

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE MERCHANT SHIPPING LAW
(2008 REVISION) TO GIVE EFFECT TO THE INTERNATIONAL
CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION
DAMAGE, 2001; TO MAKE FURTHER PROVISION IN RELATION TO
CERTAIN DEFINITIONS, TO OWNERSHIP OF A CAYMAN ISLANDS
SHIP, TO THE REGISTRY AND TO THE TRANSFER OF
REGISTRATION AMONG PORTS OF REGISTRY IN THE ISLANDS;
TO PROVIDE FOR CERTAIN PLEASURE VESSELS TO DISPENSE
WITH THE REQUIREMENT FOR THE ISSUE OF A CERTIFICATE OF
SURVEY UNDER GIVEN CONDITIONS; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE MERCHANT SHIPPING (AMENDMENT) BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to amend the Merchant Shipping Law (2008 Revision) primarily to make provision to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention). In addition, the Bill would effect miscellaneous amendments to Part II of the Law.

Clause 1 provides the short title.

Clause 2 amends section 2 of the principal Law by adding a definition for “Maritime Authority” and modifying the definition of a “proper officer” to include a person appointed as such by the Chief Executive Officer of the Authority for the purposes of issuing a Provisional Certificate of Registry.

Clause 3 amends section 4 of the principal Law by removing the provision for a body corporate or a foreign company formed outside of the Islands to necessarily have a place of business in the country of incorporation. With the removal of this provision the definition of “place of business” in this section becomes redundant and it is therefore repealed.

Clause 4 amends section 8 of the principal Law by making provision for the Registrar to withhold the issue of a closed transcript in cases where the Registrar has terminated the registration of a Cayman Islands ship under the provisions of this section and outstanding fees are payable with respect to the terminated ship.

Clause 5 repeals and replaces section 11 of the principal Law by making provision for the register to be further divided as per Cayman Islands ports of registry, for a separate register of priority notices with respect to anticipated mortgages to be established and by removing some existing duplication in subsections (1) and (2) regarding the registers and their parts.

Clause 6 amends section 13 of the principal Law by making provision, in the case of pleasure vessels under 24 metres in length, to allow such vessels not to have had their tonnages ascertained and a certificate of survey issued by a duly appointed surveyor provided the owner or his authorised representative furnishes particulars of the ship to the satisfaction of the Registrar of Shipping. Based on these particulars the ship’s tonnage would be ascertained by the Maritime Authority and the registration of the ship would be effected. The right to have

such a vessel physically inspected in cases of doubt regarding the particulars submitted is however reserved.

Clause 7 repeals and replaces section 20 of the principal Law by making provision for a Cayman Islands ship registered in a port in the Islands to be able to transfer, on application and in the Registrar's discretion, to another port of registry in the Islands, provided that no ship may be registered in more than one port at any one time.

Clause 8 amends section 337 of the principal Law by introducing new expressions in relation to the Bunkers Convention and consolidating definitions contained elsewhere in this Part of the Law. The "owner" of a ship is defined, in relation to liability for bunker oil contamination, as including the registered owner, the bareboat charterer, the manager and the operator of the ship.

Clause 9 amends section 338 of the principal Law by substituting "registered owner" for "owner" and repealing subsection (7) in order to allow provision to be made for both bunker oil pollution damage under the Bunkers Convention (see new section 338A) and for cargo oil pollution damage in the case of tankers under the Civil Liability Convention and the Fund Convention.

Clause 10 inserts section 338A, which provides that where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship, the owner of the ship shall be liable for any damage caused outside the ship in the territory of the Islands by contamination resulting from the discharge or escape. The owner is also liable for the cost of any measures reasonably taken for the purpose of preventing or minimising the damage and for any damage caused by the measures taken. Furthermore, where there is a grave and imminent threat of contamination by bunker oil, the owner is liable for the cost of measures taken to prevent or minimise damage and for damage caused by those measures.

Clause 11 amends section 339 of the principal Law so that where, as a result of any occurrence, any oil is discharged or escapes from a vessel which is not sea-going the owner is liable for any damage caused outside the ship in the territory of the Islands by resulting contamination, for the cost of measures to minimise or prevent damage and for damage caused by any such measures taken. Liability also arises where there is a relevant threat of contamination.

Clause 12 repeals and replaces section 340 of the principal Law to create exceptions from liability under new the section 338A.

