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MERCHANT SHIPPING ACT, 2007

**MARINE ENVIRONMENT (LIABILITY AND COMPENSATION)
REGULATIONS, 2012**



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SCHEDULES

MERCHANT SHIPPING ACT, 2007
MERCHANT SHIPPING (LIABILITY AND COMPENSATION)
REGULATIONS, 2012

	[1 st day of June. 2012]	Cornence- ment.
	In exercise of the powers conferred on me by sections 335 (1) and (3) of section 434 of the Merchant Shipping Act, 2007 and all other powers enabling me in that behalf, I, SENATOR IDRIS UMAR, Honourable Minister of Transport, hereby make the following Regulations-	
	PART I-OBJECTIVE AND APPLICATION	
1.	The objectives of these Regulations are to- (a) give effect in Nigeria to the Civil Liability Convention and the Fund Convention, which together, creates a scheme of liability for oil polluters and compensation for victims of oil pollution; (b) strengthen inspection regime; (c) make provisions for cross jurisdictional issues including contributions payable by persons who contribute oil as importers or receivers; (d) set out detailed rules and operational guidelines to regulate liability for pollution damage caused by ship; (e) ensure that certificates in respect of insurance are up to date; and (f) make provision for the Fund to pay compensation under a scheme of liability set out in these Regulations	Objective.
2.	These Regulations shall apply to- (a) pollution damage caused by a ship in the- (i) territory of Nigeria; and (ii) exclusive economic zone of a Contracting State, established in accordance with international law, or if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured, and (b) preventive measures taken to prevent or minimize damage.	Application.
	PART II- LIABILITY	
3.-(1)	This Regulation applies to any ship constructed or adapted for carrying oil in bulk as cargo, subject to the provisions of sub-regulation (5) of this regulation.	Liability for oil pollution damage.
(2)	Save as otherwise provided, the owner of a ship at the time of an incident; or where the incident consists of a series of occurrences, at the time of the first of such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.	
(3)	The liability of the owner under sub-regulation (2) of this regulation shall be in respect of- (a) any damage caused outside the ship in the territory of Nigeria by contamination resulting from the incident; (b) costs of any measures reasonably taken after the incident to prevent, repair or minimise damage caused in the territory of Nigeria by the contamination referred to in this sub-regulation; and (c) any damage caused in the territory of Nigeria by any measures so taken.	
(4)	Where as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this regulation applies by the contamination that might result if there were a discharge or escape of oil from the ship, the owner of the ship shall be liable for- (a) the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in Nigeria; and (b) any damage caused outside the ship in Nigeria by any measures so taken.	
(5)	The liability of the owner for costs of any measures or damage referred to in sub-regulation (4) of this regulation shall be to any or all of the following- (a) the Ministry or the Agency; for direct and third party costs incurred in responding to the incident ;	

