

No. S 54

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

**MERCHANT SHIPPING (CIVIL LIABILITY AND COMPENSATION
FOR OIL POLLUTION) ORDER, 2008**

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83{3})

MERCHANT SHIPPING (CIVILLIABILITY AND COMPENSATION
FOR OIL POLLUTION) ORDER, 2008

In exercise of the power conferred by Article 83{3} of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Order, 2008.

(2) The long title of this Order is "An Order to give effect to the International Convention on Civil Liability for Oil Pollution Damage, 1992, and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 and to make provisions generally for matters connected therewith".

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

"Brunei Darussalam ship" means a Brunei Darussalam ship or a Brunei Darussalam licensed ship as defined in section 2(1) of the Merchant Shipping Order, 2002 (S 27102);

"country" includes a territory;

"Court" means the High Court;

"damage" includes loss;

"Director" means the Director of Marine appointed under section 4 of the Merchant Shipping Order, 2002 (S 27102) and includes the Deputy Director of Marine;

"Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

"Liability Convention country" means a country in respect of which the Liability Convention is in force;

"Liability Convention State" means a State which is a party to the Liability Convention;

"master" includes every person, except a pilot, having command or charge of a ship;

"Minister" means the Minister of Communications;

"oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of ship;

"owner", in relation to a ship, means the person registered as the owner of the ship or, in the absence of registration, the person owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered in that State as the ship's operator, it means the person registered as its operator;

"port" means any area in Brunei Darussalam declared to be a port under section 3 of the Ports Act (Chapter 144);

"ship" means any seagoing vessel and seaborne craft of any type.

(2) If the Minister, by order published in the Gazette, declares that any State specified in the order is a party to the Liability Convention in respect of any country so specified, the order shall, while in force, be conclusive evidence that that State is a party to the Liability Convention in respect of that country.

(3) For the purposes of this Order –

(a) references to the territory of Brunei Darussalam include the territorial sea and exclusive economic zone of Brunei Darussalam and references to the territory of any other country include the territorial sea and exclusive economic zone of that country;

(b) references to the exclusive economic zone of a country are references to the exclusive economic zone of that country established in accordance with international law or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured;

(c) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank;

(d) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and

(e) where a relevant threat of contamination referred to in section 3(2) results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

PART II

CIVIL LIABILITY FOR OIL POLLUTION

Liability

Liability for oil pollution.

3. (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, the owner of the ship shall, except as otherwise provided by this Part, be liable —

(a) for any damage caused outside the ship in the territory of Brunei Darussalam by contamination resulting from the discharge or escape;

(b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or reducing any damage so caused in the territory of Brunei Darussalam by contamination resulting from the discharge or escape; and

(c) for any damage caused in the territory of Brunei Darussalam by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, the owner of the ship shall be liable —

(a) for the cost of any measures reasonably taken for the purpose of preventing or reducing any such damage in the territory of Brunei Darussalam; and

(b) for any damage caused outside the ship in the territory of Brunei Darussalam by any measures so taken,

and in this Order, any such threat is referred to as a relevant threat of contamination.

(3) Subject to subsection (4), this section shall apply to any ship constructed or adapted for carrying oil in bulk as cargo.

(4) Where any ship so constructed or adapted is capable of carrying any other cargoes besides oil, this section shall apply to any such ship –

(a) while it is carrying oil in bulk as cargo; and

(b) while it is on any voyage following the carriage of any such oil, unless it is proved that no residues from the carriage of any such oil remain in the ship,

but not otherwise.

(5) Where a person incurs a liability under subsections (1) or (2), he shall also be liable for any damage or cost for which he would be liable under subsections (1) or (2) if the references therein to the territory of Brunei Darussalam included the territory of any other Liability Convention country.

(6) Where –

(a) as a result of any occurrence, a liability is incurred under this section by the owner of each of 2 or more ships; but

(b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) For the purposes of this section, references to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences, resulting in the discharge or escape of oil from the ship or giving rise to the relevant threat of contamination, as the case may be.

(8) The Fatal Accidents and Personal Injuries Act (Chapter 160) shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

Exceptions from liability under section 3.

