28, that are sufficient to allow any bio-pollution risk associated with the vessel's ballast water or sediment to be identified and assessed; and
(b) the vessel does not have on board any record book , made using the vessel's ballast water record system, that are false or misleading in a material particular.

(2) For the purposes of subsection (1), if a Sri Lankan vessel is being towed by another vessel and has no crew on board, a record that is on board the other vessel is taken to be on board the Sri Lankan vessel.

(3) A vessel's ballast water record book must be readily accessible for inspection in Sri Lankan waters.

Chapter 2

Foreign vessels

31. Appropriate ballast water record book for foreign vessel

(1) A foreign vessel has ***appropriate ballast water record book ,*** which may be in electronic form, if:
(a) the vessel has on board record book that are sufficient to allow any biosecurity risk associated with the vessel's ballast water and sediment to be identified and assessed; and
(b) the record book referred to in paragraph (a) meet the requirements (if any) prescribed by the regulations as prescribed by the Convention.

(2) For the purposes of subsection (1), if a foreign vessel has no crew on board and is being towed by another vessel, a record that is on board the other vessel is taken to be on board the foreign vessel.

(3) A vessel's ballast water record book must be readily accessible for inspection in Sri Lankan waters

Chapter 3

Accuracy of the record book

32. Entries by an officer – conclusive evidence as to its accuracy

Notwithstanding section 50, entries made by any authorized officer in a ballast water record book of Sri Lankan or foreign vessels shall deem to be conclusive evidence before a court or tribunal as to its accuracy, unless fraud is proved or the originals of such record book are produced by the party disputing it.

Part 11

OFFENCE OF DISPOSING OF SEDIMENT

Chapter 1

Offence of disposing of sediment

33. Offence—disposing of sediment in Sri Lankan waters

(1) A person, irrespective of intention or knowledge, contravenes this subsection if:
- (a) the person is the person in charge or the operator of a vessel; and
- (b) the vessel is in Sri Lankan waters ; and
- (c) the vessel disposes of sediment; and
- (d) the sediment is not disposed of to a sediment reception facility.

(2) Any person who acts in contravention of the above subsection (2), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding twenty million rupees or to an imprisonment of either description for a period not exceeding one year, or to both such fine or imprisonment.

34. Exceptions—safety, accidents and pollution

Safety

(1) Section 33 does not apply to the disposal of sediment from a vessel if the disposal is necessary for the purpose of:
  (a) ensuring the safety of the vessel in an emergency; or
  (b) saving life at sea.

Accidents

(2) Section 33 does not apply to the disposal of sediment from a vessel if:
  (a) the disposal is accidental and results from damage to the vessel or its equipment; and
  (b) all reasonable precautions to prevent or minimise the disposal are taken at the following times:
    (i) before and after the occurrence of the damage;
    (ii) before and after the discovery of the damage;
    (iii) before and after the discovery of the disposal; and
  (c) none of the following intentionally caused the damage, or was reckless as to the occurrence of the damage:
    (i) the person in charge of the vessel;
    (ii) the owner of the vessel;
    (iii) the operator of the vessel.

Avoiding or minimising pollution

(3) Section 33 does not apply to the disposal of sediment from a vessel if the disposal is for the purpose of avoiding or minimising pollution from the vessel.

35. Report of discharge relating to safety, accident or pollution

Report of discharge must be made to Authority

(1) The person in charge or the operator of a vessel must make a report to the Authority if:
  (a) the vessel sediment in Sri Lankan waters ; and
  (b) the discharge is:
    (i) for the purpose of ensuring the safety of the vessel in an emergency or saving life at sea; or
    (ii) accidental; or
    (iii) for the purpose of avoiding or minimising pollution from the vessel.

(2) The report must:
  (a) set out the reason for the discharge; and
  (b) be made as soon as practicable, and in any case within 24 hours, after a member of the vessel's crew becomes aware of the discharge.

(3) A person, irrespective of intention or knowledge, commits an offence if:

(a) the person is the person in charge or the operator of a vessel; and
(b) a report under subsection (1) is required to be made in relation to the vessel; and
(c) the report is not made in accordance with this section.

(4) Any person who acts in contravention of the above subsection (3), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding forty million rupees or to an imprisonment of either description for a period not exceeding two year, or to both such fine or imprisonment.

Part 12

COMPLIANCE AND ENFORCEMENT

Chapter 1

Power to require owner of Sri Lankan vessel to Provide ballast water record book

36. Power to require owner of Sri Lankan vessel to provide ballast water record book

(1) The Authority or any authorized officer may require the owner of a Sri Lankan vessel to produce to the officer any record required to be retained under section 29, or a copy of such a record certified by or on behalf of the owner.

(2) The Authority or any authorized officer:
(a) may make copies of, or take extracts from, a record produced under subsection (1); and
(b) for that purpose, may remove the record from the place at which it was produced.

(3) A person who is required to produce a record, or a copy of a record, under subsection (1) must comply with the requirement as soon as reasonably practicable.

(4) A person, irrespective of intention or knowledge, commits an offence if:
(a) the person is required to produce a record, or a copy of a record, under subsection (1); and
(b) the person fails to comply with the requirement as soon as reasonably practicable.

(5) Any person who acts in contravention of the above subsection (4), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding forty million rupees or to an imprisonment of either description for a period not exceeding two year, or to both such fine or imprisonment.

Chapter 2

Directions powers

37. Directions not to discharge ballast water

(1) The Authority or any authorized officer may give a direction under this section to the person in charge of a vessel in Sri Lankan waters if the Authority or any authorized officer is satisfied that:

(a) a sample of the vessel's ballast water indicates that the vessel poses an unacceptable level of bio-pollution risk; or

(b) the person in charge or crew of the vessel are not familiar with, or have not implemented, essential shipboard procedures relating to ballast water management that are set out in the ballast water management plan for the vessel; or

(c) the equipment and the condition of the vessel does not correspond to the contents of the ballast water management certificate and/or to the essential shipboard procedures relating to ballast water management that are set out in the ballast water management plan for the vessel.

(2) The Authority or any authorized officer may direct the person in charge not to discharge ballast water from the vessel until the conditions specified in the direction are met.

(3) A condition specified in the direction must be for the purposes of reducing the bio-pollution risk associated with the vessel to an acceptable level.

(4) The person in charge of the vessel must comply with the direction.

(5) The Authority or any authorized officer may vary or revoke the direction.

38. Directions about movement of vessel

(1) This section applies if the Authority has clear grounds for believing that an offence against this Act has been committed or alleged to have been committed involving:

(a) a Sri Lankan vessel in Sri Lankan waters or outside; or

(b) a foreign vessel in, or proceeding to, a port in Sri Lankan territory or an installation in Sri Lankan waters ; or

(c) a foreign vessel in Sri Lankan waters .

(2) The Authority may direct the person in charge of the vessel to do one or more of the following:

(a) remove the vessel from a port in Sri Lankan territory as soon as practicable;

(b) keep the vessel out of a port in Sri Lankan territory;

(c) take the vessel to the nearest suitable repair yard or sediment reception facility as soon as practicable;

(d) keep the vessel in a specified location.

(3) The person in charge of the vessel must comply with the direction.

