

## STOP PRESS ADVICE

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### **SPAIN RATIFIES THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE (BUNKER 2001)**

Spain has ratified the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER 2001), which will come into force for Spain and other State Parties on **21<sup>st</sup> November 2008**.

In ratifying the BUNKER 2001 Convention, Spain has declared that “*Judgements on matters covered by the Convention shall, when given by a court of Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Sweden and the United Kingdom, be recognised and enforced in Spain according to the relevant internal Community rules on the subject.*”

As you may recall the BUNKER 2001 Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damages caused by spills of oil, when carried as fuel in ship’s bunkers.

The “pollution damages” are define in Art.1.9 of the BUNKER 2001 Convention as “the loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship...” and “the costs of preventive measures and further losses...”. The prescription term to claim for the pollution damages is of three (3) years.

There are two key requirements in the BUNKERS 2001 Convention:

- The need for the registered owner of a ship to maintain a compulsory insurance cover.
- The requirement for direct –action, which will allow a claim for compensation for pollution damage to be brought directly against an insurer.

In this respect, ships over 1,000 GT are required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover their liability for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with the 1976 LLMC, as amended. Spain has denounced the 1976 LLMC, therefore it is only applicable the 1996 PROTOCOL.

Art. 7.5 of the BUNKER 2001 Convention establishes that a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship and shall be carried on board the ship. The non-compliance of having the certificate on board the ship can be considered as an infraction to our Port Law 27/92.

Notwithstanding the above, Art. 7.13 of this Convention establishes that a State Party may notify the IMO Secretary-General that ships are not required to carry on board or to produce the certificate, for the State Party maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate.