

# **The Amendment to Taiwan Marine Pollution Control Act**

The Marine Pollution Control Act (referred to as “the Act” hereunder) was adopted in 2000 establishing rules for preventing and controlling pollution to waters and seas under the jurisdiction of Taiwan. In the recent amendment to the Act effective from 31 May 2023<sup>1</sup>, the higher penal level, the more explicit liability and rule, and the new adoption of whistleblower mechanism are stipulated. Our summary to which is set out as follows:

## **High Level of Administrative Fines**

The maximums of administrative fines under the Act have been largely increased from up to NT\$1.5 million to up to NT\$ 100 million.

The most significant one is of the fine for those that cause marine pollution when engage in oil transportation, marine construction, marine dumping or other acts that may lead to the pollution, the fine level of which has been raised up from between NT\$ 300,000 and NT\$ 1.5 million to between NT\$ 300,000 to NT\$ 100 million (Paragraph 1 of Article 47). The punishment for those that fail to assist in handling the aforesaid emergency shall be fined NT\$ 500,000 to NT\$ 50 million, which is also noticeably greater than the previous fine at NT\$ 100,000 to NT\$ 500,000 (Paragraph 1 of Article 47).

In the event where a ship suffers a marine peril or other accident which result in marine pollution or concern thereof, the fine for shipowners failing to promptly adopt measures for preventing, eliminating or mitigating pollution is as well greatly raised up from between NT\$ 300,000 to NT\$ 1.5 million to between NT\$ 300,000 to NT\$ 30 million (Paragraph 2 of Article 50). Furthermore, the fine can be imposed against shipowners on a consecutively daily basis if the concern and/ or extent of pollution is not improved in a prescribed period of time (Article 50).

## **Adoption of Criminal Penalties**

Imprisonments and pecuniary penalties shall be imposed to those that knowingly report false information or keep false records of their operations by a maximum of 3 years imprisonment, detention and/or a penalty of NT\$ 300,000 to NT\$ 5 million (Article 43). Also, those that fail to comply with an order to suspend work issued by the competent

---

<sup>1</sup> All the amended articles have been effective since 31<sup>st</sup> May 2023 except for the articles No. 11 and 17, effective date of which has not been set up.

authority shall be punished by a maximum of 2 years imprisonment, detention and/ or a penalty of NT\$ 500,000 to NT\$ 10 million (Article 44).

### **Explicit Liability for Damage Compensations**

Expenses incurred for preventing and/ or controlling marine pollution claimable against shipowners<sup>2</sup> are explicated in the amendment as follows:

1. Expenses required for preventing, monitoring, excluding or mitigating marine pollution measures.
2. Expenses for implementing marine or coastal environmental improvement and monitoring.
3. Expenses for conducting marine quality monitoring and damage investigation when marine pollution occurs.
4. Expenses for sampling and analysis of oil and pollutants.
5. Expenses for clearing and disposing of marine waste generated by marine pollution incidents.
6. Expenses for domestic and foreign expert review, consultation and travel.
7. Expenses for related overtime, travel, meals, postal and telecommunications, fuel, transportation vehicle rental, emergency response site rent and other expenses required for personnel to execute contingency measures, clear and dispose of waste (Article 35).

Besides, in the amendment, not only the ship shall be prohibited from sailing due to the violation of the Act, but also shipowners and important crew shall be restricted from leaving Taiwan. Furthermore, the restriction shall apply in the event that the ship, shipowners, and/ or the important crew enter Taiwan territories and/ or territorial waters again except for those who have provided a guarantee (Paragraph 1 of Article 38).

However, if the amount of the aforesaid guarantee/ security is insufficient to pay for the expenses incurred by the relevant authorities in taking emergency measures, cleaning up and handling, and for damages, the shipowner shall make up the security within the limited period of time limit notified by the competent authority (Paragraph 2 of Article 38). Failing to which will incur a fine of NT\$ 600,000 to NT\$ 30 million and may be ordered to make up the security within a limited time period; those who fail to made up within the dead line may be issued consecutive daily fines (Article 49).

The priority of the competent authority' rights to claim for the aforesaid expenses

---

<sup>2</sup> "Shipowners" designated in the Act include owners, charterers, managers and operators of the ship (Section 13 of Article 4)

incurred are prioritized over mortgages, liens and debts (Paragraph 1 of Article 39).