39. Directions about movement of vessel—variation or revocation

(1) The Authority may vary or revoke a direction given under subsection 38(2).

(2) The Authority may make it a prerequisite for the variation or revocation of a direction given to the person in charge of a vessel under paragraph 38(2)(b) or (d) that the owner of the vessel provides a security that:

(a) is in a form acceptable to the Authority; and

(b) is an amount that, in the Authority's opinion, is equivalent to the maximum amount of all penalties, other amounts of money, costs and expenses that could be payable by the person in charge and the owner of the vessel in respect of each offence that was a basis for giving the direction.

40. Offence—contravening a direction

(1) A person, irrespective of intention or knowledge, commits an offence if:

(a) the person is the person in charge of a vessel; and

(b) the person is given a direction under this Chapter; and

(c) the person fails to comply with the direction.

(2) Any person who acts in contravention of the above subsection (1), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding forty million rupees or to an imprisonment of either description for a period not exceeding two year, or to both such fine or imprisonment.

Exceptions

(2) Subsection (1) does not apply if the failure to comply with the direction is necessary for the purpose of:

(a) ensuring the safety of the vessel in an emergency; or

(b) saving life at sea.

(3) Subsection (1) does not apply if:

(a) the failure to comply with the direction is accidental and results from damage to the vessel or its equipment; and

(b) all reasonable efforts are made to comply with the direction; and

(c) none of the following intentionally caused the damage, or was reckless as to the occurrence of the damage:

(i) the person in charge of the vessel;

(ii) the owner of the vessel;

(iii) the operator of the vessel.

(4) Subsection (1) does not apply if the failure to comply with the direction is for the purpose of avoiding or minimising pollution from the vessel.

41. Manner of giving directions etc.

(1) A direction may be given or varied under this Act by any means of communication (including electronic means).

(2) Notice of revocation of a direction under this Act may be given by any means of communication (including electronic means).

(3) If:

(a) a direction is given, or is varied or revoked, under this Act; and

(b) the direction is given, varied or revoked otherwise than in writing;

the person who gave, varied or revoked the direction must give the recipient of the direction a written notice setting out the effect of the direction, variation or revocation.

42. Periodic inspections and research

(1) The Authority or any authorized officer may board any vessel in any port or installation and samples of ballast water may be collected for periodic inspections and scientific analysis in order to further research the effectiveness of ballast water management.

Part 13

MISCELLANEOUS

Chapter 1

Compensation

43. Compensation for undue detention or delay of vessel

(1) Subject to section 54(1), if a vessel is unduly detained or delayed under this Act, the State is liable to pay the owner of the vessel a reasonable amount of compensation for any loss or damage suffered by the owner as a result of the undue detention or delay.

(2) If the owner does not agree on the amount of compensation, the owner may institute proceedings in a relevant court for the recovery from the State of such reasonable amount of compensation as the court determines.

Provided that no action shall be instituted against the State after the expiry of one year for any loss or damage suffered by the owner as a result of the undue detention or delay. In calculating the period of time taken by the State to determine the amount of compensation shall be excluded.

Chapter 2

Offences

44. Offence—hindering compliance with the Act etc.

(1) A person, irrespective of intention or knowledge, must not engage in conduct that hinders or prevents the Authority or any other persons acting on behalf thereof from:

(a) performing functions or duties, or exercising powers, under this Act; or

(b) complying with this Act or a direction given under this Act.

(2) Any person who acts in contravention of the above subsection (2), shall be guilty of an offence under this Act and shall be liable for a fine not exceeding one million rupees or to an imprisonment of either description for a period not exceeding one year, or to both such fine or imprisonment.

45. Privilege against self-incrimination not applicable

A person is not excused from answering a question, providing information, reporting, producing a document or making any other similar representation under any of the provisions of this Act, on the ground that the such representation might tend to incriminate the person or make the person liable in a civil proceedings.

46. Treatment of partnerships

(1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

(3) An offence against this Act that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(4) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

47. Treatment of unincorporated and incorporated associations

(1) This Act applies to an unincorporated association and an incorporated association as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.

(3) An offence against this Act that would otherwise have been committed by the unincorporated association or an incorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence was committed, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

Chapter 3

Evidential value of analyst's certificate

48. Certificates given by analyst

Appointment of analyst

(1) The Authority may appoint a person to be an analyst for the purposes of this Act.

Analyst may give certificate

(2) If a person is alleged to have contravened this Act an analyst appointed under subsection (1) may give a written certificate stating any one or more of the following matters:

(a) when and from whom the substance or thing was received;

(b) what (if any) labels or other means of identifying the substance or thing accompanied it when it was received, or what container or containers the substance or thing was contained in when it was received;

(c) a description, and the weight, of the substance or thing received;

(d) when the substance or thing, or a portion of it, was analysed;

(e) a description of the method of analysis;

(f) the results of the analysis;

(g) how the substance or thing was dealt with after handling by the analyst, including details of:

(i) the quantity retained; and

(ii) the name of any person to whom any retained quantity was given; and

(iii) measures taken to secure any retained quantity.

49. Admission of analyst's certificate in proceedings

(1) A certificate given under section 48 is (if the procedure in subsection (2) of this section is complied with) admissible, in any proceedings in relation to a contravention of this Act, as prima facie evidence of:

(a) the matters in the certificate; and

(b) the correctness of the result of the analysis.

Procedure to be followed before admitting certificate

(2) At least 14 days before the certificate is admitted as evidence in the proceedings, the following must be given to the person (the ***defendant***) who is alleged to have contravened this Act, or a legal practitioner who is appearing for the defendant in those proceedings:
   (a) a copy of the certificate;
   (b) notice of the intention to produce the certificate as evidence in the proceedings.

Analyst may be required to attend for cross-examination

(3) The defendant may (subject to subsection (4)) require the analyst who gave the certificate to be:
   (a) called as a witness for the prosecution; and
   (b) cross-examined (as if the analyst had given evidence of the matters stated in the certificate).

Requirements for cross-examining analyst

(4) The analyst may be required to be called as a witness for the prosecution only if:
   (a) the prosecutor has been given at least 4 days' notice of the defendant's intention to require the analyst to be called; or
   (b) the court, by order, allows the defendant to require the analyst to be called.

Proof of certificate

(5) For the purposes of this Act, a document purporting to be a certificate given under section 48 is taken to be a certificate that has been given in accordance with that section, unless the contrary is established.

50. Entries by an officer – *prima facie* evidence

Subject to section 32, entries made by any authorized officer on board of a vessel including any document or statements recorded from persons on board shall be *prima facie* evidence before any court or tribunal unless the contrary is proved on the balance of probabilities by a party who disputes it.

51. Principles affecting decision-making

(1) Before the Authority or any authorized officer makes the decision, the Authority or the said officer must be satisfied of all of the following:
   (a) that exercising the power is likely to be effective in, or to contribute to, achieving the purpose for which the power is to be exercised;
   (b) that exercising the power is appropriate and adapted to achieve that purpose;
   (c) that the manner in which the power is to be exercised is no more restrictive or intrusive than is required in the circumstances;
   (d) if the power is to be exercised in relation to an individual—that the power is no more restrictive or intrusive than is required in the circumstances to protect environment, human health, property and resources;

(e) if the power is to be exercised during a period—that the period is only as long as is necessary.

52. Burden of proof - exception or exemption

If any party relies on an exception or an exemption of this Act that party shall bear the evidential burden in relation to that exception or exemption as the case may be.

Chapter 5

Regulations and other related matters

53. Regulations and Directives

(1) The Minister in charge of the Authority may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) All Schedules of this Act shall deem to be the regulations prescribed by the Minister in charge of the subject of marine pollution until such time the Minister prescribe relevant regulations under subsection (1).

(3) The Authority may issue any such binding directions as he may think necessary for the purpose of enforcing the provisions of this Act or any regulations made thereunder.

54. Protection from civil proceedings

Protection for the Authority

(1) Notwithstanding section 43, no civil proceeding lies against the Authority in relation to anything done, or omitted to be done, in good faith:

(a) by an authorized officer in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act; or

(b) by a person in providing, or purporting to provide, assistance, information or a document to an authorized officer, as a result of a request, direction or other requirement made by an authorized officer in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

(2) No civil proceeding lies against an authorized officer in relation to anything done by him in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

Protection for persons assisting authorized officers

(3) No civil proceeding lies against a person in relation to anything done, or omitted to be done, in good faith by the person in providing, or purporting to provide, assistance, information or a document to an authorized officer, as a result of a request, direction or other requirement made by an authorized officer in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

55. Protection from civil proceedings

Every offence under this Act committed in Sri Lankan waters shall be triable by the High Court sitting in any judicial zone of Sri Lanka or by the High Court exercising admiralty jurisdiction notwithstanding anything to the contrary in the Judicature Act, No.2 of 1978.

Part 14

Interpretation

55. Definitions

In this Act –

Authority means the Marine Pollution Prevention Authority established under Act No. 35 of 2008 and shall include any authorised officer.

authorized officer means an officer of the Director General of Merchant Shipping, a commissioned officer of the Navy or Coastguard, an officer of the National Aquatic Resources Research and Development Agency or the Authority, and includes any person designated by the regulations.

Administration of a vessel has the same meaning as in the Ballast Water Convention.

ballast water has the same meaning as Ballast Water has in the Ballast Water Convention, but does not include permanent ballast water in sealed tanks or vessels not designed or constructed to take ballast water mentioned in section 2.

ballast water capacity means the total volumetric capacity of the tanks, spaces or compartments on a vessel that are used for carrying, loading or discharging ballast water, including any multi-use tank, space or compartment designed to allow the carriage of ballast water.

Ballast Water Convention means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, done at London on 13 February 2004, which includes the Annex to the said Convention.

ballast water exchange means a process involving:

(a) the discharge of ballast water from a tank on a vessel; and

(b) the uptake of water into the tank simultaneously with, or immediately after, the discharge.

ballast water management has the same meaning as Ballast Water Management has in the Ballast Water Convention.

ballast water management certificate has the meaning given by section 23.

ballast water management plan has the meaning given by section 21.

ballast water operation means:

(a) taking up ballast water into a vessel (whether deliberately, accidentally or as part of a ballast water exchange); or

(b) discharging ballast water from a vessel (whether deliberately, accidentally or as part of a ballast water exchange); or

(c) treating or circulating ballast water on a vessel for the purposes of ballast water management.

ballast water reception facility means a facility (including a vessel) for receiving ballast water from vessels for treatment or disposal.

ballast water record for a vessel means a system for making and keeping record book about the vessel's ballast water and ballast water operations.

ballast water system means the tanks, spaces or compartments on a vessel that are used for carrying, loading or discharging ballast water, including any multi-use tank, space or compartment designed to allow the carriage of ballast water, as well as the piping and pumps**.**

Biodiversity Convention means the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, as in force for Sri Lanka from time to time.

Convention means the Ballast Water Convention.

Director General of Merchant Shipping means Director General of Merchant Shipping in the Merchant Shipping Act No.52 of 1971.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

foreign vessel means a vessel that is not a Sri Lankan vessel.

harmful aquatic organisms or pathogens means and include aquatic organisms or pathogens that, if introduced into waters under Sri Lankan jurisdiction, could create hazards to human health, harm organisms, damage amenities, impair biological diversity or interfere with legitimate uses of the waters and whatever species determined to be aquatic organisms or pathogens under this Act by the Regulations.

incorporated association includes an entity registered under the Companies Act No. 7 of 2007, a foreign company or any limited liability entity, or any other association the regulations may specify from time to time.

installation means a structure that:

(a) is able:

(i) to float or to be floated; and

(ii) to move, or to be moved, as an entity from one place to another; and

(b) is, or is to be, used wholly or principally in:
    (i) exploring or exploiting natural resources (such as fish or minerals) with equipment on, or forming part of, the structure; or
    (ii) operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (i) of this paragraph; and
(c) either:
    (i) is attached to, or resting on, the seabed; or
    (ii) is attached semipermanently or permanently to a structure that is attached to, or resting on, the seabed.

main enactment means Marine Pollution Prevention Authority Act No. 35 of 2008.

managed for discharge, in relation to ballast water, has the meaning given by sections 6 and 7.

National Aquatic Resources Research and Development Agency means National Aquatic Resources Research and Development Agency established by Act no. 54 of 1981.

operator of a vessel has the same meaning as Company has in the Annex to the Ballast Water Convention.

port means a natural or artificial harbour, and includes:
(a) a navigable estuary, river, creek or channel; and
(b) a haven, roadstead, dock, pier or jetty; and
(c) any other place in or at which vessels can obtain shelter or load and unload goods or embark and disembark passengers.

sediment has the same meaning as sediments has in the Ballast Water Convention.

sediment reception facility means a facility that is capable of receiving, storing, processing or transhipping ballast water or sediment in a manner that reduces the likelihood of harmful aquatic organisms or pathogens being introduced into waters under Sri Lankan jurisdiction.

Sri Lankan vessel means a vessel registered under the Merchant Shipping Act no. 52 of 1971

tank includes space or compartment.

this Act includes Regulations made under this Act.

unduly detained or delayed has the same meaning as in the Ballast Water Convention.

United Nations Convention on the Law of the Sea means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, as in force for Sri Lanka from time to time.

