

BUNKER CONVENTION BILL, 2020

ARRANGEMENT OF ARTICLES

- Article 1 Scope of Application
- Article 2 Liability of the Shipowner
- Article 3 Exclusions
- Article 4 Incidents involving two or more Ships
- Article 5 Limitation of Liability
- Article 6 Compulsory Insurance or Financial Security
- Article 7 Time Limits
- Article 8 Jurisdiction
- Article 9 Recognition and Enforcement
- Article 10 Supersession Clause
- Article 11 Signature, Ratification, Acceptance, Approval And Accession
- Article 12 States with more than one system of Law
- Article 13 Entry into Force
- Article 14 Denunciation
- Article 15 Revision or Amendment
- Article 16 Depositary
- Article 17 Transmission to United Nations
- Article 18 Languages
- Article 19 Definitions
- Article 20 Short Title

A BILL

FOR

AN ACT TO ENABLE EFFECT TO BE GIVEN IN THE FEDERAL REPUBLIC OF NIGERIA TO PROVIDE FOR THE CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE AND FOR RELATED MATTERS

Sponsored by Hon. Ossai Nicholas Ossai

Co-sponsors:

- | | |
|----------------------------------|-------------------------------|
| Hon. Abdulkadir Arman Yau | Hon. Mzondu Benjamin Bem |
| Hon. Zacharias David Idris | Hon. Ari A. Mohammed |
| Hon. Mshelia Haruna | Hon. Magaji Amos Gwamna |
| Hon. Abubakar Kabir Abubakar | Hon. Sani Zangon Daura Nasiru |
| Hon. Ibezi Ifeanyi Anthony | Hon. Amadi Oguerinwa Dennis |
| Hon. Elezieanya Ikenna Onyechere | Hon. Etaba Michael Irom |
| Hon. Emerengwa Boniface Sunday | Hon. Kolawole Taiwo Musibau |
| Hon. Akiolu Moshood Kayode | Hon. Muraina Saubana Ajibola |

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

ARTICLE 1

- 1
- 2 1. This Convention shall apply exclusively:
- 3 (a) to pollution damage caused:
- 4 (i) in the territory, including the territorial sea, of a State Party, and
- 5 (ii) in the exclusive economic zone of a State Party, established in
- 6 accordance with international law, or, if a State Party has not established
- 7 such a zone, in an area beyond and adjacent to the territorial sea of that State
- 8 determined by that State in accordance with international law and extending
- 9 not more than 200 nautical miles from the baselines from which the breadth
- 10 of its territorial sea is measured;
- 11 (b) to preventive measures, wherever taken, to prevent or minimize
- 12 such damage.

Scope of Application

1 ARTICLE 2

Liability of
the Ship Owner

2 2.-(1) Except as provided in paragraphs 3 and 4, the ship-owner at the
3 time of an incident shall be liable for pollution damage caused by any bunker
4 oil on board or originating from the ship, provided that, if an incident consists
5 of a series of occurrences having the same origin, the
6 liability shall attach to the ship-owner at the time of the first of such
7 occurrences.

8 (2) Where more than one person is liable in accordance with
9 paragraph 1, their liability shall be joint and several.

10 (3) No liability for pollution damage shall attach to the ship-owner if
11 the ship-owner proves that:

12 (a) the damage resulted from an act of war, hostilities, civil war,
13 insurrection or a natural phenomenon of an exceptional, inevitable and
14 irresistible character; or

15 (b) The damage was wholly caused by an act or omission done with
16 the intent to cause damage by a third party; or

17 (c) The damage was wholly caused by the negligence or other
18 wrongful act of any Government or other authority responsible for the
19 maintenance of lights or other navigational aids in the exercise of that function.

20 (4) If the ship-owner proves that the pollution damage resulted
21 wholly or partially either from an act or omission done with intent to cause
22 damage by the person who suffered the damage or from the negligence of that
23 person, the ship-owner may be exonerated wholly or partially from liability to
24 such person.

25 (5) No claim for compensation for pollution damage shall be made
26 against the ship-owner otherwise than in accordance with this Convention.

27 (6) Nothing in this Convention shall prejudice any right of recourse of
28 the ship-owner which exists independently of this Convention.

1 ARTICLE 3

2 3.-(1) This Convention shall not apply to pollution damage as Exclusions
3 defined in the Civil Liability Convention, whether or not compensation is
4 payable in respect of it under that Convention.