### **Adoption of Deprivation of Illegal Benefits**

The Act provides the legal ground to deprive the benefit gained by those who violate the Act and benefit therefrom. Cases of more than one party involved are also set forth in the Act (Article 63).

### **Simplifying Procedure to Recovery against Polluters**

To enable the preservation of the authority's rights, enforcement of fines imposed and recovery of the illegal benefits, authority's application to the court for provisional attachment or provisional disposition against the polluters' properties can be made without providing security (Paragraph 2 Article 39).

### **Adoption of Whistleblowing Systems**

Whistleblowing systems have been adopted in the new Act, which are laid down in the following two aspects:

1. The public may state the facts or submit evidence and materials to the competent authority to report violations of this Act (Paragraph 1 of Article 64).
2. An employee is encouraged to report the employer's violation of the Act; unfavourable measures taken by the employer against the employee with an interest disclose to the competent authority a violation of the Act are invalid; reduction or exemption of criminal liability shall be given to the employee participating in the illegal act but discloses it to the competent authority (Article 46).

### **Conclusion**

The resolute control to marine pollution of Taiwan government has been exhibited by enforcing the foregoing amendment with stricter and more comprehensive rules. An effective coordination with the competent authority will be more than important for protecting club's and members' interests when a violation of the Act occurs.

### **Attachment**

Comparison of the amendment and original provisions of pollution by ship

## Comparison of the amendment and original provision of pollution by ship

Amended Provisions	Original Provisions
<p>Article 16</p> <p>The marine polluter shall bear responsibility for the cleanup of marine environment pollution. The industry competent authority or competent authority may first adopt emergency measures and, when necessary, may perform cleanup and disposal work on behalf of the polluter; the polluter shall bear responsibility for all expenses generated by emergency measures or cleanup and disposal work.</p> <p>Those that cause the pollution due to one of the circumstances in one of the following subparagraphs shall not be punished.</p> <p>1. Fleeing disaster or ensuring the safety of a ship, aircraft, seawall or other major structure.</p> <p>2. Defending national security, or acts in response to natural disasters, war or regulations or orders.</p> <p>3. Acts performed with the permission of the central competent authority in order to prevent, eliminate or mitigate pollution, protect the environment or for special research needs.</p> <p>The central competent authority shall determine regulations <u>for the cleanup, disposal way and work as well as other matter that shall be complied with</u> in the foregoing first paragraph.</p>	<p>Article 14</p> <p>Those that cause the production of pollution due to one of the circumstances in one of the following subparagraphs shall not be punished.</p> <p>1. Fleeing disaster or ensuring the safety of a ship, aircraft, seawall or other major structure.</p> <p>2. Acts involving national defense, natural disasters, war or other acts performed in accordance with regulations or orders.</p> <p>3. Acts performed with the permission of the central competent authority in order to prevent, eliminate or mitigate pollution, protect the environment or for special research needs.</p> <p>The marine polluter shall bear responsibility for the cleanup of marine environment pollution. The industry competent authority or competent authority may first adopt emergency measures and, when necessary, may perform cleanup and disposal work on behalf of the polluter; the polluter shall bear responsibility for all expenses generated by emergency measures or cleanup and disposal work.</p> <p>The central competent authority shall determine regulations for the cleanup and disposal work in the foregoing paragraph.</p>

<p>Article 28</p> <p>Except in emergency situations that pose a serious threat to human health, personal safety or the marine environment, and with the consent of the central competent authority, <u>no incineration at sea shall be carried out.</u></p>	<p>Article 20</p> <p>Those public or private premises that use ships, aircraft, marine facilities or other methods to engage in marine dumping or marine incineration shall apply for permission from the central competent authority.</p>
<p>Article 29</p> <p>When necessary, the port management authority or enforcement authority may, in conjunction with the central competent authority, examine the ship's marine pollution prevention certificate or certificate documents, shipboard pollution emergency procedures, operation manuals, oil and cargo records, employee life garbage records and other documents designated by authority; <u>the inspected person shall not evade, obstruct or refuse.</u></p>	<p>Article 28</p> <p>When necessary, the port management authority or enforcement authority may, in conjunction with the central competent authority, examine the marine pollution prevention certificates or verification documents, operation manuals, oil, cargo records and other designated documents of domestic and foreign ships.</p>
<p>Article 31</p> <p>1. <u>Ships should be equipped with marine pollution prevention equipment and must not pollute the ocean.</u></p> <p>2. Ships loading, unloading or transporting oil, chemical goods or other cargo that might cause pollution of the sea shall adopt appropriate emissions prevention measures.</p>	<p>Article 30</p> <p>Ships loading, unloading or transporting oil, chemical goods or other cargo that might cause pollution of the sea shall adopt appropriate emissions prevention measures.</p>
<p>Article 34</p> <p>1. <u>Foreign ships engaged in transportation that have not established a branch in our country in</u></p>	

<p><u>accordance with the law, and whose ships have violated the Act and been fined, shall be ordered by the competent authority to berth at our country's ports and be prohibited from sailing, departing or being required to move before paying the fine or providing sufficient security. If they enter our territorial waters again after departure, the same shall apply.</u></p> <p>2. <u>In the case of the preceding paragraph, the port management authorities and business institutions shall assist in planning the berths, berthing berths and restricting the departure of such ships; if necessary, the competent authority may request the enforcement agency to forcibly berth them at designated berths.</u></p>	
<p>Article 35</p> <p><u>The relevant authorities shall, in accordance with the Act, claim compensation for the expenses incurred in taking emergency measures, cleaning up and handling, including the following items:</u></p> <ol style="list-style-type: none"> <li>1. <u>Expenses required for preventing, monitoring, excluding or mitigating marine pollution measures.</u></li> <li>2. <u>Expenses for implementing marine or coastal environmental improvement and monitoring.</u></li> <li>3. <u>Expenses for conducting marine quality monitoring and damage investigation when marine pollution</u></li> </ol>	

<p><u>occurs.</u></p> <ol style="list-style-type: none"> <li>4. <u>Expenses for sampling and analysis of oil and pollutants.</u></li> <li>5. <u>Expenses for clearing and disposing of marine waste generated by marine pollution incidents.</u></li> <li>6. <u>Expenses for domestic and foreign expert review, consultation and travel.</u></li> <li>7. <u>Expenses for related overtime, travel, meals, postal and telecommunications, fuel, transportation vehicle rental, emergency response site rent and other expenses required for personnel to execute contingency measures, clear and dispose of waste.</u></li> </ol>	
<p>Article 38</p> <ol style="list-style-type: none"> <li>1. Prior to the fulfillment of liability obligations for the damage compensation liability incurred by a <u>ship</u> due to the violation of this Act, or for those circumstances in which there is concern of failure to fulfill such liability obligations, the competent authority may <u>forbid the ship's sailing, departing or request of shifting, and may restrict the shipowners and important crew</u> from leaving the country. <u>If they enter our territorial waters again after departure, the same shall apply.</u> However, this restriction shall not apply to those that provide a guarantee.</li> <li>2. <u>In the case of the preceding</u></li> </ol>	<p>Article 35</p> <p>Prior to the fulfillment of liability obligations for the damage compensation liability incurred by a <u>foreign ship</u> due to the violation of this Act, or for those circumstances in which there is concern of failure to fulfill such liability obligations, the port management authority may restrict the ship and related crew from leaving the country. However, this restriction shall not apply to those that provide a guarantee.</p>

<p><u>paragraph, the port management authority and business institution shall assist in planning the berths, berthing berths and restricting the departure of such ships; if necessary, the competent authority may request the enforcement agency to forcibly berth them at designated berths.</u></p> <p>3. <u>If the amount of security provided in accordance with the provisions of the proviso to the first paragraph is insufficient to pay for the expenses incurred by the relevant authorities in taking emergency measures, cleaning up and handling, and for damages, the shipowner shall make up the security within the time limit notified by the competent authority.</u></p>	
<p>Article 39</p> <p>1. <u>The competent authority' rights to claim for the aforesaid expenses incurred have priority over mortgages, liens and obligations.</u></p> <p>2. <u>In order to preserve the right to claim damages under the Act, to claim compensation for the expenses incurred by the competent authority and the competent authorities of the respective target industries in taking emergency measures, cleaning up and handling, to enforce fines imposed under this law and to recover the proceeds of benefits under Article 63, the competent authority and the competent</u></p>	