Clause 13 amends section 341 of the principal Law in order to create certain restrictions on the liability of the owner, salvors and others in the case of bunker oil spills.

Clause 14 inserts a new section 341A which makes supplementary provision in respect of liability under sections 338, 338A and 339.

Clauses 15 to 18 inclusive capture consequential amendments in sections 342, 343, 345 and 347 respectively of the principal Law.

Clause 19 amends section 348 of the principal Law with respect to the power to detain a ship in Cayman waters where the ship is in contravention of this section in order to allow a ship to be detained before it attempts to leave port.

Clause 20 inserts a new section 348A which makes provision for compulsory insurance in respect of bunker oil contamination for ships having a gross tonnage greater than 1,000 tons. The new section also makes penal provision with respect to contraventions and again the power to detain is made exercisable, in the event that a ship is in contravention of this section, before the ship attempts to proceed to sea.

Clause 21 amends section 349 of the principal Law to make provision for the issue by the Director of a certificate where there is in force insurance or other security satisfying Article 7 of the Bunkers Convention. Provision is also made for the Director to refuse to issue a certificate where he is in doubt as to the ability of the insurer to meet his obligations or that the insurance cover is sufficient for the purposes.

Clause 22 repeals and substitutes section 350 of the principal Law in order to make provision in respect of the rights of third parties against insurers where it is alleged that the owner of a ship has incurred a liability under section 338A.

Clause 23 amends section 351 of the principal Law to make provision in respect of the jurisdiction of the Cayman Islands court and the registration of foreign judgments.

Clause 24 amends section 352 of the principal Law to make provision in respect of Government ships.

Clause 25 amends section 353 of the principal Law so that, for the purposes of Chapter II of Part XVI, any liability incurred under section 338A shall be deemed to be a liability to damages in respect of such damage to property as is mentioned

in paragraph 1(a) of Article 2 of the Convention on Limitation of Liability for Maritime Claims 1976.

Clause 26 repeals and substitutes section 355 of the principal Law in order to take account of some re-structuring, to repeal some redundant provisions and to retain some existing provisions.

Clause 27 repeals and substitutes section 365 of the principal Law again to take account of some re-structuring and retention elsewhere of the existing provisions and to provide for Regulation making powers for this Part.

THE MERCHANT SHIPPING (AMENDMENT) BILL, 2010

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 – definitions
3. Amendment of section 4 – qualifications for owning a Cayman Islands ship
4. Amendment of section 8 – termination of registration
5. Repeal and substitution of section 11 – register
6. Amendment of section 13 – survey and measurement of ships
7. Repeal and substitution of section 20 – port of registry
8. Amendment of section 337 – definitions and interpretations in this Chapter
9. Amendment of section 338 – liability for oil pollution in case of tankers
10. Insertion of new section 338A - liability for pollution by bunker oil
11. Amendment of section 339 – liability for oil pollution in other cases
12. Repeal and substitution of section 340 - exceptions from liability under sections 338, and 339
13. Amendment of section 341 – restriction of liability for oil pollution
14. Insertion of new section 341A – liability under sections 338, 338A and 339
15. Amendment of section 342 – limitation of liability under section 338
16. Amendment of section 343 – limitation actions
17. Amendment of section 345 – concurrent liabilities of owners and others
18. Amendment of section 347 – extinguishment of claims
19. Amendment of section 348 – compulsory insurance against liability for pollution
20. Insertion of section 348A – compulsory insurance against liability for pollution from bunker oil
21. Amendment of section 349 – issue of certificate by Director
22. Repeal and substitution of section 350 - rights of third parties against insurers
23. Amendment of section 351 – jurisdiction of Cayman Islands court and registration of foreign judgments
24. Amendment of section 352 – Government ships
25. Amendment of section 353 – limitation of liability under section 339
26. Repeal and substitution of section 355 - meaning of the “Liability Convention” and related expressions
27. Repeal and substitution of section 365 – meaning of the “Liability Convention”, the “Fund Convention” and related expressions

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Merchant Shipping (Amendment) Law, 2010. Short title
2. The Merchant Shipping Law (2008 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by- Amendment of section
2- definitions
(2008 Revision)
 - (a) inserting after the definition of “Marine Pollution Convention” the following definition-

“ “Maritime Authority” or “MACI” means the Maritime Authority of the Cayman Islands as established under the Maritime Authority Law (2008 Revision);” and (2008 Revision)

- (b) repealing the definition of “proper officer” and substituting the following definition-

“ “proper officer” means-

- (a) in relation to a port in the United Kingdom, a Crown Dependency or British Overseas territory, the Republic of Ireland or a country mentioned in Schedule 3 of the British Nationality Act 1981, an officer exercising in that port functions similar to those of a Shipping Master; and
- (b) in relation to any other port-
 - (i) a consular officer appointed by Her Majesty’s Government in the United Kingdom or a person appointed by the Chief Executive Officer of the Maritime Authority; or
 - (ii) a person appointed by the Chief Executive Office of the Maritime Authority for the purposes of issuing a Provisional Certificate of Registry in accordance with section 27;”.

