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NEW REGULATION IN SPAIN APPLYING THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE (BUNKER 2001); IN FORCE IN SPAIN AS FROM 21.11.08

Following our STOP PRESS ADVICE on 03.03.08 informing that Spain published its ratification to the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER 2001), the Spanish Government has published a new regulation, **Royal Decree 1795/2008**, in the Spanish Official State Bulletin dated 18.11.08, which establishes the requirements and procedures of issuance and control of the certificate that justifies the subscription of the insurance or other financial security required by the BUNKER 2001.

As from 21.11.08, all foreign flag ships with a GT superior to 1000 tons will be banned to enter or exit from any Spanish port or any maritime installation, if they do not have on board a certificate of insurance or other financial security in force and issued in conformity with the BUNKERS 2001 Convention.

REQUIREMENTS FOR ISSUANCE OF THE CERTIFICATE (Art 5): this certificate will be issued as long as the insurance or other financial security has been provided by any of the following entities:

- a) Insurance companies that have obtained the authorization by the Spanish Ministry of Economy and Finance to cover the civil liability of maritime, lacustrine and fluvial vehicles in accordance with the RD 6/2004 or established in the European Economic Space and exercising their activities in Spain as suppliers.
- b) Insurance companies established in a country belonging to the European Economic Space other than Spain and authorized to cover the civil liability of maritime, lacustrine and fluvial vehicles.
- c) Branches established in the European Economic Space of insurance companies established in third countries authorized to cover the civil liability of maritime, lacustrine and fluvial vehicles.
- d) Protection and Indemnity Clubs members of the International Group.

This regulation also empowers the Ministry of Development to issue the regulations of application of this RD and to authorize Protection and Indemnity Clubs not members of the IG to cover this civil liability, in accordance with the limits of cover as per Article 7 of the BUNKER 2001 Convention. The duration of the insurance or other financial security will be for a period not superior to one year with the effects established in Art 7.6 of the BUNKER 2001 Convention.

TO WHOM AND BY WHICH PROCEDURE WILL THE CERTIFICATES BE REQUESTED (Art 8): the certificate shall be requested to the GENERAL DIRECTORATE OF MERCHANT MARINE (GDMM) by the registered owner or the insurance company

covering the liability. The request shall be done in a term of 30 days previous to the date on which the certificate is due to have effect. Together with the request shall be presented the documents justifying the insurance or other financial security and the formularies required by the GDMM or the supervising authority duly complimented. The procedure of request of the certificate will be ruled by the Administrative Procedure Law 30/92 in what is not established in this RD.

It is important to note that any circumstance that produces the extinction, loss or reduction of the efficiency of the insurance or financial security - during the validity of the certificate - must be immediately communicated by the registered owner, the insurance company or the underwriter to the GDMM, to whom the certificate must be returned.

CLAIMS FOR INDEMNIFICATION DUE TO DAMAGES CAUSED BY BUNKER OIL POLLUTION OF SHIPS (Art. 10): no claim can be presented against the persons who carry out salvage with the consent of the owner or following the instructions of a public authority, the persons who take preventive measures and the employees or agents of the previously mentioned, unless caused by action or omission and with deliberate intention to cause damages. This RD does not limit the right that empowers Owners to proceed against third parties.

ADMINISTRATIVE SANCTIONING PROCEDURE (Art. 11): Harbour Masters can require the presentation of the certificate in order to dispatch the ship, and are empowered to initiate an Administrative Sanctioning Procedure for infringements to our Spanish Port Law 27/1992 and can order the detention of the ship for non compliance with the regulations of the RD 1795/2008.

The infringements could be typified as a severe infraction to Maritime Security (Art. 115.2.k) and / or a severe infraction related to the ordenance of Maritime traffic (Art. 115.3.c) for which the vessel could be detained as a precautionary measure within an Administrative Sanctioning Procedure, a guarantee would be requested in order to release the vessel. In the Administrative Sanctioning Procedure, a fine will be imposed in accordance to the infractions: in this case, as the infraction could be considered severe, the fines can be up to Euros 601,012.10.

It is also important to note that this RD 1795/2008 also modifies the RD 1892/2004 which applied the **International Convention on Civil Liability for Oil Pollution Damage (CLC) of 1969 and Protocol of 1992.**

Further information can be obtained from INDECO