<p><u>authorities of the respective target industries may apply to the court or administrative court for provisional attachment or provisional disposition without providing security.</u></p>	
<p>Article 40</p> <ol style="list-style-type: none"> <li>1. Those who violate the first part of paragraph 2 of Article 24 or the first part of Article 27 applying the first part of paragraph 2 of Article 24 by disposing of Class A substances announced under paragraph 1 of Article 24 or under paragraph 1 of Article 27 applying paragraph 1 of Article 24 in the ocean, or who engages in <u>sea incineration</u> of hazardous substances in violation of Article 28, shall be punished by a <u>maximum 3 years imprisonment and/ or a pecuniary penalty of NT\$ 1 million to NT\$ 5 million.</u></li> <li>2. Those who commit the crime in the preceding paragraph and thereby causes serious pollution to the ocean shall be punished by <u>a maximum 7 years imprisonment and/ or a pecuniary penalty of NT\$ 3 million to NT\$ 100 million.</u></li> <li>3. The attempt to commit the offense in the first paragraph shall be punishable.</li> </ol>	<p>Article 36</p> <p>Those that cause serious pollution of the sea by dumping Category A substances that have been officially announced pursuant to Article 22, Paragraph 1 shall be punished by a maximum of 10 years imprisonment and may be fined NT\$ 20 million to NT\$ 100 million.</p> <p>The attempt to commit the crime in the foregoing paragraph shall be punishable hereunder.</p>
<p>Article 43</p> <p>Those that have reporting obligations pursuant to the Act that knowingly report</p>	<p>Article 38</p> <p>Those that have reporting obligations pursuant to the Act that knowingly report</p>

<p>false information or keep false records of their operations shall be punished by a maximum of 3 years imprisonment, detention and/or a pecuniary penalty of NT\$ 300,000 to <u>NT\$5 million</u>.</p>	<p>false information or keep false records of their operations shall be punished by a maximum of 3 years imprisonment, detention and/or a fine of NT\$ 300,000 to NT\$ 1.5 million.</p>
<p>Article 44 For those who fails to comply with an order to suspend work issued by the competent authority pursuant to the provisions of Article 48, Article 50 or Article 55 of the Act shall be punished by <u>a maximum of 2 years imprisonment, detention and/ or pecuniary penalty of NT\$ 500,000 to NT\$ 10 million</u>.</p>	<p>Article 40 For those who fail to comply with an order to suspend work issued by the competent authority pursuant to this Act, the statutory responsible person, the perpetrator and the shipowner shall be punished by a maximum of one year of imprisonment, detention and/or a fine of NT\$ 200,000 to NT\$ 1 million.</p>
<p>Article 45 1. <u>If the person in charge of a juristic person or the supervisory planner commits a crime under Articles 40 to 44, their sentence shall be increased by up to one-half.</u>  2. <u>If the person in charge of a juristic person, the agent of a juristic person or natural person, an employee or other practitioner commits a crime under Articles 40 to 44 while performing their duties, in addition to punishing the perpetrator pursuant to the provisions of each article, the juristic person or natural person shall also be fined pursuant to each article.</u></p>	
<p>Article 46 1. <u>An employer may not dismiss, demote, reduce the salary of, damage the rights and interests that should be</u></p>	

<p><u>enjoyed pursuant to laws, contracts or customs, or take other unfavorable measures against an employee or a person with an interest because the employee or person with an interest discloses to the competent authority or judicial authority a violation of this Act, serves as a witness in a litigation procedure, or refuses to participate in a violation of this Act.</u></p> <p>2. <u>The unfavorable measures taken by the employer in the foregoing paragraph are invalid.</u></p> <p>3. <u>If an employee or a person with an interest is subject to unfavorable measures due to the behavior specified in the first paragraph, the employer shall bear the burden of proof that the unfavorable measures are unrelated to the behavior specified in the first paragraph.</u></p> <p>4. <u>If an employee or a person with an interest has participated in a criminal act that should be held criminally responsible under this law and discloses it to the competent authority or confesses or surrenders to the judicial authority, and other principal offenders or accomplices are found as a result, their sentence may be reduced or exempted.</u></p>	
<p>Article 47</p> <p>1. Those that violate Article 15, Paragraph 1 that <u>engage in oil transportation, marine construction, marine dumping or other acts that may lead to marine pollution shall be</u></p>	<p>Article 45</p> <p>Those that violate Article 13, Paragraph 1 shall be fined NT\$ 300,000 to NT\$ 1.5 million.</p> <p>Those that fail to assist in the handling of an emergency pollution incident pursuant</p>

