Pollution From Bunkers

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 was adopted by IMO following a diplomatic conference held in March 2001.

The Convention establishes a liability and compensation regime for spills of bunker oil. The need for a regime to deal with bunker oil spills was highlighted more than 5 years ago when analysis of spill data revealed that spills from non-tankers accounted for a substantial proportion of incidents. The adoption of this Convention completes an overall regime of liability and compensation for damage caused by sea carriage of oils and other hazardous and noxious substances.

Key provisions of the Convention are:

- It applies to “any seagoing vessel and seaborne craft of any type whatsoever.”
- Liability for pollution damage rests with the shipowner who is defined as “the owner, including the registered owner, bareboat charterer, manager and operator of the ship” under the terms of the Convention, liability arises and compensation is payable for “pollution damage” which means “...loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and ... the costs of preventative measures and further loss or damage caused by preventative measures...”
- Claims for compensation for “pollution damage” shall only be brought in accordance with the terms of Convention, thereby channeling claims of this nature.
- Liability for “pollution damage” is strict. However, no liability for pollution damage attaches to the shipowner if he can prove that:

  - the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
  - the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
  - the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

In addition, if the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, he may be exonerated wholly or partially from liability to such person.

Finally, any rights of recourse available to the shipowner which exist independently of the Convention are unaffected.

- Compulsory insurance/financial security provisions apply to the registered owner of ships over 1000 gt. and claims for compensation may be brought directly against the insurer or other responsible person providing financial security (when implementing the Convention at national level states have the option to exclude from this requirement ships operating exclusively within the area of that state.)
- Claims must be brought within 3 years from the date when the damage occurred subject to a maximum of 6 years from the date of the incident which caused the damage. Where an incident consists of a series of occurrences, the 6 year period runs from the date of the first occurrence.
- The shipowner and person providing insurance/financial security are entitled to limit liability under applicable national or international regimes, such as the Convention on Limitation of Liability for Maritime Claims, 1976 (“LLMC 1976”), as amended 2. Therefore, the location of any incident will dictate the applicable limits of liability and, equally, the rules which deprive the shipowner of his right to limit. The Convention makes it clear, however, that even where a shipowner loses the right to limit, the person providing insurance/financial security will still be entitled to limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained 3. The Convention will enter into force 1 year after the date on which 18 states, including five states each with ships whose combined gross tonnage is not less than 1 million gt, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the IMO Secretary-General. The Convention remains open for signature for a year from 1 October 2001 and thereafter remains open for accession.

Constitution for November 2009

1 Bunker oil is defined as any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.
2 Compulsory insurance/financial security must provide cover to an amount equal to the limit of liability under the applicable national or international limitation regime but not exceeding that calculated in accordance with LLMC 1976, as amended.
3 An associated resolution was made at the time of adoption of the Convention that all states that have not yet done so should adopt the 1996 protocol to LLMC 1976 Convention. The 1996 protocol raises the limits of liability and therefore levels of compensation payable under LLMC 1976. The protocol will come into force 90 days after acceptance by 10 states. So far only 5 acceptances have been received. (See February 2004 article: Liability Limits Increase From 13 May 2004 Under 1996 LLMC Protocol)
See footnote 2 above.
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