

Tentative Translation*

REQUIREMENT OF CONTRIBUTIONS TO THE INTERNATIONAL FUND FOR COMPENSATION
FOR OIL POLLUTION DAMAGE CAUSED BY SHIPS ACT, B.E. 2560 (2017)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;
Given on the 2nd Day of July B.E. 2560;
Being the 2nd Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to have the law on the requirement of contributions to the international fund for compensation for oil pollution damage caused by ships;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly serving as the National Assembly, as follows.

Section 1. This Act is called the “Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017)”.

Section 2.¹ This Act shall come into force after the expiration of one year as from the date of its publication in the Government Gazette.

Section 3. In this Act:
“Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 134, Part 70a, dated 7th July 2017.

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

“Fund” means the International Fund for Compensation for Oil Pollution Damage established under the Fund Convention;

“Director” means the Director of the Fund under the Fund Convention;

“ship” means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship within this meaning only when it is actually carrying oil in bulk as cargo and shall continue to be regarded as a ship during any voyage following the carriage of oil until it is proved that it has no residues of oil in bulk aboard;

“person” means a natural person, a group of persons or a State or private agency, whether it is a juristic person or not, and shall include a State or its constituent administrative region;

“shipowner” means the person registered as the owner of the ship or, in the absence of registration, shall mean the person actually owning the ship, and, in the case of a ship owned by a State and operated by a company which is registered in that State as the ship’s operator, “shipowner” shall mean such company;

“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 such a ship;

“contributing oil” means crude oil and fuel oil of the following descriptions:

(1) crude oil, which signifies any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation and also includes crude oil from which certain distillate fractions have been removed or crude oil to which certain distillate fractions have been added;

(2) fuel oil, which signifies heavy distillates or residues from crude oil distillation or blends of both materials, intended for use as a fuel for the production of heat or power of a quality equivalent to Number Four fuel oil in accordance with the Designation D 396-69 standard determined by the American Society for Testing and Materials’ Specification, or heavier;

“pollution damage” means:

(1) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, including

compensation for impairment of the environment and loss of profit from impairment of the environment;

provided that compensation for impairment of the environment shall be limited to costs of reasonable measures already undertaken or to be undertaken for the reinstatement of the impaired environment;

(2) the costs of preventive measures and loss or damage caused by such measures;

“preventive measure” means any reasonable measures taken by any person after an incident has occurred to prevent or minimise pollution damage;

“incident” means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and apparent threat of causing pollution damage;

“Special Drawing Right unit of account” means the Special Drawing Right unit of account under the law authorising and prescribing certain practices in connection with the Special Drawing Rights in the International Monetary Fund;

“guarantor” means any person providing insurance or any other financial security to cover liability of a shipowner under the law on civil liability for oil pollution damage caused by ships;

“oil terminal installation” means any site used for the storage of oil, which is capable of receiving oil from waterborne transportation and shall include any facility situated off-shore and capable of delivering oil to such site.

Section 4. The Minister of Transport shall have charge and control of the execution of this Act.

CHAPTER I GENERAL PROVISIONS

Section 5. This Act shall apply to:

(1) pollution damage caused:

(a) in the Kingdom of Thailand, including the territorial sea;

(b) in the exclusive economic zone of the Kingdom of Thailand;

(2) the costs of preventive measures, wherever taken, for preventing damage in the areas under (1).

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Section 6. If an incident consists of a series of occurrences, it shall be deemed that the incident occurred on the date of the first such occurrence.

Section 7. The Marine Department shall be the agency in charge of co-ordinating with the Fund and performing any act under this Act.

The Director-General of the Marine Department shall have the power to issue Notifications and appoint competent officials in the execution of paragraph one.

CHAPTER II THE FUND

Section 8. The Fund shall be recognised as a juristic person capable of assuming rights and obligations under the law of Thailand and of being a party to proceedings before the courts. In this regard, the Director shall be the legal representative of the Fund.

Section 9. The Fund shall be granted exemption from the following:

(1) any direct tax to be levied on assets, incomes, contributions received and other property;

(2) duties under the law on customs tariffs and other taxes in the case of the import or export of any articles for use in the operation of the Fund, provided that such articles must not be transferred or sold in the Kingdom except upon agreement between the Fund and the Government of Thailand.

Such exemptions shall not include taxes levied not beyond payment for public utility services.

Section 10. The operation of the Fund shall be under the scope of the following objects:

(1) for payment of compensation for pollution damage in the case where the amount of liability under the law on civil liability for oil pollution damage caused by ships is inadequate;

(2) for giving effect to any other objects set out by the Fund Convention.