5 (2) Except as provided in paragraph 3, the provisions of this
6 Convention shall not apply to warships, naval auxiliary or other ships owned
7 or operated by a State and used, for the time being, only on Government non-
8 commercial service.

9 (3) A State Party may decide to apply this Convention to its
10 warships or other ships described in paragraph 2, in which case it shall notify
11 the Secretary-General thereof specifying the terms and conditions of such
12 application.

13 (4) With respect to ships owned by a State Party and used for
14 commercial purposes, each State shall be subject to suit in the jurisdictions
15 set forth in article 9 and shall waive all defenses based on its status as a
16 sovereign State.

17 ARTICLE 4

18 4. When an incident involving two or more ships occurs and Incidents involving
19 pollution damage results there from, the ship-owners of all the ships two or more ships
20 concerned, unless exonerated under article 3, shall be jointly and severally
21 liable for all such damage which is not reasonably separable.

22 ARTICLE 5

23 5. Nothing in this Convention shall affect the right of the ship- Limitation of
24 owner and the person or persons providing insurance or other financial Liability
25 security to limit liability under any applicable national or international
26 regime, such as the Convention on Limitation of Liability for Maritime
27 Claims, 1976, as amended.

28 ARTICLE 6

29 6.-(1) The registered owner of a ship having a gross tonnage greater Compulsory
30 than 1000 registered in a State Party shall be required to maintain insurance Insurance or
Financial Security

1 or other financial security, such as the guarantee of a bank or similar financial
2 institution, to cover the liability of the registered owner for pollution damage
3 in an amount equal to the limits of liability under the applicable national or
4 international limitation regime, but in all cases, not exceeding an amount
5 calculated in accordance with the Convention on Limitation of Liability for
6 Maritime Claims, 1976, as
7 amended.

8 (2) A certificate attesting that insurance or other financial security is
9 in force in accordance with the provisions of this Convention shall be issued to
10 each ship after the appropriate authority of a State Party has determined that the
11 requirements of paragraph 1 have been complied with.

12 With respect to a ship registered in a State Party such certificate shall be issued
13 or certified by the appropriate authority of the State of the ship's registry; with
14 respect to a ship not registered in a State Party it may be issued or certified by
15 the appropriate authority of any State Party. This certificate shall be in the form
16 of the model set out in the annex to this Convention and shall contain the
17 following particulars:

18 (a) name of ship, distinctive number or letters and port of registry;

19 (b) name and principal place of business of the registered owner;

20 (c) IMO ship identification number;

21 (d) type and duration of security;

22 (e) name and principal place of business of insurer or other person
23 giving security and, where appropriate, place of business where the insurance
24 or security is established;

25 (f) period of validity of the certificate which shall not be longer than
26 the period of validity of the insurance or other security.

27 (3)(a) A State Party may authorize either an institution or an
28 organization recognized by it to issue the certificate referred to in paragraph 2.
29 Such institution or organization shall inform that State of the issue of each
30 certificate. In all cases, the State Party shall fully guarantee the completeness

1 and accuracy of the certificate so issued and shall undertake to ensure the
2 necessary arrangements to satisfy this obligation;

3 (b) A State Party shall notify the Secretary-General of:

4 (i) The specific responsibilities and conditions of the authority
5 delegated to an institution or organization recognised by it;

6 (ii) The withdrawal of such authority; and

7 (iii) The date from which such authority or withdrawal of such
8 authority takes effect. An authority delegated shall not take effect prior to
9 three months from the date on which notification to that effect was given to
10 the Secretary-General.

11 (c) The institution or organization authorized to issue certificates in
12 accordance with this paragraph shall, as a minimum, be authorized to
13 withdraw these certificates if the conditions under which they have been
14 issued are not maintained. In all cases the institution or organization shall
15 report such withdrawal to the State on whose behalf the certificate was
16 issued.

17 (4) The certificate shall be in the official language or languages of
18 the issuing State. If the language used is not English, French or Spanish, the
19 text shall include a translation into one of these languages and, where the
20 State so decides, the official language of the State may be omitted.

21 (5) The certificate shall be carried on board the ship and a copy
22 shall be deposited with the authorities who keep the record of the ship's
23 registry or, if the ship is not registered in a State Party, with the authorities
24 issuing or certifying the certificate.

25 (6) An insurance or other financial security shall not satisfy the
26 requirements of this article if it can cease, for reasons other than the expiry of
27 the period of validity of the insurance or security specified in the certificate
28 under paragraph 2 of this article, before three months have elapsed from the
29 date on which notice of its termination is given to the authorities referred to
30 in paragraph 5 of this article, unless the certificate has been surrendered to

1 these authorities or a new certificate has been issued within the said period. The
2 foregoing provisions shall similarly apply to any modification which results in
3 the insurance or security no longer satisfying the requirements of this article.

4 (7) The State of the ship's registry shall, subject to the provisions of
5 this article, determine the conditions of issue and validity of the certificate.

6 (8) Nothing in this Convention shall be construed as preventing a
7 State Party from relying on information obtained from other States or the
8 Organization or other international organisations relating to the financial
9 standing of providers of insurance or financial security for the purposes of this
10 Convention. In such cases, the State Party relying on such information is not
11 relieved of its responsibility as a State issuing the certificate required by
12 paragraph 2.

13 (9) Certificates issued or certified under the authority of a State Party
14 shall be accepted by other States Parties for the purposes of this Convention
15 and shall be regarded by other States Parties as having the same force as
16 certificates issued or certified by them even if issued or certified in respect of a
17 ship not registered in a State Party. A State Party may at any time request
18 consultation with the issuing or certifying State should it believe that the
19 insurer or guarantor named in the insurance certificate is not financially
20 capable of meeting the obligations imposed by this Convention.

21 (10) Any claim for compensation for pollution damage may be
22 brought directly against the insurer or other person providing financial security
23 for the registered owner's liability for pollution damage. In such a case the
24 defendant may invoke the defenses (other than bankruptcy or winding up of the
25 ship-owner) which the ship-owner would have been entitled to invoke,
26 including limitation pursuant to article 6. Furthermore, even if the shipowner is
27 not entitled to limitation of liability according to article 6, the defendant may
28 limit liability to an amount equal to the amount of the insurance or other
29 financial security required to be maintained in accordance with paragraph 1.
30 Moreover, the defendant may invoke the defence that the pollution damage

1 resulted from the willful misconduct of the ship-owner, but the defendant
2 shall not invoke any other defence which the defendant might have been
3 entitled to invoke in proceedings brought by the ship-owner against the
4 defendant. The defendant shall in any event have the right to require the
5 ship-owner to be joined in the proceedings.

6 (11) A State Party shall not permit a ship under its flag to which this
7 article applies to operate at any time, unless a certificate has been issued
8 under paragraphs 2 or 14.

9 (12) Subject to the provisions of this article, each State Party shall
10 ensure, under its national law, that insurance or other security, to the extent
11 specified in paragraph 1, is in force in respect of any ship having a gross
12 tonnage greater than 1000, wherever registered, entering or leaving a port in
13 its territory, or arriving at or leaving an offshore facility in its territorial sea.

14 (13) Notwithstanding the provisions of paragraph 5, a State Party
15 may notify the Secretary-General that, for the purposes of paragraph 12,
16 ships are not required to carry on board or to produce the certificate required
17 by paragraph 2, when entering or leaving ports or arriving at or leaving from
18 offshore facilities in its territory, provided that the State Party which issues
19 the certificate required by paragraph 2 has notified the Secretary-General
20 that it maintains records in an electronic format, accessible to all States
21 Parties, attesting the existence of the certificate and enabling States Parties
22 to discharge their obligations under paragraph 12.

23 (14) If insurance or other financial security is not maintained in
24 respect of a ship owned by a State Party, the provisions of this article relating
25 thereto shall not be applicable to such ship, but the ship shall carry a
26 certificate issued by the appropriate authority of the State of the ship's
27 registry stating that the ship is owned by that State and that the ship's liability
28 is covered within the limit prescribed in accordance with paragraph 1. Such
29 a certificate shall follow as closely as possible the model prescribed by
30 paragraph 2.

1 (15) A State may, at the time of ratification, acceptance, approval of,
2 or accession to this Convention, or at any time thereafter, declare that this
3 article does not apply to ships operating exclusively within the area of that
4 State referred to in article 2(a) (i).

5 ARTICLE 7

Time Limits

6 7. Rights to compensation under this Convention shall be
7 extinguished unless an action is brought there under within three years from the
8 date when the damage occurred. However, in no case shall an action be brought
9 more than six years from the date of the incident which caused the damage.
10 Where the incident consists of a series of occurrences, the six-year' period shall
11 run from the date of the first such occurrence.

12 ARTICLE 8

Jurisdiction

13 8.-(1) Where an incident has caused pollution damage in the territory,
14 including the territorial sea, or in an area referred to in article 2(a)(ii) of one or
15 more States Parties, or preventive measures have been taken to prevent or
16 minimise pollution damage in such territory, including the territorial sea, or in
17 such area, actions for compensation against the ship-owner, insurer or other
18 person providing security for the ship owner's liability may be brought only in
19 the courts of any such States Parties.

