

THE MERCHANT SHIPPING (SALVAGE) ACT, 1996

**A MARITIME LEGISLATION DRAFTING PROJECT SUBMITTED
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE
AWARD OF A MASTER OF LAWS DEGREE (LL.M.)
AT THE
I.M.O. INTERNATIONAL MARITIME LAW INSTITUTE (I.M.L.I.)
MALTA**

SUPERVISOR: PROFESSOR P.K. MUKHERJEE

APRIL 1996

GIANFRANCO GAUCI

DRAFTING INSTRUCTIONS

Existing Legislation

The existing Maltese legislation with regard to salvage is limited to Sections 342 to 346 of the Merchant Shipping Act, which was enacted in 1973 and modelled on its British counterpart. These four sections treat in a basic manner salvage for saving life, salvage of cargo or wreck, liability to pay salvage, conditions under which a salvage contract may be modified or rescinded, the determination of salvage, and the detention of salvaged property as security. A very positive approach is that adopted with respect to the saving of life, under which it is possible for the Minister to pay a salvage award for saving life ^{if} it risks remaining unsatisfied. On the other hand, the elements to be employed in making a salvage award are vague to say the least, and no reference is made to the salvage that has the object of preventing or minimising marine pollution.

Policy Adopted

The policy which is to guide the bill shall be one of encouragement of professional salvage firms, which alone have the expertise necessary to be able to deal with major oil spills or casualties involving large numbers of passengers. In fact, Malta has already ratified major international conventions relating to pollution and safety, such as the 1969 International Convention on Civil Liability for Oil Pollution Damage, with the 1976 protocol, the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 protocol, and the International Convention for the Safety of Life at Sea of 1974.

As regards the possibility of oil disasters, Malta is geographically positioned at the centre of a very vulnerable enclosed sea, the Mediterranean, and is furthermore in the route of most of the crude oil from North Africa and from the Persian Gulf destined to for Europe. In view of Malta's diminutive size, this in effect does not only mean that the chances of an oil disaster are high due to the traffic around Malta, but also that any substantial oil slick could engulf most of Malta's coastline. The draft shall therefore, whilst retaining the positive approach of the existing legislation with respect to the saving of life -

- (1) extend a similar treatment to the prevention and minimisation of damage to the environment, including, where necessary, the possibility of awards paid out of the Consolidated Fund;
- (2) provide for mandatory salvage in emergency situations;
- (3) facilitate compensation for losses suffered, including loss of life or limb, and physical injuries;
- (4) facilitate the recovery of expenses reasonably incurred by professional salvors, including overhead expenses; and
- (5) provide for rewards over and above the balance of losses and expenses, up to a 100% profit.

In order to attempt to give further stability to the salvage industry, it is also proposed to allow for the recovery of losses and expenses by salvors even when the salvage operations have not been successful, where they have been called in to attempt salvage by the owners of the endangered property themselves. Under the present regime, not even a salvor who has been requested to intervene by an owner who knows that the chances are slim shall be entitled to payment for services rendered, unless successful.

The regime which is being envisioned is a regime under which salvors who -

- (1) have attempted to save human lives;
- (2) have attempted to prevent or minimise damage to the environment; or
- (3) have been awarded by the owners of the endangered property, a commission or contract to save that property,

shall in any case be compensated for the losses suffered and expenses reasonably incurred. On the other hand, a reward shall be awarded to any successful salvor, whether commissioned or not, which shall either be added to the compensation for losses and expenses, or, if the salvor is not entitled to such compensation, shall be assessed taking into account such losses and expenses. A reward to the above three kinds of salvors shall not exceed in amount the sum awarded as compensation (the maximum award allowable being 100%), whilst a successful, non-commissioned salvor of property shall ^{not} be entitled to a reward ~~to~~ exceeding the value of the salvaged property.

The regime outlined above would effectively reduce quite dramatically the extent of the maxim "no cure, no pay", which would thereby be confined to the voluntary, non-commissioned salvage of property, where no threat to life or the environment is posed and where the salvor has acted on his private initiative. It is however submitted that this maxim should not in fact apply where the safety of human life or of the environment are at stake, nor should it apply where the salvor has received a specific commission from the owners of the endangered property, unless terms to that effect are agreed upon in the contractual relationship in question. This is furthermore the trend initiated by the 1989 London Salvage Convention.

The International Convention on Salvage, 1989

Together with the relevant sections of the Merchant Shipping Act, guidance shall be sought where necessary from the International Convention on Salvage, signed in London, in 1989. The following, however, are the main areas of the Convention which are in need of improvement, or which do not coincide with the policies outlined above, or which provide for national remedies, in the order in which they appear in the Convention itself, except those areas involving issues already discussed in detail above.

Damage to the Environment: The scope of the special regime operating with regard to the prevention or minimisation of damage to the environment is limited by the definition given in Article 1 of the Convention, which qualifies damage as "substantial physical damage" and circumscribes "the environment" to "coastal or inland waters of areas adjacent thereto". According to some, this definition eliminates from the picture damage to the environment in exclusive economic zones and fishery zones, and international consensus is in fact being sought to widen the Convention's definition.

Platforms and Drilling Units: "Fixed or floating platforms" and "mobile offshore drilling units" in use by the petroleum industry have been excluded from the Convention, as a result of lobbying from the said petroleum industry, ostensibly because salvage operations in this area would need to be carried out by very highly specialised personnel. It is however submitted that the largest threat to the environment insofar as marine casualties are concerned, is posed by crude oil slicks, such as can only be generated by crude oil tankers and offshore oil rigs. It is therefore in Malta's interest to have professional salvors ready at hand in case of emergency, especially since exploration for underground oil and gas has been initiated.

Mandatory Salvage: The Convention leaves its members free to legislate as they deem fit in the protection of public safety and health. In protecting members of the crew and passengers in Maltese waters or on board a Maltese vessel, and to protect the marine environment surrounding the Maltese Islands, it is deemed necessary to institutionalise a system of mandatory salvage in respect of ships which are in distress, but whose masters refuse salvage assistance.

Court Jurisdiction: The Convention obviously contains no provision detailing the instances where the Maltese Civil Court shall have jurisdiction, so that this is an element which needs to be borne in mind at all stages.

Format of Act

Finally, it is necessary to adapt format and wording of the Convention, where adopted, to the Maltese form of legislation, including references to related areas of Maltese law. Nothing in the Act shall amend the provisions of the Merchant Shipping Act, especially as the latter cover also wrecks, which are not within the scope of the bill, and do not in any manner clash with the policies outlined above.

MERCHANT SHIPPING (SALVAGE) ACT

ARRANGEMENT OF ACT

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A BILL
entitled

AN ACT to make further provision in relation to marine salvage, the saving of life at sea and the prevention of marine pollution

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Part I: Preliminary

1. This Act may be cited as the Merchant Shipping (Salvage) Act, 1996. Short title

2. In this Act, unless the context otherwise requires - Interpretation

"commissioned salvor" means a salvor acting under a commission or contract awarded by the owners;

"damage to the environment" includes any damage or inconvenience to human health, habitation, commerce or navigation, as well as any damage to marine or coastal life or resources, caused by pollution or contamination of the sea or inland waters, of shores or river banks, or of the atmosphere, whether subject to territorial jurisdiction or otherwise, or by fire, explosion or similar incidents;

"Minister" means the Minister responsible for Transport or any person acting under his authority;

"owners" means the owners of the vessel or other property in danger;

"property" means any property not permanently and intentionally attached to the shoreline and includes freight at risk;

"salvage claim" means any claim that may arise on the part of the salvor under this Act;

"salvage operation" means any act or activity undertaken at sea or in inland water to assist a vessel, human life on board, or other property in danger, or to prevent or minimise damage to the environment;

"vessel" means any ship or craft, or any structure capable of navigation, and shall include fixed and floating platforms as well as mobile offshore drilling units;

"voluntary salvor" means a salvor not acting under a commission or contract from the owners, including the crew of the endangered vessel, employees of the salvor and members of the Armed Forces of Malta, in the provision of services of an exceptional nature;

"waters under Maltese jurisdiction" includes Maltese territorial waters as well as areas adjacent thereto over which the Maltese Government exercises jurisdiction for the protection of public safety and health or in order to prevent and control pollution.

of this Section, to exercise due care to prevent or minimise loss of human life and damage to the environment;

- (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his award shall not be prejudiced should it be found that such a request was unreasonable.

(2) If, due to fault, negligence, fraud or other dishonest conduct on the salvor's part, the salvage operations-

- (a) are rendered necessary in the first place;
- (b) are hindered or otherwise made more difficult;
- (c) fail to prevent or minimise loss of human life or damage to the environment; or
- (d) fail to have a useful result;

the salvor may be deprived of the whole or part of the award to which he would otherwise be entitled under this Act.

(3) Subsection (2) of this Section shall not affect any right of action for damages against the salvor on the basis of fault, negligence, fraud or other dishonest conduct.

Part V: Rights of Salvors

9. Persons having such relation to the vessel assisted or saved as it is their duty to render assistance otherwise than under the provisions of this Act, shall not be considered salvors, except where the assistance rendered is of an exceptional nature.

Qualification as salvors

10. A salvage award shall consist of such sum as may be awarded under this Act as compensation for losses and expenses incurred by the salvor during the salvage operations together with such sum as may be awarded under this Act as a reward for the successful completion of the salvage operations.

Salvage awards

Part VI: Compensation for Losses and Expenses

11. A salvor attempting to prevent or minimise loss of human life or damage to the environment, as well as a commissioned salvor under a contract to save property, shall have a right of compensation in respect of losses suffered and expenses reasonably incurred.

Right of compensation

12. Salvor's losses include loss of life or limb, temporary or permanent debilitation, incapacitation or disfigurement and any medical or funeral expenses or loss of salary or profits related thereto, as well as loss of equipment and any other material loss suffered.

in respect of losses suffered

13. Salvor's expenses include the out-of-pocket expenses incurred, and a fair rate for time, equipment and personnel, actually used in the salvage operation, which takes into account, where applicable, the expenses involved in -

in respect of expenses

- (a) bringing equipment and personnel promptly on the spot;
- (b) employing full or part time personnel;
- (c) acquiring or hiring vessels or other equipment for use in salvage operations;
- (d) keeping vessels or other equipment available and in a state of readiness and efficiency for salvage operations; and
- (e) any other overhead expenses involved in maintaining a professional salvage firm.

14. In establishing whether the salvor's expenses have been reasonably incurred the following elements shall be taken into account -

reasonably
incurred

- (a) the nature and degree of any threat of loss of human life, damage to the environment or loss of property;
- (b) in the case of threat of loss of property, the value of such property;
- (c) the chances of success of the salvage operations at the time the expenses are incurred; and
- (d) any orders given directly by the owner which have involved additional costs.

Part VII: Rewards for Successful Salvage

15. (1) Salvage operations which have had a useful result shall be deemed to be successful for the purposes of this Act, and the successful salvor shall be entitled to a reward under this Section.

Rewards for successful salvage

(2) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below -

- (a) the nature and degree of any threat of loss of human life, damage to the environment or loss of property;
- (b) in the case of threat of loss of property, the value of such property;
- (c) the promptness of the services rendered;
- (d) the state of readiness, efficiency and availability of the salvor's vessels or other equipment and the value thereof;
- (e) the risks run by the salvors or their equipment, including personal risks and the risk of liability;
- (f) the skill and efforts of the salvors in preventing or minimizing loss of human life or damage to the environment;
- (g) the skill and efforts of the salvors in salvaging the vessel, or other property;

- (h) the measure of success obtained by the salvor;
- (i) the salved value of the vessel and other property;
and
- (j) in the case of professional salvors, the overhead expenses involved in maintaining a professional salvage firm.

16. (1) Subject to subsection (2) of this Section, when the salvor is successful in preventing or minimising loss of human life or damage to the environment, or was acting on a commission or contract, such salvor shall be entitled to a reward under Section 15 in addition to compensation for losses and expenses due under Part VI of this Act.

Sum of reward to be added to and limited by sum of compensation

(2) When the salvor is entitled to compensation for losses and expenses under Part VI of this Act, the sum total of the reward may not exceed the sum total awarded as compensation.

17. (1) Subject to subsection (2) of this Section, when the successful salvor, being a voluntary salvor of property, does not qualify for compensation of losses and expenses under Part VI of this Act, such losses and expenses shall be taken into consideration in the fixing of the reward together with the criteria listed in Section 15.

Reward of voluntary salvor of property to be limited by salved value

(2) When the successful salvor is a voluntary salvor of property, the reward, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property.

Part VIII: Claims and Actions

18. The salvage claim or claims and any dispute as to whether the services were rendered within or without waters under Maltese jurisdiction, shall, if not settled by agreement, arbitration or otherwise, be determined by the Civil Court.

Jurisdiction of the Civil Court

19. Payment of an award under this Act shall be made by all of the vessel and other property interests in proportion to their respective salvaged values, in accordance with Sections 441 to 451 of the Commercial Code, Cap. 13, dealing with average, and having regard to international custom and practice.

Contribution in general average
Cap.13,
S.441-451

20. In the exercise of a special privilege or privileges on a salvaged vessel arising from salvage operations in accordance with Section 50 of the Merchant Shipping Act, Cap. 234, the following ranking shall be observed:

Ranking of salvage claims
Cap.234, S.50

(a) compensation for losses and expenses incurred in attempting to prevent or minimise loss of life;

(b) compensation for losses and expenses incurred in attempting to prevent or minimise damage to the environment;

(c) compensation for losses and expenses incurred by a commissioned salvor in attempting to salvage property;

(d) rewards for success in preventing or minimising loss of life;

(e) rewards for success in preventing or minimising damage to the environment;

(f) rewards for success in salvaging property.

21. (1) Upon the request of the salvor, the Civil Court, or the arbitrator appointed by the parties, shall order the party liable for a payment under this Act to provide satisfactory security for the claim, including interest and costs of the salvor.

Security and
detention of
property

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

22. Where claims falling under Section 22(a), (b), (d), or (e) have arisen from salvage operations on board a Maltese vessel, or in waters under Maltese jurisdiction, and are left wholly or partially unsatisfied, the Minister may, in his discretion, award to the salvor, out of the Consolidated Fund, such sum as he thinks fit in whole or part satisfaction of any payment left unsatisfied.

Discretionary
award out of
Consolidated
Fund

23. Salvage claims shall not be enforceable against warships or other non-commercial vessels or cargoes owned or in the possession of a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law, except and insofar as that State otherwise declares, and according to the terms and conditions specified in such declaration.

Sovereign
immunity

24. Any claim arising under this Act shall be prescribed if judicial or arbitral proceedings have not been instituted within a period of two years, commencing from the day on which the salvage operations are terminated.

Prescription