	<p>(b) a response organization within Nigeria that has incurred costs in responding to the incident;</p> <p>(c) any other person within Nigeria who has suffered proven damage or incurred costs to prevent or minimize the damage; and</p> <p>(d) any person in any country that is a party to the Liability Convention, other than Nigeria, who has suffered proven damage or incurred costs to prevent or minimise the damage.</p> <p>(6) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this regulation shall apply to any such ship-</p> <p>(a) while it is carrying oil in bulk as cargo; and</p> <p>(b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil, but not otherwise.</p> <p>(7) Where a person incurs a liability under sub-regulation (2) or (3) of this regulation, he shall be liable for any damage or cost for which he would have been liable under those sub-regulations if the references in it to the territory of Nigeria included the territory of any other Liability Convention country.</p> <p>(8) In any case, where pollution damage results from the discharge of oil from two or more ships, the owner(s) of each ship concerned shall, save as is otherwise provided by these Regulations, be jointly and severally liable for all such damage in-so-far as such damage is not reasonably severable.</p> <p>(9) Where pollution damage is caused in Nigeria and in one or more Convention countries by a ship carrying oil in bulk as cargo, whether the ship is within or without Nigeria and the owner of the ship is liable for such damage pursuant to this regulation and under the law of any other Convention country, the liability for such damage shall be regarded, for the purpose of these regulations and for the purpose of any proceedings under these regulations in relation to such damage, as having been incurred in Nigeria.</p> <p>(10) For the purpose of these Regulations, reference to "threat" means relevant threat of contamination.</p>	
<p>4.-(1)</p> <p>(2)</p> <p>(3)</p>	<p>An owner of a ship shall not incur liability for pollution damage otherwise than as provided under these Regulations.</p> <p>No liability shall be incurred by the owner of a ship under regulation 5 of these Regulations by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or the relevant threat of contamination, as the case may be-</p> <p>(a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;</p> <p>(b) was due wholly to anything done or left undone by another person, not being an employee or agent of the owner, with intent to do damage; or</p> <p>(c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its functions of maintaining lights or other navigational aids for the maintenance of which it was responsible.</p> <p>Unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly with knowledge that such damage would probably result, no claim for compensation for pollution damage under these regulations or otherwise may be made against-</p> <p>(a) the servants or agents of the owners;</p> <p>(b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship;</p> <p>(c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;</p> <p>(d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;</p> <p>(e) any person taking preventive measures; or</p> <p>(f) any servant or agent of a person falling within paragraph (c), (cl) or (e) of this sub-regulation.</p>	<p>Exemption from liability.</p>
<p>5.-(1)</p>	<p>Subject to sub-regulation (3) of this regulation, where as a result of any occurrence, the owner of a ship incurs liability under regulation 3 of these Regulations by reason of discharge or escape of oil or any relevant threat of contamination; he may limit that liability in accordance with the provisions of these Regulations and if he does so, his liability, being the aggregate of his liabilities under regulation 3 of these Regulations resulting from the occurrence, shall not exceed the relevant amount.</p>	<p>Limitation of liability.</p>

<p>(2)</p> <p>(3)</p> <p>(4)</p>	<p>In subsection (1) above, "the relevant amount" means-</p> <p>(a) in relation to a ship not exceeding 5,000 tons, 4.51 million special drawing rights; and</p> <p>(b) in relation to a ship exceeding 5,000 tons, 4.51 million special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 89.77 million special drawing rights.</p> <p>The provisions of this regulation shall not apply to the owner of a ship other than a convention ship.</p> <p>Sub-regulation (1) of this regulation shall not apply in a case where it is proved that the discharge or escape, or the relevant threat of contamination, as the case may be, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in regulation 3 of these Regulations or recklessly and in the knowledge that any such damage or cost would probably result.</p>	
<p>6.-(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5)</p>	<p>Where the owner of a ship has or is alleged to have incurred a liability under regulation 3 of these Regulations, he may constitute a fund by applying to the Court for the limitation of that liability to an amount to be determined in accordance with regulation 5 of these Regulations.</p> <p>Where on an application brought pursuant to sub-regulation (1) of this regulation, the Court finds that the applicant has incurred such a liability and is entitled to limit it, the Court shall, after determining the limit of liability and directing payment into Court or to the Authority, of the amount of that limit-</p> <p>(a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and</p> <p>(b) direct the distribution of the amount paid into Court or to the Authority among those persons in proportion to their claims, subject to the provisions of this regulation.</p> <p>A payment into court of the amount of a limit determined in pursuance of this section shall be made in Nigerian Naira ; and</p> <p>(a) for the purpose of converting such an amount from special drawing rights into Naira, one special drawing right shall be treated as equal to such a sum in Naira as the International Monetary Fund have fixed as being the equivalent of one special drawing right for-</p> <p>(i) the day on which the determination is made; or</p> <p>(ii) where no sum has been so fixed for that day, the last day before that day for which a sum has been fixed;</p> <p>(b) a certificate given by or on behalf of the Central Bank of Nigeria stating that-</p> <p>(i) a particular sum in Naira has been so fixed for the day on which the determination was made, or</p> <p>(ii) that no sum has been so fixed for that day and that a particular sum in Naira has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made; shall be conclusive evidence of those matters for the purposes of these Regulations;</p> <p>(c) a document purporting to be a certificate in line with this sub-regulation shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.</p> <p>Where a Limitation Fund has been constituted in accordance with this sub-regulation-</p> <p>(d) any person having made a claim against the Fund shall be barred from exercising any right in respect of such claim against other assets of a person by or on behalf of whom the Fund has been constituted;</p> <p>(e) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest ; and</p> <p>(f) no judgment or decree for any such claim shall be enforced, except where proper steps in the proceedings under this regulation had been taken.</p> <p>Where any sum has been paid in towards the satisfaction of any claim in respect of the damage or cost to which the liability extends by the owner or the person referred to in regulation 12 of these Regulations as "the insurer"; or by a person who has or is alleged to have incurred a liability otherwise than under regulation 3 of these Regulations for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of Part XXV of the Merchant Shipping Act, 2007; the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.</p>	<p>Limitation of actions and constitution of Fund.</p>