<p><u>fined NT\$ 300,000 to NT\$ 100 million.</u></p> <p>2. Those that fail to assist in the handling of an emergency pollution incident pursuant to Article 15, Paragraph 4 shall be fined <u>NT\$ 500,000 to NT\$ 50 million.</u></p>	<p>to Article 13, Paragraph 4 shall be fined NT\$ 100,000 to NT\$ 500,000; in those severe circumstances, fines may be issued per violation.</p>
<p>Article 48</p> <p>Those that violate Article 31 Paragraph 2 or Article 32 shall be fined based on the size of the ship as below and may be ordered to make improvements within a limited time period; those that fail to make improvements by the deadline may be issued consecutive daily fines.</p> <p><u>General ships with a gross tonnage of more than 400 and oil tankers or chemical ships with a tonnage of more than 150: NT\$ 1 million to NT\$ 30 million.</u></p> <p><u>Ships that do not meet the above scale: NT\$ 300,000 to NT\$ 3 million.</u></p>	<p>Article 54</p> <p>Those that violate Article 30 or Article 31 shall be fined NT\$300,000 and NT\$1.5 million and may be ordered to make improvements within a limited time period; those that fail to make improvements by the deadline may be issued consecutive daily fines; in those severe circumstances, orders may be issued for the suspension of work.</p>
<p>Article 49</p> <p>Those that violate the provisions of paragraph 3 of Article 38 by failing to make up the security within the limited time period notified by the competent authority shall be fined NT\$600,000 to NT\$ 30 million and may be ordered to make up the security within a limited time period; those who fail to made up within the dead line may be issued consecutive daily fines.</p>	

<p>Article 50</p> <p>Those that commit any of the following acts shall be fined <u>NT\$ 300,000 to NT\$ 30 million</u> and may be ordered to make improvement within a limited time period and those that fail to make improvements by the deadline may be issued consecutive daily fines; in those severe circumstances, orders may be issued for the suspension of work:</p> <ol style="list-style-type: none"> <li>1. <u>Failure to take measures to prevent, eliminate or mitigate pollution pursuant to provisions of paragraph 1 of Article 19, paragraph 1 of Article 22, paragraph 1 of Article 26, paragraph 1 of Article 27 applying paragraph 1 of Article 26 or paragraph 1 of Article 33.</u></li> <li>2. <u>Failure to comply with an order issued by the competent authority pursuant to paragraph 2 of Article 19, paragraph 2 of Article 22, paragraph 2 of Article 26, paragraph 1 of Article 27 applying paragraph 2 of Article 26 or paragraph 2 of Article 33.</u></li> </ol>	<p>Article 49</p> <p>Those that fail to adopt measures to prevent, eliminate or mitigate pollution pursuant to Article 16, Paragraph 1, Article 19, Article 24 or Article 32 or fail to comply with an order of the competent authority to adopt measures shall be fined NT\$300,000 to NT\$1.5 million and may be ordered to make improvements within a limited time period; those that fail to make improvements by the deadline may be issued consecutive daily fines; in those severe circumstances, orders may be issued for the suspension of work.</p>
<p>Article 52</p> <p>Those that violate Article 30 Paragraph 1 to release wastewater, oil, waste or other pollutants into the ocean shall be fined based on the size of the ship as follows and may be ordered to improve within a limited time period; those that fail to make improvements by the deadline may</p>	<p>Article 53</p> <p>Those that violate Article 29, Paragraph 1 shall be fined NT\$300,000 to NT\$1.5 million and may be ordered to make improvements within a limited time period; those that fail to make improvements by the deadline may be issued consecutive daily fines.</p>

