

SCHEDULE 2 TO THE ORDER

THE MERCHANT SHIPPING ACT 1974

PART I

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Supplemental

Jurisdiction and effect of judgments

6.—(1) Paragraph (d) of section 1(1) of the Administration of Justice Act 1956 as applied in Solomon Islands by the Admiralty Jurisdiction (British Solomon Islands Protectorate) Order 1965⁽¹⁾ (Admiralty jurisdiction in claims for damage done by ships) shall be construed as extending to any claim in respect of a liability falling on the Fund under this Part of this Act.

(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 guarantor in respect of liability under section 1 of the Act of 1971, 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 the Act of 1971 for damage which is partly in the area of Solomon Islands, subsection (2) above shall, for the purpose of proceedings under this Part of this Act, apply with any necessary modifications to a judgment in proceedings under that law of the said country.

(4) Subject to subsection (5) below, Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance⁽²⁾ shall apply, whether or not it would so apply apart from this subsection, 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 4 or 5 of this Act; and in its application to such a judgment the said Part II shall have effect with the omission of subsections (2) and (3) of section 6 of the Ordinance.

(5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance 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 paragraph 4 of Article 4 of the Fund Convention (as set out in Schedule 1 to this Act) 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

7.—(1) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in Solomon Islands unless—

- (a) the action is commenced, or

(1) (1965 I, p. 1887).

(2) Laws of Solomon Islands Revised Ed. 1969. Cap. 9.

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(b) a third-party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,
not later than three years after the claim against the Fund arose.

In this subsection “third-party notice” means a notice of the kind described in subsections (2) and (3) of the last preceding section.

(2) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in Solomon Islands unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape by reason of which the claim against the Fund arose.

(3) Notwithstanding the preceding provisions of this section, a person's right to bring an action under section 5 of this Act shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against him under the Act of 1971 (that is to say an action to enforce a liability against which he seeks indemnity), or under the corresponding provisions of the law of any country outside Solomon Islands giving effect to the Liability Convention.

Subrogation and rights of recourse

8.—(1) In respect of any sum paid under section 4(1)(b) of this Act (default by owner or guarantor on liability for pollution damage) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.

(2) The right of the Fund under subsection (1) above is subject to any obligation of the Fund under section 5 of this Act to indemnify the owner or guarantor for any part of the liability on which he has defaulted.

(3) In respect of any sum paid—

- (a) under paragraph (a) or paragraph (c) of section 4(1); or
- (b) under section 5,

the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner or guarantor or any other person has in respect of his liability for the damage in question.

(4) In respect of any sum paid by a public authority in Solomon Islands as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Part of this Act.

Modification of limitation of liability under Act of 1971

9. In the Act of 1971 after section 8 there shall be inserted the following section—

“Cases excluded from sections 4 to 8

8A.—(1) Sections 4 to 8 of this Act shall not apply to a ship which at the time of the discharge or escape was registered in a country—

- (a) which was not a Convention country, and
- (b) which was a country in respect of which the 1957 Convention was in force.

(2) In this section ‘the 1957 Convention’ means the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships signed in Brussels on 10th October 1957.

(3) If Her Majesty by Order in Council made under this subsection as it applies to the United Kingdom declares that any country—

- (a) is not a Convention country within the meaning of this Act, and

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(b) is a country in respect of which the 1957 Convention is in force,
or that it was such a country at a time specified in the Order, the Order shall, while in force, be
conclusive evidence of the facts stated in the Order.”