4. No liability shall be incurred by the owner of a ship under section 3 by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or the relevant threat of contamination, as the case may be —

(a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;

(b) was due wholly to any thing done or left undone by another person, not being an employee or agent of the owner, with intent to do damage; or

(c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its functions of maintaining lights or other navigational aids for the maintenance of which it was responsible.

Restriction of liability for oil pollution.

5. (1) Where, as a result of any occurrence —

(a) any oil is discharged or escapes from a ship; or

(b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 3 —

(i) he shall not be liable otherwise than under that section for any damage or cost referred to in that section; and

(ii) no person to whom this sub-paragraph applies shall be liable for any such damage or cost unless it resulted from any thing done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1)(ii) shall apply to —

(a) any servant or agent of the owner of the ship;

(b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship;

(c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;

(e) any person taking any of the measures referred to in sections 3(1)(b) or (2)(a); and

(f) any servant or agent of a person falling within paragraphs (c), (d) or (e).

(3) The liability of the owner of a ship under section 3 for any impairment of the environment shall be taken to be a liability only in respect of –

(a) any resulting loss of profits; and

(b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

Limitation of liability under section 3.

6. (1) Where, as a result of any occurrence, the owner of a ship incurs a liability under section 3 by reason of a discharge or escape or by reason of any relevant threat of contamination, then, subject to subsection (4)–

(a) section 141 of the Merchant Shipping Order, 2002 (S 27/02) shall not apply in relation to that liability; but

(b) he may limit that liability in accordance with this Order, and if he does so his liability (being the aggregate of his liabilities under section 3 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1)(b), "relevant amount" means –

(a) in relation to a ship not exceeding 5,000 tons, 4.51 million special drawing rights; and

(b) in relation to a ship exceeding 5,000 tons, 4.51 million special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 89.77 million special drawing rights.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the Gazette, make such amendments to subsection (2)(a) and (b) as appear to him to be appropriate for the purpose of

giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.

(4) Subsection (1) shall not apply in a case where it is proved that the discharge or escape, or the relevant threat of contamination, as the case may be, resulted from any thing done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 3 or recklessly and in the knowledge that any such damage or cost would probably result.

(5) For the purposes of this section, the tonnage of a ship shall be its gross tonnage calculated in accordance with the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

Limitation actions.

7. (1) Where the owner of a ship has or is alleged to have incurred a liability under section 3, he may apply to the Court for the limitation of that liability to an amount determined in accordance with section 6.

(2) If on such an application the Court finds that the applicant has incurred such a liability and is entitled to limit it, the Court shall, after determining the limit of liability and directing payment into Court of the amount of that limit –

(a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and

(b) direct the distribution of the amount paid into Court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the provisions of this section.

(3) A payment into Court of the amount of a limit determined under this section shall be made in Brunei Darussalam dollars, and –

(a) for the purpose of converting such an amount from special drawing rights into Brunei Darussalam dollars, one special drawing right shall be treated as equal to such a sum in Brunei Darussalam dollars as the International Monetary Fund has fixed as being the equivalent of one special drawing right for –

(i) the day on which the determination is made; or

(ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;

(b) a certificate given by or on behalf of the Minister of Finance stating –

- (i) that a particular sum in Brunei Darussalam dollars has been so fixed for the day on which the determination was made; or
- (ii) that no sum has been so fixed for that day and that a particular sum in Brunei Darussalam dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made,

shall be conclusive evidence of those matters for the purposes of this Part; and

(c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(4) No claim shall be admitted in proceedings under this section unless it is made within such time as the Court may direct or such further time as the Court may allow.

(5) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends –

(a) by the owner or the persons referred to in section 14 as "the insurer"; or

(b) by a person who has or is alleged to have incurred a liability, otherwise than under section 3, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of section 141 of the Merchant Shipping Order, 2002 (S27/02),

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(6) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended, he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(7) The Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it considers appropriate having regard to any

claims that may later be established before a court of any country outside Brunei Darussalam.

(8) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b).

Restriction on enforcement of claims after establishment of limitation fund.

8. Where the Court has found that a person who has incurred a liability under section 3 is entitled to limit that liability to any amount and he has paid into Court a sum not less than that amount —

(a) the Court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and

(b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs,

if the sum paid into Court or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 7 had been taken.

Concurrent liabilities of owners and others.

9. Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the owner of the ship incurs a liability under section 3 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsections (1) or (2) of that section, then, if —

(a) the owner has been found, in proceedings under section 7, to be entitled to limit his liability to any amount and has paid into Court a sum not less than that amount; and

(b) that other person is entitled to limit his liability in connection with the ship by virtue of section 141 of the Merchant Shipping Order, 2002 (S27/02),

no proceedings shall be taken against that other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into Court, no further steps shall be taken in those proceedings except in relation to costs.

Establishment of limitation fund outside Brunei Darussalam.

10. Where the events resulting in the liability of any person under section 3 also resulted in a corresponding liability under the law of another Liability Convention country, sections 8 and 9 shall apply as if the references to sections 3 and 7 included references to the corresponding provisions of that law and the references to sums paid into Court included references to any sums secured under these provisions in respect of that liability.

Extinguishment of claims.

11. No action to enforce a claim in respect of a liability incurred under section 3 shall be entertained by any court in Brunei Darussalam unless the action is commenced not later than 3 years after the claim arose nor later than 6 years after the occurrence or first of the occurrences resulting in the discharge or escape, or in the relevant threat of contamination, as the case may be, by reason of which the liability was incurred.

Compulsory Insurance

Compulsory insurance against liability for oil pollution.

12. (1) Subsection (2) shall apply to any ship carrying in bulk as cargo more than 2,000 tons of oil.

(2) The ship shall not enter or leave any port in Brunei Darussalam or enter or leave the territorial sea of Brunei Darussalam nor, if it is a Brunei Darussalam ship, enter or leave any port or territorial sea of any other country, unless there is in force a certificate complying with subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention.

(3) The certificate shall be –

(a) if the ship is a Brunei Darussalam ship, a certificate issued by the Director;

(b) if the ship is registered in a Liability Convention country other than Brunei Darussalam, a certificate issued by or under the authority of the government of that other Liability Convention country;

(c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Director or by or under the authority of the government of any Liability Convention country other than Brunei Darussalam.

(4) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations provide that certificates in respect of ships registered in any country or any specified country which is not a Liability Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of subsection (3)(c) if the certificates are issued by or under the authority of the government of the country designated in the regulations in that behalf; and the country that may be so designated may be either or both of the following –

(a) the country in which the ship is registered; and

(b) any country specified in the regulations for the purposes of this subsection.

(5) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any person authorised by the Director and, if the ship is a Brunei Darussalam ship, to any consular officer within the meaning of the Merchant Shipping Order, 2002 (S27/02).

(6) If a ship enters or leaves, or attempts to enter or leave a port or the territorial sea in contravention of subsection (2), the master or the owner of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$1 million.

(7) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5), the master of the ship shall be guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

(8) If a ship attempts to leave a port in, or the territorial sea of, Brunei Darussalam in contravention of this section, the ship may be detained by the Director, any police officer or any commissioned officer on full pay in the Royal Brunei Armed Forces.

(9) Section 206 of the Merchant Shipping Order, 2002 (S27/02) shall apply, with the necessary modifications, to the detention of a ship under this Order.

Issue of certificates.

13. (1) Subject to subsection (2), if the Director is satisfied, on an application for a certificate referred to in section 12 in respect of a Brunei Darussalam ship or a ship registered in any country which is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Director may issue such a certificate to the owner.

(2) If the Director is of the opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 3 in all circumstances, the Director may refuse to issue the certificate.

(3) The Director shall maintain a record of any certificate issued by him under this section in respect of a Brunei Darussalam ship which shall be available for public inspection.

Rights of third parties against insurers.

14. (1) Where it is alleged that the owner of a ship has incurred a liability under section 3 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which a certificate referred to in section 12 is related, proceedings to enforce a claim in respect of that liability may be brought against the person who provided the insurance or other security [referred to in this Order as the insurer).

(2) In any proceedings brought against the insurer by virtue of this section, it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or the relevant threat of contamination, as the case may be, was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability, but the insurer may do so whether or not the discharge or escape, or the relevant threat of contamination, as the case may be, resulted from any thing done or omitted to be done by the owner as mentioned in section 6(4).

(4) Where the owner and the insurer each apply to the Court for the limitation of his liability, any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.