<p>be issued consecutive daily fines.</p> <p>General ships with a gross tonnage of more than 400 and oil tankers or chemical ships with a tonnage of more than 150: NT\$ 3 million to NT\$ 30 million.</p> <p>Ships that do not meet the above scale: NT\$ 30,000 to NT\$ 3 million.</p>	
<p>Article 54</p> <p>Those that commits any of the following acts shall be fined <u>NT\$ 100,000 to 10 million and may be ordered to clean up the pollution within a time limit; if the pollution is not cleaned up within the time limit, consecutive daily fines may be issued.</u></p> <ol style="list-style-type: none"> <li>1. <u>Failure to clean up pollution pursuant to the first part of paragraph 1 of Article 16.</u></li> <li>2. <u>Engaging in sea incineration in violation of Article 28.</u></li> </ol>	<p>Article 46</p> <p>Those that fail to clean up pollution pursuant to Article 14, Paragraph 2 shall be fined NT\$300,000 to NT\$1.5 million.</p>
<p>Article 56</p> <p>Those that violate Article 36 Paragraph 2 that ships are not insured with the liability insurance or provided with the security, or their liability insurance and/or guarantee are suspended or canceled, shall be fined NT\$600,000 to NT\$ 3 million.</p>	<p>Article 52</p> <p>Those that violate Article 21, Paragraph 1 or Article 33, Paragraph 2 shall be fined NT\$600,000 to NT\$3 million.</p>

<p>Article 58</p> <p>Those that evade, obstruct or refuse an inspection, appraisal, order, check or examination performed or issued pursuant to Article 6 Paragraphs 1, Article 25 Paragraph 3, Article 27 Paragraph 1 applying Article 25 Paragraph 3 or Article 29 shall be fined <u>NT\$300,000 to NT\$1.5 million</u> and may be issued consecutive daily fines and be subject to the compulsory enforcement of the inspection, appraisal, check or examination.</p>	<p>Article 41</p> <p>Those that refuse, evade or obstruct an inspection, appraisal, order, check or examination performed or issued pursuant to Article 6, Paragraphs 1 and 2, Article 23 or Article 28 shall be fined NT\$200,000 to NT\$1 million and may be issued consecutive daily fines and be subject to the compulsory enforcement of the inspection, appraisal, check or examination.</p>
<p>Article 62</p> <ol style="list-style-type: none"> <li>1. <u>Fines imposed under the Act shall be determined according to the characteristics of the pollution and the circumstances of the violation.</u></li> <li>2. <u>The criteria for imposing penalties in the foregoing paragraph shall be determined by the central competent authority.</u></li> </ol>	
<p>Article 63</p> <ol style="list-style-type: none"> <li>1. <u>Those who have benefited from violating the obligations under the Act shall, in addition to being penalized for a certain amount of fine in accordance with provision of this Act, return their illegal profits.</u></li> <li>2. <u>If a person performs an act for the benefit of others and causes others to violate their obligations under the Act and should be punished, if the person who performs the act has not been punished for receiving benefits due to</u></li> </ol>	

<p><u>his act, the benefits shall be deprived.</u></p> <p>3. <u>If a person who violates the obligation under the Act should be punished, and another person has benefited from the act but has not been punished, the latter will be deprived with the benefits received.</u></p> <p>4. <u>The recovery of the foregoing three paragraphs shall be made by the competent authority that made the decision by means of administrative disposition. The term ‘interest’ may include positive interest and negative interest that should have been paid but was not paid or reduced, and the methods for calculation, estimation and other relevant matters shall be determined by the central competent authority</u></p>	
<p>Article 64</p> <p>3. <u>The public may state the facts or submit evidence and materials to the competent authority to report violations of this Act.</u></p> <p>4. <u>If the report in the foregoing paragraph is verified to be true and a fine is imposed, when the amount of the fine reaches a certain amount, a certain percentage of the total amount of the actual fine received may be used to supplement the reward for the whistleblower.</u></p> <p>5. <u>The competent authority shall keep confidential the identity information of the whistleblower.</u></p> <p>6. <u>The jurisdiction, processing period, reward amount for whistleblowers,</u></p>	



confidentiality of whistleblowers' identity and other relevant matters for handling whistleblower cases by the competent authorities in charge in the foregoing three paragraphs shall be determined by the central competent authority.