Amendment of section 4
–qualifications for
owning a Cayman
Islands ship

3. The principal Law is amended in section 4

- (a) by deleting in paragraph (h) of subsection (1) the words “and having a place of business in”; and
- (b) in subsection (3)-
 - (i) by inserting after the words “from time to time;” the word “and”; and
 - (ii) by repealing the definition of “place of business” wherever it appears.

Amendment of section 8
–termination of
registration

4. The principal Law is amended in section 8 by repealing paragraph (c) of subsection (5) and substituting the following paragraph-

“(c) a ship’s registration is terminated under this subsection-

- (i) the owner shall, immediately on being notified of the termination of the registration of the ship, surrender its certificate of registry forthwith to the Registrar; and

- (ii) the Registrar shall issue a closed transcript after any outstanding fees payable to the Maritime Authority with respect to the ship have been paid to his satisfaction.”.

5. The principal Law is amended by repealing section 11 and substituting the following section-

Repeal and substitution
of section 11 - register

“11. (1) There shall be a register for registrations of ships, the registrations of mortgages as referred to in section 79 and the registrations of priority notices accepted under the provisions of section 80(2).

(2) The register for registrations of ships shall be so constituted as to distinguish, in separate parts, the registrations of-

- (a) ships which are not pleasure yachts or demise chartered ships;
- (b) pleasure yachts;
- (c) demise chartered ships;
- (d) ships under construction;
- (e) ships in respect of which a provisional certificate of registry is issued under section 27; and
- (f) submersible craft,

and may otherwise distinguish between classes or description of ships and ports of registry in the Islands.

(3) Upon completion of the construction of a ship registered in the part of the register for ships under construction, the registration may be transferred to another appropriate part of the register.

(4) The registration of a provisionally registered ship may, where appropriate, be transferred to another part of the register.

(5) The registers shall be maintained by the Registrar of Shipping in accordance with this Part, the relevant provisions of Parts IV and VIII, the registration regulations and any directions given by the Director.

(6) In this section-

“pleasure yacht” includes a pleasure vessel and any vessel to which

regulations made in respect of vessels in commercial use for sport or pleasure are stated to apply.”.

Amendment of section
13 – survey and
measurement of ships

6. The principal Law is amended in section 13-

- (a) by deleting the words “Every ship” in subsection (1) and substituting the words “Subject to subsection (3) every ship”; and
- (b) by adding a new subsection (3) as follows-

“(3) The ascertainment of tonnage and the delivery of the certificate of survey referred to in subsection (1) shall not be required for a pleasure vessel of less than 24 metres in length if-

- (a) the owner or a duly authorised person acting on behalf of the owner submits to the satisfaction of the Registrar and in accordance with the registration regulations, prior to registration, the particulars of the vessel as required under that subsection; and
- (b) the Registrar reserves the right to require the ship to be inspected in accordance with subsection (1) in any case of doubt with respect to its particulars.”.

Repeal and substitution
of section 20 – port of
registry

7. The principal Law is amended by repealing section 20 and substituting the following-

“Port of registry

20. The port of registry of a ship registered under this Law and the port to which it belongs shall be one of the following ports-

- (a) George Town;
- (b) The Creek; or
- (c) Bloody Bay,

and the Registrar may, on application, allow a vessel which is registered in one of the ports to transfer its registration to another of the ports mentioned in this section but the vessel shall be registered in one port only at any one time.”.