20 (2) Reasonable notice of any action taken under paragraph 1 shall be
21 given to each defendant.

22 (3) Each State Party shall ensure that its courts have jurisdiction to
23 entertain actions for compensation under this Convention.

24 ARTICLE 9

Recognition
and Enforcement

25 9.-(1) Any judgments given by a Court with jurisdiction in
26 accordance with article 9 which is enforceable in the State of origin where it is
27 no longer subject to ordinary forms of review, shall be recognised in any State
28 Party, except:

29 (a) Where the judgment was obtained by fraud; or

30 (b) Where the defendant was not given reasonable notice and a fair

1 opportunity to present his or her case.

2 (2) A judgment recognised under paragraph 1 shall be enforceable
3 in each State Party as soon as the formalities required in that State have been
4 complied with. The formalities shall not permit the merits of the case to be
5 re-opened.

6 ARTICLE 10

7 **10.** This Convention shall supersede any Convention in force or
8 open for signature, ratification or accession at the date on which this
9 Convention is opened for signature, but only to the extent that such
10 Convention would be in conflict with it; however, nothing in this article
11 shall affect the obligations of States Parties to States not party to this
12 Convention arising under such Convention.

Supersession
Clause

13 ARTICLE 11

14 **11.-(1)** This Convention shall be open for signature at the
15 Headquarters of the Organization from 1 October 2001 until 30 September
16 2002 and shall thereafter remain open for accession.

Signature,
Ratification,
Acceptance,
Approval and
Accession

17 (2) States may express their consent to be bound by this
18 Convention by:

19 (a) signature without reservation as to ratification, acceptance or
20 approval;

21 (b) Signature subject to ratification, acceptance or approval
22 followed by ratification, acceptance or approval; or

23 (c) Accession.

24 (3) Ratification, acceptance, approval or accession shall be
25 effected by the deposit of an instrument to that effect with the Secretary-
26 General.

27 (4) Any instrument of ratification, acceptance, approval or
28 accession deposited after the entry into force of an amendment to this
29 Convention with respect to all existing State Parties, or after the completion
30 of all measures required for the entry into force of the amendment with

1 respect to those State Parties shall be deemed to apply to this Convention as
2 modified by the amendment.

3 ARTICLE 12

States with more
than one system
of Law

4 **12.**-(1) If a State has two or more territorial units in which different
5 systems of law are applicable in relation to matters dealt with in this
6 Convention, it may at the time of signature, ratification, acceptance, approval
7 or accession declare that this Convention shall extend to all its territorial units
8 or only to one or more of them and may modify this declaration by submitting
9 another declaration at any time.

10 (2) Any such declaration shall be notified to the Secretary-General
11 and shall state expressly the territorial units to which this Convention applies.

12 (3) In relation to a State Party which has made such a declaration:

13 (a) in the definition of "registered owner" in article 1 (4), references to
14 a State shall be construed as references to such a territorial unit;

15 (b) references to the State of a ship's registry and, in relation to a
16 compulsory insurance certificate, to the issuing or certifying State, shall be
17 construed as referring to the territorial unit respectively in which the ship is
18 registered and which issues or certifies the certificate;

19 (c) References in this Convention to the requirements of national law
20 shall be construed as references to the requirements of the law of the relevant
21 territorial unit; and

22 (d) References in articles 9 and 10 to courts, and to judgements which
23 must be recognized in States Parties, shall be construed as references
24 respectively to courts of, and to judgements which must be recognized in, the
25 relevant territorial unit.

26 ARTICLE 13

Entry into Force

27 **13.**-(1) This Convention shall enter into force one year following the
28 date on which eighteen States, including five States each with ships whose
29 combined gross tonnage is not less than 1 million, have either signed it without
30 reservation as to ratification, acceptance or approval or have deposited

1 instruments of ratification, acceptance, approval or accession with the
2 Secretary-General.

3 (2) For any State which ratifies, accepts, approves or accedes to it
4 after the conditions in paragraph 1 for entry into force have been met, this
5 Convention shall enter into force three months after the date of deposit by
6 such State of the appropriate instrument.

7 ARTICLE 14

8 **14.**-(1) This Convention may be denounced by any State Party at Denunciation
9 any time after the date on which this Convention comes into force for that
10 State.