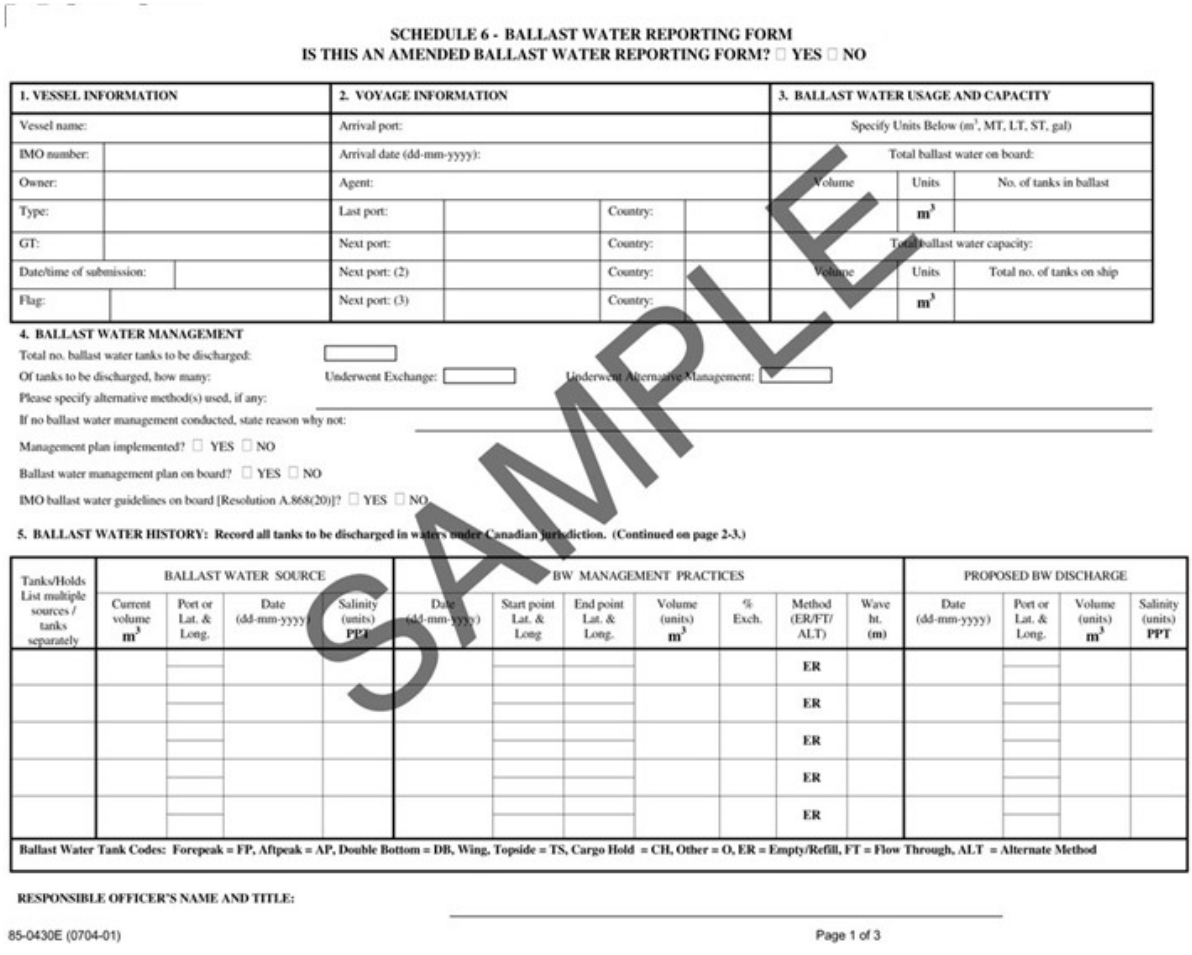
vessel:
(a) means any kind of vessel used in navigation by water, however propelled or moved, including the following;
    (i) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water; and
    (ii) waterborne craft; and

(b) For the purposes of this Act, a reference to a vessel does not include a reference to a vessel that is being carried on board another conveyance. A vessel that is being carried on board another conveyance is generally treated as goods for the purposes of this Act.

Schedule 1
Instructions for the Ballast Water Reporting Form

1. The Regulations herein mentioned has to be read and understood with the Directives issued by of the Authority from time to time.
2. The Ballast Water Reporting Form is encouraged to be submitted prior to the entry into waters under Sri Lankan jurisdiction.

Appendix 1 –
SRI LANKAN BALLAST WATER REPORTING FORM



SCHEDULE 6 - BALLAST WATER REPORTING FORM
IS THIS AN AMENDED BALLAST WATER REPORTING FORM? ☐ YES ☐ NO

1. VESSEL INFORMATION		2. VOYAGE INFORMATION				3. BALLAST WATER USAGE AND CAPACITY		
Vessel name:		Arrival port:				Specify Units Below (m^3, MT, LT, ST, gal)		
IMO number:		Arrival date (dd-mm-yyyy):				Total ballast water on board:		
Owner:		Agent:				Volume	Units	No. of tanks in ballast
Type:		Last port:		Country:			m^3	
GT:		Next port:		Country:		Total ballast water capacity:		
Date/time of submission:		Next port: (2)		Country:		Volume	Units	Total no. of tanks on ship
Flag:		Next port: (3)		Country:			m^3	

4. BALLAST WATER MANAGEMENT

Total no. ballast water tanks to be discharged: ☐

Of tanks to be discharged, how many: Underwent Exchange: ☐ Underwent Alternative Management: ☐

Please specify alternative method(s) used, if any:

If no ballast water management conducted, state reason why not:

Management plan implemented? ☐ YES ☐ NO

Ballast water management plan on board? ☐ YES ☐ NO

IMO ballast water guidelines on board [Resolution A.868(20)]? ☐ YES ☐ NO

5. BALLAST WATER HISTORY: Record all tanks to be discharged in waters under Canadian jurisdiction. (Continued on page 2-3.)

Tanks/Holds List multiple sources / tanks separately	BALLAST WATER SOURCE				BW MANAGEMENT PRACTICES							PROPOSED BW DISCHARGE			
	Current volume m^3	Port or Lat. & Long.	Date (dd-mm-yyyy)	Salinity (units) PPT	Date (dd-mm-yyyy)	Start point Lat. & Long	End point Lat. & Long.	Volume (units) m^3	% Exch.	Method (ER/FT/ ALT)	Wave ht. (m)	Date (dd-mm-yyyy)	Port or Lat. & Long.	Volume (units) m^3	Salinity (units) PPT
										ER					
										ER					
										ER					
										ER					
										ER					

Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing, Topside = TS, Cargo Hold = CH, Other = O, ER = Empty/Refill, FT = Flow Through, ALT = Alternate Method

RESPONSIBLE OFFICER'S NAME AND TITLE:

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Vessel name:	IMO number:	Arrival date (dd-mm-yyyy):

Tanks/Holds List of multiple sources / tanks separately	BALLAST WATER SOURCE				BW MANAGEMENT PRACTICES							PROPOSED BW DISCHARGE			
	Current volume m^3	Port or Lat. or Long.	Date (dd-mm-yyyy)	Salinity (units) **PPT**	Date (dd-mm-yyyy)	Start point Lat. & Long.	End point Lat. & Long.	Volume (units) m^3	% Exch.	Method (ER/FT/ Alt)	Wave ht. (m)	Date (dd-mm-yyyy)	Port or Lat. or Long.	Volume (units) m^3	Salinity (units) **PPT**
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Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing, Topside = TS, Cargo Hold = CH, Other = O, ER = Empty/Refill, FT = Flow Through, ALT = Alternate Method

6. Will water be added to any tanks containing only residual ballast and sediment, and then subsequently discharged during the same voyage ? ☐ YES ☐ NO

7. If the answer to # 6 is YES:

a) Has the ship complied with best management practices ? ☐ YES ☐ NO

b) Has the residual ballast water been exposed to salinity conditions equivalent to ballast exchange ? ☐ YES ☐ NO

