

SCHEDULE 2
TO THE ORDER

THE MERCHANT SHIPPING ACT 1974

PART I

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Interpretation of Part I

1.—(1) In this Part of this Act—

- (a) the “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage opened for signature in Brussels on 29th November 1969;
- (b) the “Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971;
- (c) “the Fund” means the International Fund established by the Fund Convention; and
- (d) “Fund Convention country” means a country in respect of which the Fund Convention is in force.

(2) If Her Majesty by Order in Council made under this subsection as it applies in the United Kingdom 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 the Convention in respect of that country.

(3) In this Part of this Act, unless the context otherwise requires—
the “Act of 1971” means the Merchant Shipping (Oil Pollution) Act 1971,

“damage” includes loss,

“discharge or escape”, in relation to pollution damage, means the discharge or escape of oil carried by the ship,

“guarantor” means any person providing insurance or other financial security to cover the owner's liability of the kind described in section 10 of the Act of 1971,

“oil”, except in sections 2 and 3, means persistent hydrocarbon mineral oil,

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

“pollution damage” means damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever the escape or discharge may occur, and includes the cost of preventive measures and further damage caused by preventive measures,

“preventive measures” means any reasonable measures taken by any person after the occurrence to prevent or minimise pollution damage,

“ship” means any sea-going vessel and any seaborne craft of any type whatsoever carrying oil in bulk as cargo,

“dollars” means Australian dollars.

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(4) For the purposes of this Part of this Act a ship's tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage.

If the ship cannot be measured in accordance with the normal rules, its tonnage shall be deemed to be 40 per cent. of the weight in tons (of 2240 lbs.) of oil which the ship is capable of carrying.

(5) For the purposes of this Part of this Act, 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.

(6) In this Part of this Act a franc shall be taken to be a unit of 65½ milligrammes of gold of millesimal fineness 900.

(7) The Governor may from time to time by order specify the amounts which for the purposes of this Part of this Act are to be taken as equivalent to any specified number of francs.

Contributions to Fund

Contributions by importers of oil and others

2.—(1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Solomon Islands.

(2) Subsection (1) above applies whether or not the oil is being imported, and applies 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 Solomon Islands 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 Solomon Islands, 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 the year does not exceed 150,000 tonnes.

(6) For the purpose of subsection (5) above—

- (a) all the members of a group of companies shall be treated as a single person, and
- (b) any two 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 Assembly of the Fund under Articles 11 and 12 of the Fund Convention and notified to him 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 from time to time by the said Assembly, until it is paid.

(8) The Governor may by regulations impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Governor, or to the Fund.

Regulations under this subsection—

- (a) may contain such supplemental or incidental provisions as appear to the Governor expedient, and

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- (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding 800 dollars, or such lower limit as may be specified in the regulations.
- (9) In this and the next following section, unless the context otherwise requires—
 - “company” means a body incorporated under the law of Solomon Islands, or of any other country;
 - “group” in relation to companies, means a holding company and its subsidiaries as defined by section 148 of the Companies Ordinance⁽¹⁾, subject, in the case of a company incorporated outside Solomon Islands, 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 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,
 - (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 D 396-69)”, 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.

Power to obtain information

3.—(1) For the purpose of transmitting to the Fund the names and addresses of the persons who under the last preceding section 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 Governor may by notice require any person engaged in producing, treating, distributing or transporting oil 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 subsection (6) of the last preceding section.

(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 the last preceding section, particulars contained in any list transmitted by the Governor 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) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the execution of this section, or

(1) Laws of Solomon Islands Revised Ed. 1969. Cap. 66.

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(c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,
be liable to a fine not exceeding 800 dollars.

(6) 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 liable to a fine, or to imprisonment for a term not exceeding twelve months, or to both.

Compensation for persons suffering pollution damage

Liability of the Fund

4.—(1) The Fund shall be liable for pollution damage in Solomon Islands if the person suffering the damage has been unable to obtain full compensation under section 1 of the Act of 1971 (which gives effect to the Liability Convention)—

- (a) because the discharge or escape causing the damage—
 - (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
 - (ii) was due wholly to anything done or left undone by another person (not being a servant 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 2 of the Act of 1971), or
- (b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or
- (c) because the damage exceeds the liability under section 1 of the Act of 1971 as limited—
 - (i) by section 4 of the Act of 1971, or
 - (ii) (where the said section 4 is displaced by section 9 of this Act) by section 503 of the Merchant Shipping Act 1894.

(2) Subsection (1) above shall apply with the substitution for the words “Solomon Islands” of the words “a Fund Convention country” where the incident has caused pollution damage both in Solomon Islands and in 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 Solomon Islands.

(3) Where the incident has caused pollution damage both in Solomon Islands and in another country in respect of which the Liability Convention is in force, references in this section to the provisions of the Act of 1971 shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

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

(6) 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 1 of the Act of 1971.

- (7) 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, or
 - (ii) was caused by oil which has escaped or been discharged 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 two or more ships one of which is identified by him.
- (8) If the Fund proves that the pollution damage resulted wholly or partly—
- (a) from an act or omission done with intent to cause damage by the person who suffered the damage, or
 - (b) from the negligence of that person,

the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person: Provided that this subsection shall not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.

(9) Where the liability under section 1 of the Act of 1971 is limited to any extent by subsection (5) of that section (contributory negligence), the Fund shall be exonerated to the same extent.

(10) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention which impose an overall liability on the liabilities of the owner and of the Fund, and the text of which is set out in Schedule 1 to this Act.

(11) 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 be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(12) For the purpose of giving effect to the said provisions of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under this section shall notify the Fund, and—

- (a) no steps 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 the said provisions of Article 4 of the Fund Convention, 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.

Indemnification of shipowners

Indemnification where damage is caused by ship registered in Fund Convention country

5.—(1) Where a liability is incurred under section 1 of the Act of 1971 in respect of a ship registered in a Fund Convention country the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which—

- (a) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less, and
- (b) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less.

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(2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a country in respect of which the Liability Convention is in force), and the incident has caused pollution damage in Solomon Islands (as well as in that other country) subsection (1) above shall apply with the omission of the words “under section 1 of the Act of 1971”.

(3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.

(4) In proceedings to enforce the Fund's obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner—

- (a) the ship did not comply with such requirements as the Governor may by order prescribe for the purposes of this section, and
- (b) the occurrence or damage was caused wholly or partly by that non-compliance.

(5) The requirements referred to in subsection (4) above are such requirements as appear to the Governor appropriate to implement the provisions of—

- (a) article 5(3) of the Fund Convention (marine safety conventions), and
- (b) article 5(4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).

(6) An order made under subsection (4) above—

- (a) may be varied or revoked by a subsequent order so made, or
- (b) may contain such transitional or other supplemental provisions as appear to the Governor to be expedient.

(7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner's liability for the purposes of this section.

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⁽²⁾ (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⁽³⁾ 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

(2) (1965 I, p. 1887).

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

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
- (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.

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(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
- (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.”