PART III-COMPULSORY INSURANCE		
7.-(1)	No ship carrying 2,000 tons of oil or more shall enter or leave a port in Nigeria or arrive at or leave a terminal in the territorial sea of Nigeria nor, if the ship is a Nigerian ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of sub-regulation (2) of this regulation and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).	Compulsory insurance.
(2)	The certificate referred to under sub-regulation (1) of this regulation shall be issued by- <ul style="list-style-type: none"> (a) the Agency; (b) (b) or under the authority of the government of the other Liability Convention country where the ship is registered in a Liability Convention country other than Nigeria; (c) the Minister or by or under the authority of the government of any Liability Convention country other than Nigeria, where the ship is registered in a country which is not a Liability Convention country; and (d) a member club of the International Group of P and I Clubs, or a club affiliated with such a member, provided always that the certificate is clearly backed by the International Group of P and I Clubs. 	
(3)	For any certificate required by this section to be in force in respect of a ship, it shall be carried on board the ship and shall, on demand, be produced by the master to any duly authorised inspector.	
8.-(1)	Where 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 or offshore installation in Nigeria in contravention of regulation 7 of these Regulations, the owner and master shall each be liable on conviction to a fine of not less than N50,000,000.00	Penalties for non-compliance.
(2)	Where a ship fails to carry, or the master of a ship fails to produce on demand by a duly authorized inspector, a certificate as required by sub-regulation (3) of regulation 7, the master shall be guilty of an offence and liable on conviction to a fine not exceeding N25,000,000.00.	
(3)	Where a ship attempts to leave a port, terminal or offshore installation in Nigeria in contravention of this regulation, the ship shall be stopped and detained by a duly authorized inspector.	
(4)	Where a ship which has been detained by a duly authorized inspector pursuant to this section leaves or attempts to leave a port, terminal or offshore installation otherwise than in accordance with the provisions of these Regulations, the master of the ship shall be guilty of an offence and on conviction, liable to a fine not exceeding N25,000,000.00.	
PART IV-CIVIL LIABILITY CERTIFICATE		
9.	An application to obtain a certificate of Civil Liability shall be made to the Agency accompanied by a blue card addressed to the Agency and duly signed by the ship's P&I insurer which must satisfy the requirement under sub-regulation (2)(d) of regulation 7 of these Regulations.	Application for issuance of civil liability certificate.
10.-(1)	On an application to the Agency for a certificate in respect of a Convention ship registered in Nigeria or in a non-Convention country, the Agency shall, subject to sub-regulation (2) of this regulation, issue such a certificate to the owner of the ship, if the Agency is satisfied that a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention will be in force in respect of the ship throughout the period for which the certificate is issued.	Issuance of civil liability certificate.
(2)	Where the Agency is of the opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under regulation 3 of these Regulations in all circumstances, the Agency may refuse to issue the certificate.	
(3)	The Agency shall maintain a record of any certificate it issues under this regulation in respect of a Nigerian ship which shall be available for public inspection.	
11.-(1)	The Agency shall revoke a certificate issued pursuant to regulation 10(1) of these Regulations where it is confirmed that the information given in support of the application under regulation 9 of these regulations were false and the revoked or cancelled certificate shall be delivered to the appropriate authority.	Revocation or cancellation of civil liability certificate.
(2)	Failure by the ship owner to deliver up the certificate so revoked or cancelled shall attract a fine of not less than N10,000,000.00.	
12.-(1)	Where it is alleged that the owner of a ship has incurred a liability under regulation 3 of these Regulations as a result of any discharge or escape of oil occurring, or as a result of any relevant	Proceedings against insurers.