Section 11. The Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation under the law on civil liability for oil pollution damage caused by ships in the following cases:

(1) where no person bears liability for the ensuing pollution damage under the law on civil liability for oil pollution damage caused by ships;

(2) where the shipowner liable for pollution damage under the law on civil liability for oil pollution damage caused by ships is financially incapable of making full compensation in the amount required by the law on civil liability for oil pollution damage caused by ships and any existing financial security does not cover or is insufficient to satisfy the claims;

provided that when it appears that the person suffering pollution damage has taken all reasonable steps in making claims as prescribed by law and has been unable to obtain full satisfaction of the amount of compensation as set out by the law on civil liability for oil pollution damage caused by ships, it shall be deemed that the shipowner is financially incapable of making compensation and has insufficient financial security;

(3) where the damage which has arisen exceeds the limitation of liability of the shipowner as set out by the law on civil liability for oil pollution damage caused by ships.

In the case where the shipowner has voluntarily and reasonably performed any act thereby incurring expenses or made sacrifices of property to prevent or minimise pollution damage, the expenses or property sacrificed shall also be deemed as pollution damage.

Section 12. The Fund shall not be liable to pay compensation in the following cases:

(1) where the Fund proves that:

(a) the pollution damage resulted from an act of war, hostilities, civil war or insurrection; or

(b) the pollution damage was caused by oil which has escaped or been discharged from a warship or any other ship owned or operated by a State and such ship, at the time of the incident, was used on government non-commercial service;

(2) where the person suffering pollution damage cannot prove that such pollution damage resulted from an incident involving a ship.

Section 13. The Fund may be exonerated wholly or partially from its liability to pay compensation to the person suffering pollution damage if it can prove that such pollution damage resulted from such person's act or omission done whether willfully or negligently.

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The Fund shall not be liable in the case where the shipowner is exonerated from liability on account of proof by the shipowner that the pollution damage wholly or partially resulted from an act or omission, whether done willfully or negligently, of the person suffering such pollution damage.

The Fund shall remain liable with regard to preventive measures.

Section 14. The Fund shall pay compensation upon occurrence of an incident, as follows:

(1) upon the occurrence of any one incident, except in cases under (2) and (3), it shall pay compensation in the amount, when the compensation actually paid under the law on civil liability for oil pollution damage caused by ships is added thereto, not exceeding 203 million Special Drawing Rights;

(2) upon the occurrence of an incident resulting from a natural phenomenon of an exceptional, inevitable and irresistible character, except in the case under (3), it shall pay compensation in the amount not exceeding 203 million Special Drawing Rights;

(3) upon the occurrence of an incident, when three Contracting States to the Fund Convention are involved and the quantity of contributing oil received by persons in the territories of the Contracting States during the preceding calendar year equalled or exceeded 600 million tons, it shall pay compensation in the amount not exceeding 300.74 million Special Drawing Rights.

Such limitation of liability may be amended in accordance with the Convention or Protocol to which Thailand is a party, as shall be prescribed by the Royal Decree.

Section 15. The amount of compensation payable by the Fund under section 14 shall not include interest accrued on placement of security for liability of shipowners under the law on civil liability for oil pollution damage caused by ships.

Section 16. For the purpose of the calculation of compensation under this Act, the conversion of the Special Drawing Right unit of account into the Baht currency shall be made on the basis of the exchange rate determined by the International Monetary Fund on the date on which the Assembly of the Fund under the Fund Convention passes a resolution for payment of compensation.

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Section 17. In the case where the Fund is required to pay compensation to several persons suffering pollution damage in the aggregate amount exceeding the compensation payable by the Fund under section 14, the Fund shall pay compensation in the proportion to which each of the persons suffering pollution damage is entitled.

Section 18. In the case where the Fund has paid compensation for pollution damage under section 11, the Fund shall acquire by subrogation the rights of the person so compensated to have recourse against the shipowner, the shipowner's guarantor or any other persons causing the damage.

In the exercise of the right of recourse against other persons under paragraph one, the Fund shall enjoy the same rank as that of the insurer.

Section 19. In the case where a State agency has, as required by law, paid compensation for pollution damage to one or more persons suffering pollution damage, such State agency shall acquire by subrogation such persons' rights to have recourse against the Fund.

For the purpose of this section, "State agency" means the central administration, the provincial administration, the local administration, a State enterprise, a public organisation or any other agency of the State.

CHAPTER III CONTRIBUTIONS

Section 20. The following persons have the duty to make annual contributions to the Fund:

- (1) any person who has received the contributing oil in total quantities exceeding 150,000 metric tons in each calendar year;
- (2) each of associated persons who has received oil in each calendar year in the quantity not exceeding 150,000 metric tons but has had the quantity of contributing oil, when aggregated altogether, exceeding 150,000 metric tons; in this regard, each associated person shall pay contributions in respect of the quantity actually received.