Amendment of section
337 – definitions and
interpretation in this
Chapter

8. The principal Law is amended in section 337-

- (a) by repealing subsection (1) and substituting the following subsection-

“(1) In this Chapter-

“Bunkers Convention” means the International Convention on Civil

Liability for Bunker Oil Pollution Damage, 2001;

“Bunkers Convention country” means a country in respect of which the Bunkers Convention is in force;

“Bunkers Convention State” means a State which is a party to the Bunkers Convention;

“bunker oil” means any hydrocarbon mineral oil (including lubricating oil) which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil;

“damage” includes loss;

“Fund” means the International Fund established by the Fund Convention;

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

“Fund Convention country” means a country in respect of which the Fund Convention is in force;

“Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

“Liability Convention country” means a country in respect of which the Liability Convention is in force;

“Liability Convention State” means a State which is a party to the Liability Convention;

“oil”, except when used in relation to “bunker oil”, means persistent hydrocarbon mineral oil;

“owner” except when used in relation to “registered owner”, means the registered owner, bareboat charterer, manager and operator of the ship;

“registered 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;

“relevant threat of contamination” includes a relevant threat of contamination falling within section-

(a) 338(2) as defined in section

338(2A);

(b) 338A(2) as defined in section 338A(4); and

(c) 339(2) as defined in section 339(2B)”; and

“ship”, subject to section 339(4), means any seagoing vessel or sea-borne craft of any type.”; and

- (b) by inserting in subsection (2)-
 - (i) after the words “of any oil” the words “or bunker oil”;
 - (ii) after the words “to the owner” where they first appear, the words “or the registered owner”; and
 - (iii) after the words “to the owner” where they next appear, the words “or the registered owner, as the case may be”.

Amendment of section 338 – liability for oil pollution in case of tankers

9. The principal Law, is amended in section 338-

- (a) in subsections (1) to (6) by inserting the word “registered” before the word “owner” or the word “owners”, as the case may be, wherever such words appear;
- (b) in subsection (2)-
 - (i) by deleting the comma appearing at the end of paragraph (b) and substituting a full stop; and
 - (ii) by deleting the remainder of the subsection;
- (c) by inserting after subsection (2) the following subsection-

“ (2A) In this Chapter, such a threat as is mentioned in subsection (2) is referred to as a relevant threat of contamination falling within subsection (2).”; and
- (d) by repealing subsection (7).

Insertion of new section 338A – liability for pollution by bunker oil

10. The principal Law is amended by inserting after section 338 the following section-

“Liability for pollution by bunker oil

338A. (1) Subject to subsection (3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship then, except as otherwise provided by this Chapter, the owner of the ship shall be liable for-

- (a) any damage caused outside the ship in the territory of the Islands by contamination resulting from the discharge or escape;
- (b) the cost of any measure reasonably taken after the discharge or escape for the purpose of preventing

or minimising any damage so caused in the territory of the Islands by contamination resulting from the discharge or escape; and

- (c) any damage caused in the territory of the Islands by any measures so taken.

(2) Subject to subsection (3), where, as a result of any occurrence, there arises a grave or imminent threat of damage being caused outside a ship by the contamination that might result if there were a discharge or escape of bunker oil from the ship then, except as otherwise provided by this Chapter, the owner of the ship shall be liable for-

- (a) the cost of any measure reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Islands; and
- (b) any damage caused outside the ship in the territory of the Islands by any measures so taken.

(3) There shall be no liability under this section in relation to-

- (a) a discharge or escape of bunker oil from a ship to which section 338 applies; or
- (b) a threat mentioned in subsection (2) arising in relation to a potential discharge or escape of bunker oil from such a ship,

where that bunker oil is also persistent hydrocarbon mineral oil.

(4) In the subsequent provisions of this Chapter-

- (a) a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by subsection (3), is referred to as a discharge or escape of bunker oil falling within subsection (1); and
- (b) a threat mentioned in subsection (2), other than one excluded by subsection (3), is referred to as a relevant threat of contamination falling within subsection (2).

(5) Where a person incurs a liability under subsection (1) or (2) he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of the Islands included the territory of any other Bunkers

Convention country.

(6) Where-

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of two or more ships; and
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

Amendment of section
339 – liability for oil
pollution in other cases

11. The principal Law is amended in section 339-

- (a) in subsection (1)-
 - (i) by deleting the word “Where” at the beginning of the subsection and substituting the words “Subject to subsection (2A), where”;
 - (ii) by deleting the words “other than a ship to which section 338 applies”; and
 - (iii) by inserting before the word “owner”, the word “registered”;
- (b) in subsection (2)-
 - (i) by deleting the word “Where” at the beginning of the subsection and substituting the words “Subject to subsection (2A), where,”;
 - (ii) by deleting the words “other than a ship to which section 338 applies”;
 - (iii) by inserting before the word “owner”, the word “registered”; and
 - (iv) by deleting the comma appearing at the end of paragraph (b), substituting a full stop and deleting the remainder of the paragraph;
- (c) by inserting, after subsection (2) the following subsections-
 - “ (2A) No liability shall be incurred under this section by reason of-
 - (a) a discharge or escape of oil from a ship to which section 338 applies or a relevant threat of

- contamination falling within subsection (2) of that section; or
- (b) a discharge or escape of bunker oil falling within section 338A(1) or a relevant threat of contamination falling within section 338A(2).