Supplementary

Jurisdiction of Brunei Darussalam courts and registration of foreign judgments.

15. (1) Section 3(2)(d) of the Admiralty Jurisdiction Act (Chapter 179) shall be construed as extending to any claim in respect of a liability incurred by the owner of a ship under this Part.

(2) Where –

(a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of Brunei Darussalam and no measures are reasonably taken to prevent or minimise such damage in that territory; or

(b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of Brunei Darussalam,

no court in Brunei Darussalam shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost –

- (i) against the owner of the ship;
- (ii) against any person to whom section 5(1)(ii) applies, unless any such damage or cost resulted from any thing done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result; or
- (iii) against any person taking any of the measures referred to in subsections (3)(a) or (b), unless any such damage or cost resulted from any thing done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(3) In subsection (2), "relevant damage or cost" means –

(a) in relation to any discharge or escape referred to in subsection (2)(a), any damage caused in the territory of another Liability Convention country by contamination resulting from that discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country;

(b) in relation to any relevant threat of contamination referred to in subsection (2)(b), any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or

(c) any damage caused by any measures referred to in paragraphs (a) or (b).

(4) Part I of the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177) shall apply, whether or not it would so apply apart from this

section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 3, and in its application to such a judgment that Part shall have effect with the omission of sections 5(2) and (3) of that Act.

Restriction on enforcement of judgments given by court in country not party to Liability Convention.

16. Notwithstanding Part I of the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177) and any rule of law relating to the recognition and enforcement of foreign judgments, any judgment given by a court in a country which is not a Liability Convention country in respect of any liability for oil pollution incurred by the owner of a ship in that country may be recognised and enforced by the Court only up to the limit of liability prescribed by section 6.

Government ships.

17. (1) Notwithstanding the other provisions of this Part, this Part shall not apply in relation to any warship or any ship for the time being used by the government of any State otherwise than for commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes, it shall be a sufficient compliance with section 12(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Liability Convention.

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in Brunei Darussalam to enforce a claim in respect of a liability incurred under section 3, be deemed to have submitted to the jurisdiction of that court, and accordingly the Chief Justice, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make Rules of Court to provide for the manner in which those proceedings are to be commenced and carried on.

(4) Nothing in subsection (3) shall authorise the issue of execution against the property of any State.

Saving for recourse actions.

18. Nothing in this Part shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Part may have against another person in respect of that liability.

Power to detain ship.

19. (1) Where the Director has reasonable cause to believe that any oil has been discharged or has escaped from any ship or that a relevant threat of contamination has arisen, and the owner of that ship has incurred a liability under section 3 and the damage only affects, or is likely only to affect, the territory of Brunei Darussalam, the Director may detain the ship and the ship may be so detained until the owner of the ship deposits with the Director an amount which meets the owner's liability or furnishes such security which will, in the opinion of the Director, be adequate to meet the owner's liability.

(2) If any ship is detained under this Order and the ship proceeds to sea before it is released by the Director, the master of the ship, and also the owner thereof and any person who sends the ship to sea, if that owner or person is party or privy to the act of sending the ship to sea, shall be guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 2 years or both.

Power of arrest.

20. Any officer of the Marine Department authorised by the Director or any police officer may arrest without warrant any person who has committed or whom he reasonably believes to have committed an offence under this Part and take him before a Court of a Magistrate to be dealt with according to law.

Sale of ship.

21. Where the owner or the master of a ship has been convicted of an offence under the provisions of this Part and any fine imposed under this Part is not paid at the time ordered by the Court, the Court may, in addition to any powers for enforcing payment, direct the amount remaining unpaid to be levied by distress and sale of the ship, its tackle, furniture and apparel.

PART III

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Interpretation of this Part.

22. (1) In this Part, unless the context otherwise requires –

"discharge or escape", in relation to pollution damage, means the discharge or escape of oil from a ship;

"Fund" means the International Fund established by the Fund Convention;

"Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

"Fund Convention country" means a country in respect of which the Fund Convention is in force;

"incident" means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;

"pollution damage" means —

(a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship;

(b) the cost of preventive measures; and

(c) further damage caused by preventive measures,

but does not include any damage attributable to any impairment of the environment, except to the extent that any such damage consists of —

(i) any loss of profits; or

(ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

"preventive measures" means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken —

(a) after an incident has occurred; or

(b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences.

(2) If the Minister, by order published in the Gazette, declares that any State specified in the order is a party to the Fund Convention in respect of any country so specified, the order shall, while in force, be conclusive evidence that that State is a party to that Convention in respect of that country.

Legal capacity of Fund.

23. (1) For the purposes of the rights and obligations of this Part, the Fund has the capacity, rights and obligations of an individual and, in particular, may sue and be sued.

(2) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative.

(3) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund, and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.

Contributions by importers of oil and others.

24. (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Brunei Darussalam otherwise than on a voyage only within its territorial sea.

(2) Subsection **(1)** shall apply whether or not the oil is being imported, and shall apply even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in Brunei Darussalam after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

(4) The person liable to pay contributions is —

(a) in the case of oil which is being imported into Brunei Darussalam, the importer; and

(b) otherwise, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in that year does not exceed 150,000 tonnes.

(6) For the purpose of subsection (5)–

(a) all the members of a group of companies shall be treated as a single person; and

(b) any 2 or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

(7) The contributions payable by a person for any year shall –

(a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;

(b) be payable in such instalments, becoming due at such times, as may be so notified to him,

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined by the Assembly of the Fund, until it is paid.

(8) The Minister may, by regulations made with the approval of His Majesty the Sultan and Yang Di-Pertuan, impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Director or the Fund.

(9) Regulations made under subsection (8) may –

(a) include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient; and

(b) provide that any contravention or failure to comply with any of such regulations shall be an offence punishable with a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

(10) In this section and in section 25, unless the context otherwise requires –

"company" means a body corporate incorporated or registered under the law of Brunei Darussalam, or of any other country;

"group", in relation to companies, means a holding company and its subsidiaries as defined in sections 125 and 126 of the Companies Act (Chapter 39) subject, in the case of a company incorporated outside Brunei Darussalam, to any necessary modifications of those definitions;

"importer" means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation, and "import" shall be construed accordingly;

"oil" means crude oil and fuel oil, and –

(a) "crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes –

- (i) crude oils from which distillate fractions have been removed; and
- (ii) crude oils to which distillate fractions have been added; and

(b) "fuel oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials Specification for Number Four Fuel Oil (Designation D396-69)", or heavier;

"terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

(11) All contributions payable under this section and any interest payable thereon are debts due to the Fund and recoverable as such from the persons liable to pay the contributions in any court of competent jurisdiction.

Power to obtain information.

25. (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 24 are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Director may by notice require any person engaged in producing, treating, distributing or transporting oil, or any other person who the Director has reason to believe has any information relevant to the purpose, to furnish such information as may be specified in the notice.

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 24(6).

(3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 24, particulars contained in any list transmitted by the Director to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) A person who —

(a) refuses or wilfully neglects to comply with a notice under this section; or

(b) in furnishing any information in compliance with a notice under this section, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

Liability of Fund.

26. (1) The Fund shall be liable for pollution damage in the territory of Brunei Darussalam if the person suffering the damage has been unable to obtain full compensation under section 3 —

(a) because the discharge or escape, or the relevant threat of contamination, by reason of which the damage was caused —

(i) resulted from an exceptional, inevitable and irresistible natural phenomenon;

(ii) was due wholly to any thing done or left undone by another person, not being an employee or agent of the owner, with intent to do damage; or

(iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible, (and because liability is accordingly wholly displaced by section 4);

(b) because the owner or insurer liable for the damage cannot meet his obligations in full; or

(c) because the damage exceeds the liability under section 3 as limited by section 6 or by section 141 of the Merchant Shipping Order, 2002 (S 27/02), as the case may be.

(2) Subsection (1) shall apply with the substitution for the words "Brunei Darussalam" of the words "a Fund Convention country" where the incident has caused pollution damage in the territory of Brunei Darussalam and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in Brunei Darussalam.

(3) Where the incident has caused pollution damage in the territory of Brunei Darussalam and of another country in respect of which the Liability Convention is in force, references in this section to any provision of Part II shall include references to the corresponding provision of the law of any country giving effect to the Liability Convention.