For the purpose of this section, "associated person" means the person under control or common management.

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Section 21. The contributing oil under section 20 shall mean the following:

(1) oil received from the carriage by sea at a port or an oil terminal installation in the Kingdom;

(2) oil first received, at any installation in the Kingdom, from any other country not being a Contracting State to the Fund Convention after the carriage by sea and discharge in such country.

Section 22. The Director-General of the Marine Department shall publish in the Government Gazette the names of contributing oil and non-contributing oil as prescribed in the Notification of the Fund.

Section 23. The persons under section 20 shall furnish formal particulars and quantities of contributing oil received by them in each calendar year to the Marine Department in a manner ensuring completeness and factual correctness.

The rules, procedures and periods of time for reporting the formal particulars and quantities of oil shall be as prescribed in the Notification of the Director-General published in the Government Gazette.

Section 24. The Marine Department shall prepare a complete and up-to-date list of names and addresses of the persons under section 20 as well as the formal particulars and quantities of contributing oil received by such persons in each calendar year and furnish the same to the Director as determined by the Fund. In this regard, it shall be presumed that the persons whose names appear on the list are the persons who have the duty to make annual contributions to the Fund.

Section 25. The persons under section 20 must make annual contributions in the amount and periods of time directly notified by the Fund to such persons.

If payment of the annual contributions by such persons under paragraph one is in arrears, the Fund may charge interest at the rate determined by the Fund.

CHAPTER IV
CLAIMS, LEGAL PROCEEDINGS AND PERIODS OF PRESCRIPTION

Section 26. The person suffering pollution damage may claim compensation from the Fund.

Section 27. The Public Prosecutor shall have the power to conduct all proceedings for claiming compensation for pollution damage under this Act in the capacity as the injured person on behalf of the State or in the capacity as the person authorised by the injured private individual.

The conduct of proceedings by the Public Prosecutor under paragraph one shall be exempt from all fees but this shall not extend to liability for fees at the final stage.

In the case of authorisation by the injured private individual under paragraph one, the Public Prosecutor may entrust the Marine Department, the Pollution Control Department and any other agency concerned to conduct the gathering of evidence, assess compensation for pollution damage or take other action as it is deemed appropriate.

Section 28. Rights to claim compensation under this Act shall be barred by prescription if an action is not instituted or the notification to the Fund is not made under section 33 within three years as from the date on which the damage occurred or an action is not instituted within six years as from the date of the occurrence of the incident causing such damage.

Section 29. Rights to claim contributions under this Act shall be barred by prescription after a lapse of three years as from the date of default of payment thereof.

CHAPTER V
JURISDICTION OF THE COURT

Section 30. Legal proceedings for making claims under this Act shall fall within the jurisdiction of the Intellectual Property and International Trade Court. In this regard, the Chief

Judge of the Central Intellectual Property and International Trade Court, with the approval of the President of the Supreme Court, has the power to issue any Rules on the conduct of proceedings.

Section 31. In the case where a claim for compensation for pollution damage is made against the shipowner or the guarantor of the shipowner before a court of a foreign country which is a Contracting State to the Liability Convention but is not a Contracting State to the Fund Convention, the person suffering pollution damage has the right to bring an action against the Fund before the Intellectual Property and International Trade Court if such action falls within the jurisdiction of the Intellectual Property and International Trade Court under the law on civil liability for oil pollution damage caused by ships.

Section 32. In the case where an action is brought against the shipowner or the guarantor of the shipowner under the law on civil liability for oil pollution damage caused by ships before the Intellectual Property and International Trade Court, the Fund has the right to join the proceeding as a party.

Section 33. In instituting an action for claiming compensation for pollution damage against the shipowner or the guarantor of the shipowner, if any party has notified the Fund of the institution of the action in accordance with the formalities in the Rule under section 30 and the Fund has not joined the action, the final judgment of the Court in respect of the conclusive facts shall also be binding upon the Fund.

Section 34. A final judgment on compensation by the Fund given by a court in a foreign country which is a Contracting State to the Fund Convention shall be enforceable in Thailand except where:

- (1) such judgment was obtained by fraud;
- (2) the defendant was not duly served a summons and was not given a reasonable opportunity to present his case in defence;
- (3) such judgment is contrary to public order or good morals.

The period of time, conditions and procedures for an application to the Intellectual Property and International Trade Court for enforcement of a judgment of a foreign court under paragraph one shall be in accordance with the Rules of the Intellectual Property and International Trade Court.

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CHAPTER VI
PENALTIES

Section 35. Any person who fails to comply with section 23 shall be liable to a fine of fifty thousand to one million Baht.

Countersigned by:

General Prayut Chan-o-cha
Prime Minister

Office of the Council of State

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