RESPONSIBLE OFFICER'S NAME AND TITLE: _____

Vessel name:	IMO number:	Arrival date (dd-mm-yyyy):

Tanks/Holds List of multiple sources / tanks separately	BALLAST WATER SOURCE				BW MANAGEMENT PRACTICES							PROPOSED BW DISCHARGE			
	Current volume m^3	Port or Lat. Or Long.	Date (dd-mm-yyyy)	Salinity (units) PPT	Date (dd-mm-yyyy)	Start point Lat. & Long.	End point Lat. & Long.	Volume (units) m^3	% Exch.	Method (ER/FT/ ALT)	Wave ht. (m)	Date (dd-mm-yyyy)	Port or Lat. Or Long.	Volume (units) m^3	Salinity (units) PPT
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Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing, Topside = TS, Cargo Hold = CH, Other = O, ER = Empty/Refill, FT = Flow Through, ALT = Alternate Method

RESPONSIBLE OFFICER'S NAME AND TITLE: _____

Appendix 2
GUIDELINES FOR SUBMITTING THE BALLAST WATER REPORTING FORM

1. The Form contained in Appendix 2 shall be filled and submitted based on the under-mentioned Guidelines.

Guidelines

a. Check "**Yes"** if this is an amended reporting form or "**No"** if it is not. Amendments should be submitted if there are any differences between actual ballast discharges and discharge information or changes to the "Arrival Port" or "Next Port(s)" reported in a prior form.
b. Section 1 – Vessel Information

i. Vessel Name: Enter the name of the vessel clearly.
ii. IMO Number: Fill in the identification number of the vessel used by the International Maritime Organization.
iii. Owner: Enter the name of the registered owner(s) of the vessel. If under charter, enter the name of the operator.
iv. Type: List specific vessel type using the following: Bulker, RoRo, Container, Passenger, Chemical Carrier, General Cargo, Reefer, Combo, Tanker etc. Write out any additional vessel types.
v. GT: Enter the Gross Tonnage of the vessel.

vi. Date/Time of Submission: Enter the date (DD/MM/YYYY) and time of submission (24 hour clock UTC).
vii. Flag: Fill in the full name of the country under whose authority the ship is operating. No abbreviations allowed.

C. Section 2 – Voyage Information

i. Arrival Port: Enter in the name of your port of destination for this voyage. No abbreviations allowed.
ii. Arrival Date: Fill in the scheduled arrival date to the above port. Please use the format (DD/MM/YYYY).
iii. Agent: Enter the agent used for the "Arrival Port".
iv. Last Port: Fill in the last port at which the vessel called. No abbreviations allowed.
v. Country of Last Port: Fill in the country of the last port at which the vessel called. No abbreviations allowed.
vi. Next Port: Fill in the port at which the vessel will call immediately after departing the "Arrival Port". If next port is unknown, enter "Unknown".
vii. Country of Next Port: Fill in the country of the "Next Port" at which the vessel will call. No abbreviations allowed.
viii. Next Port (2): Fill in the port at which the vessel will call immediately after departing the "Next Port". If the next port is unknown, enter "Unknown". No abbreviations allowed.
ix. Country of Next Port (2): Fill in the country of the "Next Port (2)" at which the vessel will call. No abbreviations allowed.
x. Next Port (3): Fill in the port at which the vessel will call immediately after departing the "Next Port (2)". If the next port is unknown, enter "Unknown". No abbreviations allowed.
xi. Country of Next Port (3): Fill in the country of the "Next Port (3)" at which the vessel will call. No abbreviations allowed.

D. Section 3 – Ballast Water

Total Ballast Water on Board:

i. Volume: What was the total volume of ballast water on board upon arrival into the "Arrival Port" listed in Section 2. Do not count potable water.
ii. Units: Please include units, cubic meters (m3), metric tonnes (mt), long tons (LT), short tons (ST), or gallons (GAL).
iii. Number of Tanks in Ballast: Count the number of ballast tanks and holds with ballast when the vessel arrives at the "Arrival Port" listed in Section 2. Do not include tanks carrying only residual ballast water or sediment.

Total Ballast Water Capacity:

i. Volume: What is the maximum volume of ballast water carried when no cargo is on board?
ii. Units: Please include units, cubic meters (m3), metric tonnes (mt), long tons (LT), short tons (ST), or gallons (GAL).
iii. Total Number of Tanks on Ship: Count all the tanks and holds used to carry ballast water. Do not include tanks that carry potable water.

E. Ballast Water Management

i. Volume: What is the maximum volume of ballast water carried when no cargo is on board?
ii. Units: Please include units, cubic meters (m3), metric tonnes (mt), long tons (LT), short tons (ST), or gallons (GAL).
iii. Total Number of tanks to be discharged: Count only tanks and holds with ballast to be discharged into waters under Sri Lankan jurisdiction or into an approved reception facility. Count all tanks and holds separately (e.g. port and starboard tanks should be counted separately). Include tanks with residual ballast only if these will be ballasted locally and the contents of the tank will subsequently be discharged into waters under Sri Lankan jurisdiction.
iv. Of tanks to be discharged, how many: Underwent exchange? Count all tanks that have underwent exchange and will be discharged into waters under Sri Lankan jurisdiction or into an approved reception facility.
v. Of tanks to be discharged, how many: Underwent Alternative Management: Count all tanks that have underwent alternative management to exchange, and will be discharged into waters under Sri Lankan jurisdiction or into an approved reception facility.
vi. Specify alternative method(s) used, if any: Specifically, describe methods other than “Empty/Refill” or “Flow-Though” used for ballast management. (i.e. “Salt Water Flushing”).
vii. If no ballast treatment conducted, state reason why not: This applies to all unexchanged tanks and holds intended to be discharged into waters under Sri Lankan jurisdiction or into an approved reception facility.
viii. Ballast water management plan on board? Is there a written document on board, specific to your vessel, describing the procedure for ballast management? This should include safety and exchange procedures (usually provided by vessel’s owner or operator). Check Yes or No.
ix. Management Plan implemented? Did you follow the above management plan? Check Yes or No. Where yes is checked, shipboard personnel should be able to demonstrate their familiarity with the plan during any inspection by Sri Lankan officials.

x. IMO ballast water guidelines on board: Is there a copy of the International Maritime Organization (IMO) Ballast Water Guidelines on board this vessel (i.e. "Guidelines for the Control and Management of Ship's Ballast Water to Minimize the Transfer Aquatic Organisms and Pathogens", [Resolution A.868(20)])? Check Yes or No.

F. Section 5 – Ballast Water History

i. Report on all tanks that are to be discharged into waters under Sri Lankan jurisdiction or into an approved reception facility.

ii. Follow each tank across the page listing the original source (s) of the ballast under 'Last Ballasting Operation', all management events under 'Ballast Water Management Practices', and all discharge events under 'Proposed Ballast Water Discharge' separately.

Ballast Water Source:

i. Tanks/Holds: List all tanks and holds that you plan to discharge into waters under Sri Lankan jurisdiction, or into an approved reception facility in Sri Lanka (write out, or use codes listed below table). List multiple BW sources in tanks separately.

ii. Current Volume: Select the volume units (m3, MT, LT, ST, gal). Record the total volume of ballast water uptake.

iii. Port or latitude/longitude: Record the location of ballast water uptake. No abbreviations for ports.

iv. Date: Record the date of ballast water uptake. Use the format (DD/MM/YYYY).

v. Salinity: Indicate the salinity of the ballast water at the time of uptake, with units (parts per thousand (ppt)) or specific gravity (sg)).