(2B) In the subsequent provisions of this Chapter-

- (a) a discharge or escape of oil from a ship, other than one excluded by subsection (2A), is referred to as a discharge or escape of oil falling within subsection (1); and
- (b) a threat mentioned in subsection (2), other than one excluded by subsection (2A), is referred to as a relevant threat of contamination falling within subsection (2).”;
- (d) in subsection (3) by inserting before the word “owner” or “owners”, as the case may be, wherever they appear; the word “registered” ; and
- (e) in subsection (4) by inserting after the word “section” the words “, other than in subsection (2A).”.

12. The principal Law is amended by repealing section 340 and substituting the following section-

“Exceptions from liability under sections 338, 338A and 339

340. (1) No liability shall be incurred by a defendant under section 338, 338A or 339 by reason of a discharge or escape of bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that subsection (2) applies.

(2) Subsection (1) applies if the discharge or escape or the relevant threat of contamination (as the case may be)-

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the defendant, with intent to do damage; or
- (c) 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.”.

Repeal and substitution of section 340 – exceptions from liability under sections 338 and 339

Amendment of section
341 – restriction of
liability for oil pollution

13. The principal Law is amended in section 341-

- (a) in subsection (1)-
 - (i) by repealing paragraphs (a) and (b) and substituting the following paragraphs-
 - “(a) there is a discharge or escape of oil from a ship to which section 338 applies or there arises a relevant threat of contamination falling within subsection (2) of that section, or;
 - (b) there is a discharge or escape of oil falling within section 339(1) or there arises a relevant threat of contamination falling within subsection (2) of that section,”;
 - (ii) by inserting the word “registered” before the word “owner”.
- (b) in subsection (2)-
 - (i) by deleting the words “Subsection (1)(b)(ii)” and substituting “Subsection (1)(ii)”;
 - (ii) in paragraphs (a) and (d), by inserting the word “registered” before the word “owner”;
- (c) by inserting, after subsection (2), the following subsections-
 - “(2A) Where, as a result of any occurrence-
 - (a) there is discharge or escape of bunker oil falling within section 338A(1); or
 - (b) there arises a relevant threat of contamination falling within section 338A(2),

then whether or not the owner of the ship in question incurs any liability under section 338A-

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it; and
- (ii) no person to whom this subsection applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2B) Subsection (2A)(ii) applies to any-

- (a) servant or agent of the owner;
 - (b) person not falling within paragraph (a) but engaged in any capacity on board the ship or to perform any service for the ship;
 - (c) person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
 - (d) person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 338A; and
 - (e) servant or agent of a person falling within paragraph (c) or (d).”; and
- (d) in subsection (3) by deleting the words “the owner of a ship under section 338 or 339” and substituting the words “a person under section 338, 338A or 339”.

14. The principal Law is amended by inserting, after section 341, the following section-

“Liability under sections 338, 338A and 339

341A. For the purposes of this Chapter-

- (a) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur;
- (b) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship;
- (c) where more than one discharge or escape of oil or bunker oil results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (d) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.”.