11 (2) Denunciation shall be effected by the deposit of an instrument
12 with the Secretary-General.

13 (3) A denunciation shall take effect one year, or such longer period
14 as may be specified in the instrument of denunciation, after its deposit with
15 the Secretary-General.

16 ARTICLE 15

17 **15.**-(1) A conference for the purpose of revising or amending this Revision or
18 Convention may be convened by the Organization. Amendment

19 (2) The Organization shall convene a conference of the States
20 Parties for revising or amending this Convention at the request of not less
21 than one-third of the States Parties.

22 ARTICLE 16

23 **16.**-(1) This Convention shall be deposited with the Secretary- Depository
24 General.

25 (2) The Secretary-General shall:

26 (a) Inform all States which have signed or acceded to this
27 Convention of:

28 (i) Each new signature or deposit of instrument together with the
29 date thereof;

30 (ii) The date of entry into force of this Convention;

1 (iii) The deposit of any instrument of denunciation of this Convention
2 together with the date of the deposit and the date on which the denunciation
3 takes effect; and

4 (iv) Other declarations and notifications made under this Convention.

5 (b) Transmit certified true copies of this Convention to all Signatory
6 States and to all States which accede to this Convention.

7 ARTICLE 17

Transmission
to United Nations

8 **17.** As soon as this Convention comes into force, the text shall be
9 transmitted by the Secretary-General to the Secretariat of the United Nations
10 for registration and publication in accordance with Article 102 of the Charter of
11 the United Nations.

12 ARTICLE 18

Languages

13 **18.** This Convention is established in a single original in the Arabic,
14 Chinese, English, French, Russian and Spanish languages, and each text being
15 equally authentic.

16 DONE AT LONDON this twenty-third day of March, two thousand and one.

17 IN WITNESS WHEREOF the undersigned being duly authorised by their
18 respective Governments for that purpose have signed this Convention.

19 ARTICLE 19

Interpretation

20 **19.** For the purposes of this Convention:

21 (1) "Ship" means any seagoing vessel and seaborne craft, of any type
22 whatsoever;

23 (2) "Person" means any individual or partnership or any public or
24 private body, whether corporate or not, including a State or any of its
25 constituent subdivisions;

26 (3) "Ship-owner" means the owner, including the registered owner,
27 bareboat charterer, manager and operator of the ship;

28 (4) "Registered owner" means the person or persons registered as the
29 owner of the ship or, in the absence of registration, the person or persons
30 owning the ship. However, in the case of a ship owned by a State and operated

1 by a company which in that State is registered as the ship's operator,
2 "registered owner" shall mean such company;

3 (5) "Bunker oil" means any hydrocarbon mineral oil, including
4 lubricating oil, used or intended to be used for the operation or propulsion of
5 the ship, and any residues of such oil;

6 (6) "Civil Liability Convention" means the International
7 Convention on Civil Liability for Oil Pollution Damage, 1992, as amended;

8 (7) "Preventive measures" means any reasonable measures taken
9 by any person after an incident has occurred to prevent or minimize
10 pollution damage;

11 (8) "Incident" means any occurrence or series of occurrences
12 having the same origin, which causes pollution damage or creates a grave
13 and imminent threat of causing such damage;

14 (9) "Pollution damage" means:

15 (a) loss or damage caused outside the ship by contamination
16 resulting from the escape or discharge of bunker oil from the ship, wherever
17 such escape or discharge may occur, provided that compensation for
18 impairment of the environment other than loss of profit from such
19 impairment shall be limited to costs of reasonable measures of reinstatement
20 actually undertaken or to be undertaken; and

21 (b) The costs of preventive measures and further loss or damage
22 caused by preventive measures.

23 (10) "State of the ship's registry" means, in relation to a registered
24 ship, the State of registration of the ship and, in relation to an unregistered
25 ship, the State whose flag the ship is entitled to fly;

26 (11) "Gross tonnage" means gross tonnage calculated in
27 accordance with the tonnage measurement regulations contained in Annex 1
28 of the International Convention on Tonnage Measurement of Ships, 1969;

29 (12) "Organization" means the International Maritime
30 Organization;

1 (13) "Secretary-General" means the Secretary-General of the
2 Organization.

3 ARTICLE 20

Short title

4 **20.** This Bill may be cited as the Bunker Convention Bill, 2020.

EXPLANATORY MEMORANDUM

This Bill seeks to enable effect to be given in the Federal Republic of Nigeria to provide for the Convention of Civil Liability for Bunker Oil Pollution damage.