L.N. 40 of 2009

MERCHANT SHIPPING ACT (CAP. 234)

Merchant Shipping (Liability for Bunker Oil Pollution Damage) Regulations, 2009

IN exercise of the powers conferred by articles 308A, 374 and 375 of the Merchant Shipping Act, the Minister for Infrastructure, Transport and Communications has made the following regulations:

Citation and commencement.

1. (1) The title of these regulations is the Merchant Shipping (Liability for Bunker Oil Pollution Damage) Regulations, 2009.

(2) These regulations shall come into force on 12 February, 2009.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires-

"the Act" means the Merchant Shipping Act; Cap. 234.

"Bunkers Convention" means the International Convention on Civil Liability for Bunker Oil Pollution Damage signed in London on 23rd March, 2001, including any amendment or Protocol related thereto as may from time to time be ratified, acceded to or accepted by the Government of Malta and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the International Maritime Organization (IMO);

"the Minister" means the Minister responsible for shipping and includes any public officer, or an officer of any body corporate established by law, acting under his authority;

"Registrar-General" means the Registrar-General of Shipping and Seamen appointed under article 363 of the Act and includes any person acting under his authority;

"territorial waters of Malta" shall have the same meaning as is assigned to the term in the Territorial Waters and Contiguous Zone Act.

Cap. 226.

(2) Unless otherwise defined in the principal Act or in these regulations, or unless the context so requires, words and expressions used in these regulations shall have the same meaning assigned to them in the Bunkers Convention.

(3) Any reference in these regulations to an international convention or its related protocol or code shall include reference to any amendment to such convention, protocol or code accepted by the Government of Malta.

Bunkers Convention given force of law in Malta.

3. (1) Subject to the provisions of sub-regulations (2) to (6) hereof the Bunkers Convention as may from time to time be amended and as it is in force, shall, unless otherwise provided in these regulations and notwithstanding the provisions of any other law, form part of and be enforceable as part of the Law of Malta and shall apply to all Maltese ships, wherever they may be and to all other ships while they are in Maltese waters as determined by the said Convention.

(2) Reference in the Bunkers Convention and in these regulations to "the Court" shall be read and construed as reference to the Civil Court, First Hall.

(3) Where pollution damage, resulting from an incident, has been sustained in Malta, including the territorial waters of Malta and any exclusive economic zone of Malta as may be established in accordance with international law or similar area determined by Malta in accordance with international law, including the waters enclosed in Malta's contiguous zone claim and the waters superjacent to Malta's continental shelf claim, or if preventive measures have been taken to prevent or minimize such damage in that area, action for compensation under the provisions of the Bunkers Convention shall be brought in Malta before the Civil Court, First Hall, by presenting a claim before such Court. Such a claim shall be instituted in accordance with subtitle III of the Title VIII of Part I of Book Second of the Code of Organization and Civil Procedure.

Provided that where any such exclusive economic zone or any such similar area has been established by Malta, the Minister shall by Order in the Gazette prescribe that the provisions of these regulations shall also apply to such exclusive economic zone or such similar area as may be established in such Order.

(4) No claim for compensation for damage under these regulations may be made against:

(a) the servants or agents of the owner or the members of the crew;

(b) the pilot or any other person who, without being a member of the crew, performs services to the ship;

(c) any person performing salvage operations with the consent or on the instructions of the shipowner or on the instructions of a competent person so authorized by the Minister;

(d) any person taking measures to prevent or minimize the effects of oil pollution;

(e) the servants or agents of persons mentioned in paragraphs (c) and (d):

Provided that the damage did not result from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result.

(5) The appropriate authority for the purposes of issuing the certificate attesting that insurance or other financial security is in force, as referred to in Article 7(2) of the Bunkers Convention, in respect of ships registered in Malta shall be the Registrar-General who shall for the purposes of Article 7(7) of that Convention and subject to the provisions of the same Convention and of these regulations determine the conditions of issue and validity of such certificate and, in respect of ships registered in a State not party to the Bunkers Convention shall be the said Registrar-General who shall have such powers as aforesaid, or the appropriate authority of a State Party to the Convention, in accordance with the provisions thereof:

Provided that a certificate referred to in paragraph (5) hereof in respect of a ship registered under the Malta flag, issued before the entry into force of these regulations by another State Party to the Bunkers Convention shall remain valid until such date stated on the said certificate.

(6) The applicable limitation regime for the purposes of the Bunkers Convention shall be that provided for in the Merchant

L.N. 361 of 2003.

Shipping (Limitation of Liability for Maritime Claims) Regulations, 2003.

Applicable procedure.

4. Subject to the provisions of sub-regulation 3(3), the Civil Court, First Hall shall have jurisdiction to try and determine cases and actions that, in accordance with these regulations, are to be brought before it.

Duty to ensure compliance.

5. It shall be the duty of the registered owner of the ship and of the master to ensure that the ship is in compliance with the provisions of these regulations and such person, if in fault, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall for each offence be liable to a fine (*multa*) not exceeding 500 units.

Prohibition of proceeding to sea without appropriate certificate.

6. (1) No Maltese ship to which Article 7 of the Bunkers Convention applies shall proceed or attempt to proceed to sea unless there is in force in respect of the ship the certificate referred to in Article 7(2) to the Bunkers Convention.

(2) No foreign flagged ship to which Article 7 of the Bunkers Convention applies shall proceed or attempt to proceed to ports, installations or the territorial waters of Malta unless there is in force in respect of the ship the certificate referred to in Article 7(2) of the Bunkers Convention.

(3) The master of every ship to which sub-regulation (2) hereof applies shall, at the time when clearance for the ship is demanded, produce to the officer from whom such clearance is demanded, the certificate referred to in the said subregulation, and clearance shall not be granted, until the said certificate is so produced.

Judgments of foreign courts.

7. (1) Judgments of foreign courts having jurisdiction under Article 9 of the Bunkers Convention and adjudicating compensation for bunker oil pollution damage are recognized and declared enforceable in Malta, unless:

(a) the judgment was fraudulently obtained;

(b) the defendant was not given reasonable notice and a fair opportunity to present his case.

(2) Judgments on matters covered by the Bunkers Convention shall, when given by a court of a Member State to which Decision 2002/762/EC applies, other than a court of the Republic of Denmark, be recognized and enforced in Malta according to the relevant internal Community Rules.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — *Printed at the Government Printing Press on recycled paper*

Prezz/*Price*
€0.19