Insertion of new section 341A – liability under sections 338, 338A and 339

Amendment of section 342 – limitation of liability under section 338	15. The principal Law is amended in section 342- (a) in subsection (1) by inserting- (i) after the word “owner” the word “registered”; and (ii) after the word “contamination” the words “falling within subsection (2) of that section”; and (b) in subsection (4) by inserting- (i) before the word “resulted” the words “as the case may be,”; and (ii) before the word “owner” the word “registered”.
Amendment of section 343 – limitation actions	16. The principal Law is amended in section 343- (a) in subsection (1) by inserting before the word “owner” the word “registered”; (b) in subsection (2) by deleting the words “and is entitled to” and substituting the words “but has not found that he is not entitled to”; and (c) by repealing paragraph (a) of subsection (6) and substituting the following paragraph- “(a) by the registered owner or the persons referred to in section 350 as “the insurer” in relation to any insurance or other security provided as referred to in subsection (1) of that section;”.
Amendment of section 345 – concurrent liabilities of owners and others	17. The principal Law is amended in section 345 by inserting before the word “owner” wherever it appears, the word “registered”.
Amendment of section 347 – extinguishment of claims	18. The principal Law is amended in section 347 by inserting after “338” “, 338A”.
Amendment of section 348 – compulsory insurance against liability for pollution	19. The principal Law is amended in section 348 by repealing subsection (7) and substituting the following subsection- “(7) Where a ship which is in a port in the Islands is found to be in contravention of this section, such ship may, in addition to any penalties which may apply, be detained until such contravention is remedied.”
Insertion of new section 348A – compulsory insurance against liability for pollution from bunker oil	20. The principal law is amended by inserting after section 348 the following section- “Compulsory insurance against liability for pollution from bunker oil 348A. (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) shall apply to any ship having a gross tonnage greater than 1,000 tons calculated in

accordance with the Tonnage Regulations.

(2) The ship shall not enter or leave a port in the Islands or arrive at or leave a terminal in the territorial sea of the Islands nor, if the ship is a Cayman Islands ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force in respect of the ship-

- (a) a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention; and
- (b) a certificate complying with subsection (3) showing that there is in force a contract of insurance or other security satisfying those requirements.

(3) The certificate shall be-

- (a) if the ship is a Cayman Islands ship, a certificate issued by the Director;
- (b) if the ship is registered in a Bunkers Convention country other than the Islands, a certificate issued by or under the authority of the government of the other Bunkers Convention country; or
- (c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the Director or by or under the authority of the government of any Bunkers Convention country other than the Islands.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs, the Director or any surveyor authorised by the Director for the purpose and, if the ship is a Cayman Islands ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2), the master or registered owner commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Where a ship which is in a port in the Islands is found to be in contravention of this section, such ship may, in addition to any penalties which may apply, be detained until such contravention is remedied.”.

Amendment of section
349 – issue of certificate
by Director

21. Section 349 of the principal Law is amended-

- (a) in subsection (1)-
 - (i) by deleting the reference to section 348 and substituting “348(2)”;
 - (ii) by inserting before the word “owner” the word “registered”;
- (b) by inserting after subsection (1) the following subsection-

“ (1A) Subject to subsection (2), if the Director is satisfied, on the application for such a certificate as is mentioned in section 348A(2) in respect of a Cayman Islands ship or a ship registered in any country which is not a Bunkers Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Director shall issue such a certificate to the registered owner.”; and
- (c) by repealing subsection (2) and substituting the following subsection-

“ (2) The Director may refuse the certificate if he is of the opinion that there is doubt whether-

 - (a) the person providing the insurance or other security will be able to meet his obligations thereunder; or
 - (b) the insurance or other security will cover the registered owner’s liability under section 338 or the owner’s liability under section 338A, as the case may be.”.

22. The principal Law is amended by repealing section 350 and substituting the following section-

Repeal and substitution
of section 350 – rights
of third parties against
insurers

“Rights of
third parties
against
insurers

350. (1) Where it is alleged that the registered owner of a ship has incurred a liability under section 338 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 348(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security, in this section referred to as “the insurer”.

(2) Where it is alleged that the owner of a ship has incurred a liability under section 338A as a result of any discharge or escape of bunker oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 348A(2) related, proceedings to enforce a claim in respect of the liability may be brought against the insurer.

(3) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 338 it shall be a defence, in addition to any defence affecting the registered owner’s liability, to prove that the discharge or escape, or, as the case may be, the threat of contamination, was due to the wilful misconduct of the registered owner himself.

(4) The insurer may limit his liability in relation to claims in respect of liability under section 338 which are made against him by virtue of this section in like manner and to the same extent as the registered owner may limit his liability under section 342, but the insurer may do so whether or not the discharge or escape, or, as the case may be, the threat of contamination, resulted from anything done or omitted to be done by the registered owner as mentioned in section 342(4).

(5) Where the registered owner and insurer each applies to the court for the limitation of his liability (in relation to liability under section 338) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.

(6) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 338A it shall be a defence (in addition to any defence affecting the owner's liability)

to prove that the discharge or escape, or, as the case may be, the threat of contamination, was due to the wilful misconduct of the owner himself.

