

Pollution damage from fuel oil carried on ships will be covered in 2008

The last significant gap in the international regime for compensating victims of oil spills from ships is set to be closed, with the entry into force on 21 November 2008 of an international treaty covering liability and compensation for pollution damage caused by spills of oil, when carried as fuel in ships' bunkers. Current regimes covering oil spills do not include bunker oil spills from vessels other than tankers.

Criteria for entry into force of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 were met on 21 November 2007, following accession to the treaty by Sierra Leone.

The Convention was adopted in 2001 by the International Maritime Organization (IMO), the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships.

Under the terms of the Convention, it enters into force one year after the date on which 18 States, including five States with ships whose combined gross tonnage is not less than 1 million, have ratified it. With the accession by Sierra Leone, the Bunkers Convention has been ratified by 18 States, with a combined gross tonnage of 114,484,743, representing 15.86 per cent of world merchant shipping tonnage.

When the Convention is in force, ships over 1,000 gross tonnage registered in a State Party to the Convention will be required to carry on board a certificate certifying that the ship has insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime. In all cases, this amount should not exceed an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.*

The Convention will make the shipowner, defined broadly so as to include the owner, registered owner, bareboat charterer, manager and operator of a ship, liable to pay compensation for pollution damage (including the costs of preventative measures) caused in the territory, including the territorial sea of a State Party, as well as in its exclusive economic zone, or if a State Party has not established one, in an equivalent area.

IMO Secretary-General Efthimios E. Mitropoulos welcomed the latest accession. "I am very pleased to be able to announce today that, following accession by Sierra Leone, the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage, will enter into force in 12 months time," he said. "With the entry into force of this Convention the Organization has now in place all the elements of a liability and compensation regime for damage caused by the sea carriage of oils, whether as cargo or as fuel."

"Recent accidents involving spills of oil carried as fuel on large ships have shown how important this Convention is, alongside measures to reduce the number of such casualties to a minimum. Despite our best efforts, it has to be acknowledged that accidents will happen and, when they do, it is vital that there is a smooth and internationally agreed liability and compensation regime in place," he added, urging all those States who have not yet ratified this Convention to do so at the earliest opportunity, so that the percentage of global merchant shipping tonnage covered by it can be as high as possible.

Bunkers Convention

The Bunkers Convention, which is a free-standing instrument covering pollution damage, is modelled on the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC). Key elements of both include the need for the registered owner of a vessel to maintain compulsory insurance cover; the right of direct action, which would allow a claim for compensation for pollution damage to be brought directly against an insurer; and the principle of strict liability, which obviates the need to prove negligence.

Oil fuel tank protection

Rules to limit the size of oil fuel tanks on new ships and ensure they are protectively located are included in the International Convention for the Prevention of Pollution from Ships (MARPOL Convention). A new [regulation on oil fuel tank protection](#) was adopted in 2004 and entered into force on 1 January 2007.

The regulation applies to all ships delivered on or after 1 August 2010 with an aggregate oil fuel capacity of 600 m³ and above. It includes requirements for the protected location of the fuel tanks and performance standards for accidental oil fuel outflow.

A maximum capacity limit of 2,500 m³ per oil fuel tank is included in the regulation, which also requires administrations (flag States) to consider general safety aspects, including the need for maintenance and inspection of wing and double-bottom tanks or spaces, when approving the design and construction of ships in accordance with the regulation.

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* Under the 1996 LLMC Protocol, which entered into force in 2004:

The limit of liability for claims for loss of life or personal injury for ships not exceeding 2,000 gross tonnage is 2 million SDR (US\$3.17 million).

For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 tons, 800 SDR (US\$1,269)
- For each ton from 30,001 to 70,000 tons, 600 SDR (US\$952)
- For each ton in excess of 70,000, 400 SDR (US\$634).

Under the 1996 LLMC Protocol, the limit of liability for property claims for ships not exceeding 2,000 gross tonnage is 1 million SDR (US\$1.586 million).

For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 tons, 400 SDR (US\$634)
- For each ton from 30,001 to 70,000 tons, 300 SDR (US\$476)
- For each ton in excess of 70,000, 200 SDR (US\$317)

(Using exchange rate of 1 SDR=1.586 US\$, as at 29 November 2007

Ref: IMF website: http://www.imf.org/external/np/fin/data/rms_five.aspx)

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