(4) For the purposes of this section, an owner or insurer is to be treated as incapable of meeting his obligations if those obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(5) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 3.

(6) The Fund shall incur no obligation under this section if —

(a) it proves that the pollution damage —

(i) resulted from an act of war, hostilities, civil war or insurrection;

(ii) was caused by oil which has been discharged or escaped from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on government non-commercial service; or

(b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving 2 or more ships one of which is identified by him.

(7) If the Fund proves that the pollution damage resulted wholly or partly –

(a) from any thing done or omitted to be done with intent to cause damage by the person who suffered the damage; or

(b) from the negligence of that person,

the Fund may, subject to subsection (9), be exonerated wholly or partly from its obligations to pay compensation to that person.

(8) Where the liability under section 3 in respect of the pollution damage is limited to any extent by subsection (8) of that section, the Fund shall, subject to subsection (9), be exonerated to the same extent.

(9) Subsections (7) and (8) shall not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

Limitation of Fund's liability under section 26.

27. (1) The Fund's liability under section 26 shall be subject to the following –

(a) subject to paragraphs (b) and (c), the aggregate amount of compensation payable by the Fund shall, in respect of any one incident, be limited, such that the total sum of that amount and the amount of compensation actually paid under section 3 for pollution damage shall not exceed 203 million special drawing rights;

(b) subject to paragraph (c), the aggregate amount of compensation payable by the Fund for pollution damage resulting from an exceptional, inevitable and irresistible natural phenomenon shall not exceed 203 million special drawing rights;

(c) the maximum amount of compensation referred to in paragraphs (a) and (b) shall be 300.74 million special drawing rights with respect to any incident occurring during any period when there are 3 Fund Convention countries in respect of which the combined quantity of oil imported or received by persons in the territories of such countries, during the preceding calendar year, is not less than 600 million tons; and

(d) any interest accrued on any payment made to the Court under section 7 shall not be taken into account for the computation of the maximum compensation payable by the Fund under this section.

(2) Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under subsection (1), the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant concerned under this Part shall be the same for all claimants.

(3) A certificate given by the Director of the Fund stating that subsection (1)(c) is applicable to any claim under section 26 shall be conclusive evidence for the purposes of this Part that it is so applicable.

(4) For the purpose of giving effect to subsections (1) and (2), the Court giving judgment against the Fund in proceedings under section 26 shall notify the Fund, and –

(a) no step shall be taken to enforce the judgment unless and until the Court gives leave to enforce it;

(b) that leave shall not be given unless and until the Fund notifies the Court either that the amount of the claim is not to be reduced under subsection (1), or that it is to be reduced to a specified amount; and

(c) in the latter case the judgment shall be enforceable only for the reduced amount.

(5) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of a judgment referred to in subsection (4) shall be steps to obtain payment in Brunei Darussalam dollars, and –

(a) for the purpose of converting such an amount from special drawing rights into Brunei Darussalam dollars, one special drawing right shall be treated as equal to such a sum in Brunei Darussalam dollars as the International Monetary Fund has fixed as being the equivalent of one special drawing right for –

(i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident; or

(ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and

(b) a certificate given by or on behalf of the Minister of Finance stating –

(i) that a particular sum in Brunei Darussalam dollars has been so fixed for the relevant day; or

- (ii) that no sum has been so fixed for the relevant day and that a particular sum in Brunei Darussalam dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

shall be conclusive evidence of those matters for the purposes of this Part.

(6) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the Gazette, make such amendments to this section as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in paragraphs 4 and 5 of Article 4 of the Fund Convention.

(7) Any document purporting to be a certificate referred to in subsection (5)/b) shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Jurisdiction and effect of judgments.

28. (1) Section 3(2)/d) of the Admiralty Jurisdiction Act (Chapter 179) shall be construed as extending to any claim in respect of a liability falling on the Fund under this Part.

(2) Where, in accordance with Rules of Court made for the purposes of this subsection, the Fund has been given notice of proceedings brought against an owner or insurer in respect of liability under section 3, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

{3} Where a person incurs a liability under the law of a Fund Convention country corresponding to this Part for damage which is partly in the territory of Brunei Darussalam, subsection (2) shall, for the purpose of proceedings under this Part, apply, with the necessary modifications, to a judgment in proceedings under that law of that country.