	<p>threat of contamination arising, while there was in force a contract of insurance or other security to which a certificate referred to in regulation 10(1) is related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security, hereafter referred to as "the insurer".</p> <p>(2) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape, or the relevant threat of contamination, as the case may be, resulted from anything done or omitted to be done by the owner.</p> <p>(3) Where the owner and the insurer each apply to the Court for the limitation of his liability, any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.</p>	
13.	<p>No action to enforce a claim in respect of a liability incurred under regulation 3 of these Regulations shall be entertained by any court in Nigeria unless in the case of-</p> <p>(a) a single occurrence, the action is commenced not later than 3 years after the claim arose ; or</p> <p>(b) a series of occurrences, not later than 6 years after the occurrence or first of the occurrences resulting in the discharge or escape, or in the relevant threat of contamination, as the case may be, by reason of which the liability was incurred.</p>	Time bars and limitation of action.
14.-(1)	<p>Without prejudice to any power to detain a ship contained in any other enactment, a duly authorized inspector may stop or detain a ship in any port in Nigeria if it appears to the inspector that the owner of the ship has incurred a liability under these Regulations for pollution damage caused by any ship he owns.</p> <p>(2) Any ship so detained pursuant to regulation (I) of this regulation shall be so detained until the owner of the ship-</p> <p>(a) deposits with the Agency an amount which meets the owner's liability or furnishes security which in the opinion of the Agency, is adequate to meet the owner's liability; or</p> <p>(b) constitutes a fund in court and applies for the limitation of his liability as provided in regulation 5 of these Regulations.</p> <p>(3) Where a ship which has been detained pursuant to this regulation leaves, or attempts to leave any port, terminal, offshore installation or any other place in Nigeria otherwise than in accordance with the provisions of these regulations, the owner and the master of the ship commits an offence and shall each be liable on conviction to a fine of not less than N 15,000,000.00 or imprisonment for a term of not more than one year or both.</p>	Power to detain.
15.-(1)	<p>Nothing in the preceding provisions of these Regulations shall apply in relation to any warship or any ship for the time being used by the Federal or a state government or the government of any Convent-on country for purposes other than commercial purposes.</p> <p>(2) In relation to a ship owned by a State and for the time being used for commercial purposes, it shall be in sufficient compliance with regulation 9 of these Regulations, 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 shall be addressed to the limit prescribed by Article V of the Convention.</p> <p>(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in Nigeria to enforce a claim in respect of a liability incurred under regulation 3 of these Regulations, be deemed to have submitted to the jurisdiction of that 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 sub-regulation shall authorize the issue of execution against the property of any State.</p>	Government ships.
PART V-INTERNATIONAL OIL POLLUTION COMPENSATION FUND		
16.	<p>For the purposes of the rights and obligations described in these Regulations, the International Oil Pollution Compensation Fund ("Fund") shall have the capacity, rights and obligations of a natural person in all legal proceedings before the Court in Nigeria and the Director of the Fund shall be its legal representative.</p>	Legal capacity of the International Oil Pollution Compensation Fund.
17.-(1)	<p>Subject to the provisions of these Regulations, the Fund shall be liable for pollution damage in Nigeria caused by the discharge of oil from ship carrying oil in bulk as cargo, whether such ship is within or outside Nigeria.</p>	Liability of the Fund.