(7) The insurer may limit his liability in relation to claims in respect of liability under section 338A which are made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability by virtue of Chapter 2 of Part XVI but the insurer may do so whether or not the discharge or escape, or, as the case may be, the threat of contamination, resulted from any act or omission mentioned in section 399.

(8) Where the owner and the insurer each applies to the court for the limitation of his liability (in relation to liability under section 338A) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.”.

Amendment of section
351 – jurisdiction of
Cayman Islands court
and registration of
foreign judgments

23. Section 351 of the principal Law is amended-

- (a) in subsection (1)-
 - (i) in paragraph (a) by deleting the words “any oil is discharged or escapes from a ship but” and substituting the words “there is a discharge or escape of oil from a ship to which section 338 applies, or a discharge or escape of oil falling within section 339(1), which”;
 - (ii) in paragraph (b) by inserting, after the word “contamination” the words “falling within section 338(2) or 339(2)”;
 - (iii) in paragraph (b)(i) by inserting before the word “owner” the word “registered”;
- (b) by inserting after subsection (2) the following subsections-
 - “ (2A) Where-
 - (a) there is a discharge or escape of bunker oil falling within section 338A(1) which does not result in any damage caused by contamination in the territory of the Cayman Islands and no measures are reasonably taken to prevent or minimise such damage in that territory; or
 - (b) any relevant threat of contamination falling within section 338A(2) arises but no measures are reasonably taken to prevent or minimise such damage in the

territory of the Cayman Islands, no court in the Islands shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost against-

- (i) the owner of the ship; or
- (ii) any person to whom section 341(2A)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(2B) In subsection (2A), "relevant damage or cost" means-

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Bunkers Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country;
- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b),

and section 341(2B)(d) shall have effect for the purpose of subsection (2A)(ii) of this section as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b)."; and

- (c) by repealing subsection (3) and substituting the following subsection-

“ (3) Any judgment given by a court in a Liability Convention country in respect of a liability incurred under any provision corresponding to section 338 or 338A shall be enforceable by the court.”.

Amendment of section
352 – Government ships

24. Section 352 of the principal Law is amended-

- (a) in subsection (2) by repealing the subsection and substituting the following subsection-

“ (2) In relation to a ship owned by a state and for the time being used for commercial purposes it shall be a sufficient compliance-

- (a) with section 348(2) if there is in force a certificate issued by the government of that state and showing that the ship is owned by that state and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of that Convention; and

- (b) with section 348A(2) if there is in force a certificate issued by the government of that state and showing that the ship is owned by that state and that any liability for pollution damage as defined in Article 1 of the Bunkers Convention will be met up to the limit set out in sections 401 to 403 and sections 406 to 408 inclusive.”; and

- (b) by inserting after subsection (3) the following subsection-

“ (4) Every Bunkers Convention State shall, for the purposes of any proceedings brought in the court in the Islands to enforce a claim in respect of a liability incurred under section 338A, be deemed to have submitted to the jurisdiction of the court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any state.”.

Amendment of section
353 – limitation of
liability under section
339

25. Section 353 of the principal Law is amended in the text and in the marginal note by deleting “section 339” and substituting “section 338A or 339”.

26. The principal Law is amended by repealing section 355 and substituting the following section-

“Parties to the Liability Convention and references to territories of a country

355. (1) If Her Majesty, by Order in Council, declares that any State specified in the Order is a party to the Bunkers Convention, the Liability Convention or the Fund Convention in respect of any country so specified, the Order shall, while in force, for the purposes of this Part, be conclusive evidence that that State is a party to that Convention in respect of that country.

Repeal and substitution of section 355 – meaning of the “Liability Convention” and related expressions

(2) References in this Chapter to the territory of any country includes the territorial sea of that country, and in the case of the Islands and any Liability Convention country, the exclusive economic zone thereof established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea thereof and extending not more than two hundred nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by the State in question in accordance with international law.”.

27. The principal Law is amended by repealing section 365 and substituting the following section-

“Governor may make Regulations

365. The Governor may make Regulations with respect to the Liability Convention, the Fund Convention, the Fund Protocol of 2003 and the Bunkers Convention and matters connected therewith in this Part.”.

Repeal and substitution of section 365 – meaning of the “Liability Convention”, the “Fund Convention” and related expressions

Passed by the Legislative Assembly the day of , 2010.

Speaker.

Clerk of the Legislative Assembly.