Ballast Water Management Practices:

i. Date: Record the date of ballast water management. Use the format (DD/MM/YYYY). If the exchange occurred over several days, enter the day when the ballast water management was completed.

ii. Start point or latitude/longitude: Report location or starting point of the ballast water management practice.

iii. Volume: Select volume units (m3, MT, LT, ST, gal). Report volume of ballast water managed.

% Exchange: (Note: for effective flow through exchange, this value should be at least 300%).

% Exchange = Total Volume Added by Empty/Refill or by Flow-Through ÷ Capacity of Ballast Tank or Hold

iv. Method: Indicate the management method using the appropriate code (ER = empty/refill, FT = flow through, ALT = alternative method).

v. Wave Height (m): Estimate the sea height in meters at the time of the ballast water exchange, if this method was used. (Note: this is the combined height of the wind-sea and swell, and does not refer to water depth).

Proposed Ballast Water Discharge:

i. Date: Record the date of the proposed ballast water discharge. Use the format (DD/MM/YYYY).

ii. Port or latitude/longitude: Report the location of the proposed ballast water discharge. No abbreviations for ports.

iii. Volume: Select units (m3, MT, LT, ST, gal). Report the expected volume of ballast water to be discharged. Do not enter "Depends on cargo operations" or similar statement. If the proposed ballast water discharge is significantly different from the actual amount discharged then an amended form must be submitted.

iv. Salinity: Indicate the salinity of the ballast water at the time of discharge, with units (parts per thousand (ppt)) or specific gravity (sg)).

G. Section 6 – Residual Ballast and Sediment

i. Will water be added to any tanks containing only residual ballast and sediment, and then subsequently discharged into waters under Sri Lankan jurisdiction? Check Yes or No.

H. Section 7 – If the answer to Section 6 is YES

i. If the answer to Section 6 is YES:

a. Has the ship complied with best management practices published Directives issued by the Authority? Check Yes or No.

b. Has the residual ballast water been exposed to salinity conditions equivalent to ballast exchange? Check Yes or No.

ii. If the answer to Section 7(b) is NO then:

Please be advised that ballast water taken on board the ship in waters under Sri Lankan jurisdiction, and then mixed with ballast water (including residual ballast water and sediments) taken from waters outside of Sri Lankan jurisdiction that has not been treated or exposed to salinity conditions equivalent to ballast exchange must be exchanged or treated before it may be discharged in waters under Sri Lankan jurisdiction.

I. Title and Signature

i. Enter the responsible officer's name and title (printed) and signature. A signature is not necessary on electronic forms.

Cabinet Memorandum

A Bill for the Implementation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments
For
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

I ……
……. [name], the Minister of Shipping and Ports hereby submit to His Excellency the President and the Cabinet of Ministers of THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA the following enclosed documents.

Minister of Shipping and Ports
[Date]

Ballast Water and Sediment (Reception Facilities) Regulations 2015

Contents

Ballast Water and Sediment (Reception Facilities) Regulations 2015

Chapter 1 — Introduction

1. Preliminary

These regulations are the *Ballast Water and Sediment (Reception Facilities) Regulations 2015* promulgated under section 53 of the Marine Pollution Prevention Authority (Control and Management of the Discharge of Ballast Water and Sediment) (Special Provisions) Bill No. …. of 2015.

2. Commencement

These regulations come into operation as follows:

(a) Chapter 1, 2 and 4 — on the day on which these regulations are published in the *Gazette*;

(b) the rest of the regulations —

(i) on 1 October 2016; or

(ii) if these regulations are published in the *Gazette* on a later day — on that day.

3. Relationship between the Act and these regulations

(a) The regulations are to be applied and interpreted consistently with the Act.

(b) The Act prevails over the provisions of the regulations to the extent to which the provisions of the regulations are inconsistent with these regulations.

4. Definitions

In these regulations, definitions in the Act applies except as provide below;

Ballast Water Tank means any tank, hold or space used for the carriage of ballast water as defined in Article 1 of the Convention.

entity includes an entity registered under the Companies Act No. 7 of 2007, a foreign company or any limited liability entity, or any other association the regulations may specify from time to time.

reception facility means a facility (including a vessel) for receiving ballast water from vessels for treatment or disposal, or a facility for receiving sediments.

5. Application

These regulations apply to the reception of ballast water facilities and reception facilities for sediment, however do not apply to sediment from tanks other than ballast water tanks.

6. Requirements for the approval and operation of ballast water and sediment reception facilities

(1) A ballast water reception facility should be capable of receiving ballast water from vessels so as not to create a risk to the environment, human health, property and resources arising from the release to the environment of Harmful Aquatic Organisms and Pathogens.

(2) A ballast water reception facility should provide pipelines, manifolds, reducers, equipment and other resources to enable, as far as practicable, all vessels wishing to discharge ballast water in a port to use the facility.

(3) The ballast water reception facility should provide adequate equipment for mooring vessels using the facility and when applicable safe anchorage.

(4) Details of the capabilities and any capacity limitations of a treatment facility should be made available to the vessels that intend to use the facility.

(5) The details made available to vessels on ballast water reception facility should include but not be limited to:

(a) maximum volumetric capacity of ballast water;
(b) maximum volume of ballast water that can be handled at any one time;
(c) maximum transfer rates of ballast water (cubic metres per hour);
(d) hours of operation;
(e) ports, berths, areas where access to the facility is available;
(f) vessel-to-shore pipeline connection details (pipeline size and reducers available);
(g) if vessel or shore crew are required for duties such as to connect or disconnect
(h) hoses;
(i) contact details for the facility;
(j) how to request use of the facility including any notice period and what
(k) information is required from the vessel;

(l) all applicable fees; and
(m) other relevant information.

(6) The facility should provide vessel to shore connections that are compatible with a recognized standard such as those in the Oil Companies International Marine Forum (OCIMF) "Recommendations for Oil Tankers Manifolds and Associated Equipment".

(7) Personnel in charge of and those employed in the provision of a ballast water reception facility including the treatment and disposal of ballast water should receive adequate instructions.

(8) Sediment reception facilities should be designed, taking into account the vessel types that may be anticipated to use them and consideration should be given to the requirements for ballast tank cleaning that may take place and of repair facilities in the area(s) the reception facility serves.

(9) When considering the requirements of the sediment reception facilities, the Authority may take into account includes, but not be limited to:

(a) site selection;
(b) collection, handling and transport of sediment;
(c) sampling, testing and analysis of sediment;
(d) storage of sediment and storage conditions;
(e) estimated required capacity (volume/weight) including moisture content of the
sediment the facility will handle;
(f) environmental benefits and costs;
(g) proximity of available sites to local ballast tank cleaning and repair facilities;
(h) effect on the environment in construction and operation of the facility;
(i) training of facility staff;
(j) equipment required to off load sediment from vessels, such as cranes;
(k) human health;
(l) safety;
(m) maintenance;
(n) operational limitations; and
(o) waterway access, approaches and traffic management.