(4) Subject to subsection (5), Part I of the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177) shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 26, and in its application to such a judgment that Part shall have effect with the omission of sections 5(2) and (3) of that Act.

(5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part I of the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177) gives leave to enforce it, and –

(a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under section 27(1) or that it is to be reduced to a specified amount; and

(b) in the latter case, the judgment shall be enforceable only for the reduced amount.

Extinguishment of claims.

29. (1) No action to enforce a claim against the Fund under this Part shall be entertained by a court in Brunei Darussalam unless –

(a) the action is commenced; or

(b) a third party notice of an action to enforce a claim against the owner or his insurer in respect of the same damage is given to the Fund,

not later than 3 years after the claim against the Fund arose.

(2) In subsection (1), "third party notice" means a notice of the kind described in sections 28(2) and (3).

(3) No action to enforce a claim against the Fund under this Part shall be entertained by a court in Brunei Darussalam unless the action is commenced not later than 6 years after the occurrence, or first of the occurrences, resulting in the discharge or escape, or in the relevant threat of contamination, as the case may be, by reason of which the claim against the Fund arose.

Subrogation.

30. (1) In respect of any sum paid by the Fund as compensation for pollution damage, the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.

(2) In respect of any sum paid by the Government as compensation for pollution damage, the Government shall acquire by subrogation any rights which the recipient has against the Fund under this Part.

PART IV

GENERAL

Regulations.

31. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

(3) Without prejudice to the generality of subsection (1), regulations may be made to –

(a) prescribe the amount of fees to be paid on an application for the issue of a certificate under section 13(1);

(b) provide for the cancellation and delivery up to the Director of a certificate issued under section 13(1);

(c) provide for matters relating to the conversion of amounts referred to in sections 7(3) and 27(5) from special drawing rights to such sums in Brunei Darussalam dollars;

(d) provide for any other matter which is required or authorised by any provision of this Order to be provided for by regulations; and

(e) subject to section 24(9), provide that any contravention or failure to comply with any of such regulations shall be an offence punishable with a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

Director may authorise officers to exercise powers and duties.

32. The powers conferred and the duties imposed on the Director under this Order and any regulations made thereunder may be exercised and carried out by any officer of the Marine Department authorised by the Director either generally or specially, and subject to his directions.

Power to board and search ship.

33. (1) The Director may, where he has reason to believe that an offence has been committed under this Order or any regulations made thereunder –

- (a) board and search any ship;
- (b) enter and search any premises; or
- (c) summon any person before him and require him to answer questions,

and may carry out such inspection and examination as he may consider necessary and may seize any book, paper, document or other thing found in those places which may furnish evidence of the commission of an offence under this Order or the regulations and may make copies of, or take extracts from, any such book, paper or document.

(2) Any person who assaults, hinders, impedes or obstructs the Director in the performance of his duties under this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

(3) For the purposes of subsection (2), "Director" includes an officer of the Marine Department authorised by the Director to exercise any powers referred to in subsection (1).

Offences committed by body corporate.

34. Where a body corporate is guilty of an offence under this Order or any regulations made thereunder and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of that body corporate or of any person purporting to act in any such capacity, he, as well as the body corporate, shall also be guilty of the offence and liable to be proceeded against and punished accordingly.

Composition of offences.

35. (1) The Director may compound any offence against this Order or any regulations made thereunder which is prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed that offence a sum not exceeding \$2,000.

(2) On payment of such sum, no further proceedings shall be taken against such person in respect of that offence.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the offences which may be compounded and the method and procedure thereof.

Protection from personal liability.

36. No suit, prosecution or other legal proceedings shall lie against the Director or any authorised officer or other person acting under the direction of the Director in respect of any act or thing done or omitted to be done by him in good faith in the exercise, performance or purported exercise or performance, of any powers or duties under this Order or under any regulations made thereunder.

Made this 11th. day of Rabiulakhir, 1429 Hijriah corresponding to the 17th. day of April, 2008 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

Dicetak oleh AWANG MOHIDIN BIN HAJI DAUD, **Pengarah** Percetakan,
di **Jabatan** Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.

Harga **B\$5.00**