Chapter 2 — Construction, alteration and extension of reception facilities

Part 1 — Approval of construction, alteration and extension of reception facilities

7. Approval required to construct, alter or extend an reception facility

A person or an entity must not construct, alter or extend a reception facility other than in accordance with the approval of the Authority under this Part.

8. Applying for approval to construct, alter or extend an reception facility

(1) A person or an entity who proposes to construct a reception facility shall apply to the Authority for approval to construct the facility.

(2) A person or an entity with a reception facility may apply to the Authority for approval to alter or extend the facility.

(3) The application must be in the approved form and must be accompanied by —

(a) 2 copies of the plans and specifications for, and a description of, the proposed reception facility, alteration or extension which, for the construction or extension of the reception capacity and proposed; and

(b) how the operations relating to reception, processing, purification and discharge of the water body is carried out as required by this regulations; and

(b) a block plan showing the position of the water body or bodies and treatment plants in relation to the position and distribution of toilets, change rooms and other similar facilities, and the lands to which the reception facility abuts and the purposes for which those lands are used; and

(c) all other information necessary for the Authority to assess the application.

9. Approval of construction, alteration or extension of an reception facility

(1) The Authority may grant the person or an entity the approval to construct, alter or extend the reception facility if satisfied that the facility to be constructed, the part of the facility to be altered or the extension would comply with the requirements of these regulation.

(2) The Authority may grant the person or an entity the approval to construct, alter or extend the reception facility even though not satisfied as required by subregulation (1) if satisfied that the health and safety of persons using the facility will not be compromised and that either —

(a) the function and performance of those parts or aspects of the facility to be constructed or altered or of the extension that do not comply with the requirements of the regulations as required by subregulation (1) is the same as, or better than, that which is required by these regulations and directives for that part or aspect; or

(b) there is a public interest in approving the construction, alteration or extension.

10. Approval of construction etc. — variations after approval granted

(1) The Authority may, after granting approval under regulation 9 for the construction, alteration or extension of an reception facility (the ***original approval***), approve of a variation in the plans and specifications for the construction, alteration or extension if satisfied that the facility to be constructed, the part of the facility to be altered or the extension, as varied, would —

(a) comply with the requirements of these regulations as in force at the time of the application for the original application; or

(b) meet the requirements of regulation 9(2).

(2) The person or an entity granted the original approval may apply for an approval of a variation under this regulation which must be in the approved form and must be accompanied by 2 copies of the plans and specifications for the proposed reception facility, alteration or extension as varied.

(3) For the purposes of Part 2, the approval of the variation is to be treated as part of the original approval.

11. Approval of construction etc. — staged construction

(1) The Authority may, under regulation 9, grant approval for one or more stages of the construction, alteration or extension of a reception facility and, for that purpose, need only be satisfied that the stage or those stages of the construction, alteration or extension would comply with the requirements of this regulation (to the extent to which they are relevant) as in force at the time of the application.

(2) For the purposes of Part 2, the approvals granted in relation to a particular reception facility in accordance with this regulation are to be treated as a single approval.

Part 2 — Certificate of compliance

12. Certificate of compliance required to operate an reception facility

A person or an entity must not operate a reception facility unless there is, in force, a certificate of compliance that covers, or a number of certificates of compliance that between them cover, all of the facility.

13. Certificate of compliance

(1) A certificate of compliance for a reception facility must specify the class, or classes, of reception facility that the facility may be operated as.

(2) If there are a number of certificates of compliance in force covering a reception facility, they are to be read together, and, of any 2 certificates, the later prevails over the earlier to the extent of any inconsistency.

(3) The Authority may issue a certificate of compliance that is a consolidation of a number of certificates.

14. Applying for a certificate of compliance

(1) A person may apply to have a certificate of compliance issued by the Authority for an reception facility, or a part of a reception facility.

(2) The application must be in the approved form.

15. Issue of certificate of compliance

(1) The Authority may issue a certificate of compliance for a reception facility if satisfied that it has been constructed in accordance with the approval to construct the facility granted under Part 1.

(2) The Authority may issue a certificate of compliance for a reception facility in respect of an alteration or extension of the facility if satisfied that it has been altered or extended in accordance with the approval to alter or extend the facility granted under Part 1.

(3) Subject to subregulation (5), in the case of —

(a) a reception facility for which no approval to construct was granted under Part 1; or

(b) an alteration or extension of a reception facility for which alteration or extension no approval was granted under Part 1,

the Authority may issue a certificate of compliance for the facility or in respect of the alteration or extension (whichever is relevant) if satisfied that the facility, or alteration or extension, complies with the requirements of these Regulation as in force at the time of the application for the certificate.

(4) Subject to subregulation (5), this applies to and in relation to a reception facility if —

(a) the facility was in use, to some extent, during the 12 months immediately prior to 1 October 2016; and

(b) there is no certificate of compliance in force in respect of the facility.

(5) The Authority may issue a certificate of compliance for the facility even though not satisfied as required by subregulations (3) and (4) if satisfied that the operational, health and safety of persons using the facility will not be compromised and that there is a public interest in issuing the certificate of compliance.

Chapter 3 — Operation of reception facilities

Part 1 — Permit to operate a reception facility

16. Permit required to operate an reception facility

(1) A person or an entity must not operate a reception facility as a reception facility of a particular class unless the operator, or one of the operators, has a permit to operate the facility or water body as a reception facility of that class or a higher class.

(2) Subregulation (1) does not apply to a person or an entity which operates a reception facility as an employee only.

(3) For the purposes of these regulations, a class 1 reception facility is the highest class of facility.

17. Applying for a permit to operate

(1) An operator may apply to the Authority for a permit to operate a particular a reception facility as an reception facility of a class specified in the application.

(2) The application must be in the approved form.

18. Permit to operate an reception facility

(1) The Authority may grant an operator a permit to operate a reception facility as an of a particular class, if satisfied that —

(a) there is in force a certificate of compliance that covers, or a number of certificates of compliance that between them cover, all of the facility; and

(b) on being tested, meets the requirements of these regulations, including subregulation (6); and

(c) staff, with the qualifications required by these regulations and directives passed by the Authority for a reception facility that is being operated as a reception facility of that class, are engaged.

(2) A permit to operate a reception facility is not transferable.

Part 2 — Operation of reception facilities

19. Operation of reception facilities

(1) The operator of a reception facility must operate the facility, or ensure that the facility is operated, in accordance with —

(a) the operational requirements of these regulation, except to the extent to which a variation in operational requirements approved by the Authority under regulation 20 is inconsistent with those requirements of these regulation; and

(b) any variations in operational requirements approved by the Authority under regulation 20.

(2) The operator of a reception facility must ensure that the regulations and directives complied with for that facility.

20. Variation in operational requirements

(1) The Authority may approve a variation in operational requirements for a particular reception facility if satisfied that the operational requirement, as varied —

(a) will provide the same or better operational, health and safety protection to persons and industry using the facility as that provided by the operational requirement unvaried; or

(b) will not compromise the operational, health and safety of persons using the facility and that there is a public interest in approving the variation.

(2) A variation in operational requirements must be in writing and a copy of it must be given to the person, at the facility, who is in charge of the day-to-day operations of the facility.

Part 3 — Quality control

21. Water sampling

(1) The Authority must ensure that —

(a) an officer, or a person under the direction of an officer, collects water samples from water body of each reception facility at least once per month; and

(b) the water samples are given to a laboratory approved by the Authority for microbiological analysis; and

(c) the water samples are collected, stored and transported to the laboratory in accordance with the requirements of the laboratory.

(2) For the purposes of subregulation (1)(a), a person is under the direction of an officer if the person is under the regular and frequent, but not necessarily continuous and personal, supervision of the officer.

(3) The Authority may approve a laboratory for microbiological analysis.

(4) The Authority may grant an exemption if satisfied that —

(a) it is impractical for an officer of the Authority to comply with one or more of the requirements of subregulation (1); and

(b) the operator of the facility must ensure that the water samples are taken at least once per month and that the other requirements of subregulation (1) are complied with.

(5) The Authority may revoke an exemption if —

(a) satisfied that the circumstance in subregulation (4)(a) is no longer the case; or

(b) the operator has not ensured that the water samples are taken at least once per month and that the other requirements of subregulation (1) are complied with.

(6) If the Authority grants an exemption under subregulation (4), the operator must ensure that the water samples are taken at least once per month and that the other requirements of subregulation (1) are complied with.

22. Improvement orders

(1) The Authority may give the operator of the facility an improvement order if satisfied that —

(a) the operator is not complying with regulation 19(1) or (2) to the extent to which the operator must comply with that provision; or

(b) the facility is a risk to the health of persons using the facility or the operation of it is likely to cause such a risk.

(2) An improvement order must be in the approved form and must specify, to the extent relevant —

(a) the operational requirements of these regulations, or any variation in operational requirements approved by the Authority, that are not being complied with; and

(b) the measures to be taken to comply with those requirements or to reduce the risk referred to in subregulation (1)(b); and

(c) the time within which the operator must comply with the order.

(3) An improvement order may include ancillary or incidental directions.

(4) If the operator of a reception facility is given an improvement order, the operator of the facility, or each operator if there is more than one, must ensure that the order is complied with.

(5) The time within which an order must be complied with may, before that time has expired, be extended by the Authority or, in the case of an order given by an authorized person by the Authority.

(6) If an improvement order is complied with, the Authority must note the date of compliance on the order or a copy of it and, if asked to do so by the operator of the facility, give a copy of the order as noted to the operator.

23. Closing facilities

(1) The Authority may give the operator of the facility a closure order in respect of the facility if satisfied that —

(a) the operator is not complying with regulation 19(1) or (2) to the extent to which the operator must comply with that provision and either —

(i) that the facility is of operational deficiency, lacks health and safety standards for the persons using the facility; or

(ii) the operation of it is likely to cause such a risk;

or

(b) the operator has failed to ensure that an improvement order given in respect of the facility is complied with.

(2) The Authority may give the operator of a reception facility a closure order if satisfied that it is not covered by one or more certificates of compliance.

(3) If the Authority gives a closure order, it must give the Ports Authority a copy of the order as soon as practicable, and in any event within 48 hours after it is given.

(4) If any authorized person by the Authority (other than an officer from the Authority) gives a closure order, the Authority must —

(a) confirm the order (with or without amendment); or

(b) cancel the order,

and may do so orally and then in writing.

(5) If an order given by an authorized person is not confirmed by the Authority within 48 hours of it being given, it expires on the earlier of —

(a) the time at which it is cancelled by the Authority; or

(b) the end of the 48 hour period after it is given.

(6) A closure order must be in the approved form and must specify, to the extent relevant —

(a) the grounds for giving the closure order; and

(b) the measures to be taken to comply with the requirements of these regulations and directives or any variation in operational requirements approved by the Authority ; and

(c) the measures to be taken to reduce the risk referred to in subregulation (1)(a); and

(d) that the operator of the facility will commit an offence unless the operator ensures that the facility (which ever part of that facility as case may be) remains closed while the closure order is in force.

(7) The operator of a reception facility, or each operator if there is more than one, must ensure that the facility (which ever part of that facility as case may be) remains closed while a closure order is in force in respect of the facility.

(8) A closure order given or confirmed by the Authority remains in force until —

(a) the Authority is satisfied that the grounds for giving the order have ceased or been remedied; and

(b) where relevant — the measures required to be taken have been taken; and

(c) the A`uthority directs that the closure order cease to be in force (which may be given or confirmed in writing).

(9) The measures referred to in subregulation (8)(b) are those required to be taken by the closure order (if any) and the improvement order, if the closure order was issued, at least in part, because of a failure to comply with an improvement order.

Chapter 4 — General provisions

Part 1 — Hygiene and use of facilities

24. Certain persons not to enter or use water body

(1) A person must not enter or use, or attempt to enter or use, a water body of a reception facility if the person is —

(a) suffering from any gastrointestinal disease, skin infection or any other disease that is communicable in a facility environment; or

(b) in an unclean condition; or

(c) wearing unclean clothes; or

(d) under the apparent influence of alcohol, drugs or alcohol and drugs; or

(e) if the person is a young child under the age of 12 and unaccompanied by an adult.

(2) Subregulation (1)(a) does not apply to a person who has a written statement by a medical practitioner to the effect that the person will not be a health hazard to other users of the facility.

25. Pollution of water bodies

A person must not —

(a) pollute, or deposit any rubbish or offensive matter in a water body of a reception facility; or

(b) intentionally release bodily material or waste into a water body, other than that which is released in the ordinary course of using the water body.

26. Animals not to enter reception facilities etc.

(1) A person must not permit any animal belonging to the person, or under his or her control, to enter or remain in an reception facility.

(2) This regulation does not apply to a person using —

(a) a guide dog; or

(b) a dog trained to assist the person in activities where hearing is required; or

(c) any other animal trained to assist the person to alleviate the effect of a disability the person has.

(3) However, the person referred to in subregulation (2) must ensure that the animal does not have contact with the water body.

Part 2 — Miscellaneous provisions

27. Reasons for certain decisions

If the Authority —

(a) refuses to grant an approval under regulation 9; or

(b) refuses to issue a certificate of compliance under regulation 15; or

(c) refuses to grant a permit to operate an reception facility under regulation 18,

the Authority must give the reasons for so doing to the applicant.

28. Review of certain decisions

(1) A person or an entity affected by a decision of the Authority or any authorized officer may appeal to the Administrative Appeals Tribunal for a review of the decision.

(2) A person or an entity affected by a decision shall appeal within a period of 28 days from the decision of the Authority.

29. Requirements to Class or Approve the Facilities

(1) The Authority may direct the facilities to be classed or approved by any recognized organization under section 24 of the Act; and

(2) The approval or classification by any recognized organization may only be recognized for a period of two years, unless directed otherwise by the Authority.

30. Approved forms

An application, order or other document is in the ***approved form*** if —

(a) it is in the form approved in writing by the Authority in relation to that kind of application, order or other document; and

(b) it contains the information that the form requires, and is accompanied by such further information or documents as the form requires.