(3)	Any claim brought on behalf of the Federal or state Government under sub-regulation (1) of this regulation may include a claim for any amount paid by such government to any person who has suffered pollution damage in the territory of Nigeria or in any other Convention Country as a result of an incident in respect of which the claim is made.	
PART VI-CONTRIBUTIONS		
23.-(1) (2) (3) (4) (5) (6) (7)	Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Nigeria otherwise than on a voyage only within Nigerian waters. Sub-regulation (1) of this regulation shall apply whether or not the oil is being imported and applies even where contributions are payable in respect of carriage of the same oil on a previous voyage. Contributions shall also be payable to the Fund in respect of oil when first received in any installation in Nigeria after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country. The person liable to pay contributions is- (a) in the case of oil which is being imported into Nigeria, the importer, and (b) otherwise, the receiver of the oil. A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tons. For the purpose of sub-regulation (5) of this regulation- (a) all the members of a group of companies shall be treated as a single person, and (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company. The contributions payable by a person for any year shall- (a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund; (b) be payable in such instalments, becoming due at such times, as may be so notified to him ; and (c) where any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate to be determined from time to time by the Assembly of the Fund, until it is paid.	Contributions by importers of oil and others.
24.-(1) (2)	Any person who is liable to contribute to the Fund under regulation 23 of these Regulations shall give a report of such receipts and such other information as may be required by the Agency in the Form set out in Schedule 2 to these Regulation. The Agency shall transmit to the Fund the list of names and addresses of the persons receiving oil who are liable to contribute to the Fund and the quantity of contributing oil received by such persons during the preceding calendar year.	Obligation of person receiving Contributing Oil.
25.-(1) (2) (3) (4)	An importer or receiver who in one calendar year received 150,000 tons of contributing oil or more shall pay to the Fund in such manner on or before such date as may be prescribed; such sums as may be determined by the Assembly of the Fund Convention and certified by the Director of the Fund. The sum payable shall be determined in accordance with the report submitted by the Minister under regulation 28 of these Regulations. Where any person fails to pay to the Fund any sum due and payable by him under sub-regulation (1) of these Regulations, the Director of the Fund shall recover such sum together with interest thereon as a contract debt from such person in any court of competent jurisdiction; provided that the interest rate shall be such as may, from time to time, be determined by the Assembly of the Fund Convention. Any person, who fails to make the payment specified in sub-regulation (1) of this regulation to the Fund, shall be liable to a fine of not less than N50,000,000.00.	Contribution to the Fund.
PART VII-SUBMISSION OF REPORTS		
26.-(1) (2)	It shall be the duty of any importer or receiver of crude oil or any other contributing oil to submit to the Minister in respect of each import or receipt; a report on the volume of crude oil and fuel oil so imported or received by such person immediately after carriage by sea into ports, terminal installations and offshore terminals in the territory of Nigeria. The importer or receiver shall submit annually a detailed documentation of all crude and fuel oil [contributing oil] received or imported for each calendar year.	Submission of report on volume of contributing oil carried by Sea.
27.	Any person or entity who- (i) fails to submit to the Minister, the oil report specified in regulation 26(1) and (2) of these	Penalties for non-

	<p>Regulations;</p> <p>(ii) submits the report later than the prescribed time; or</p> <p>(iii) submits a false oil report, commit an offence and shall on conviction be liable to a fine of not less than N100,000,000.00</p>	submission of contributing oil report.
28.	It shall be the duty of the Minister to submit the report received under regulation 26 to the Fund Secretariat.	Submission of oil report to the Fund.
29.	Section 2(3)(a) of the Admiralty Jurisdiction Act, 1991 shall be construed as extending to any claim in respect of a liability incurred under these Regulations and the Admiralty jurisdiction of the Federal High Court shall extend to any case arising out of any claim under these Regulations.	Jurisdiction of the Federal High Court.
30.	Part I of the Foreign Judgments (Reciprocal Enforcement) Act, CAP F35 LFN, 2004 shall apply whether or not it would so apply apart from these regulation to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to regulation 3 and in its application to such a judgment, that Part shall have effect with the omission of section 6 (2) and (3) of that Act.	Recognition and enforcement of foreign judgments.
31.-(1)	The Federal High Court shall be competent to entertain all actions against the Fund in Nigeria for compensation for oil pollution damage arising under Article 4 of the Fund Convention as if such action had been brought against the ship-owner who is or would have been liable for pollution damage caused by the relevant incident.	Court jurisdiction in relation to the Fund.
(2)	The Federal High Court shall have exclusive jurisdiction to entertain all actions for compensation against the Fund brought under Article 4 of the Fund Convention.	
(3)	Where the Federal High Court is seized of an action against the ship-owner or his guarantor for compensation for oil pollution damage, the court shall also have exclusive jurisdiction over any or all actions against the Fund for compensation in respect of the same incident.	
(4)	The Federal High Court shall take into account the Fund's criteria for admissibility of claims while determining cases for compensation and ensure that decisions would not be in contravention of the Conventions.	
(5)	The Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with Article IX of the Liability Convention before the Federal High Court in Nigeria against a ship-owner or his guarantor; provided that the Fund shall not be bound by any judgment or decision arising from proceedings or settlement in which it is not a party.	
(6)	Where an action for compensation for pollution damage is instituted against a ship-owner or his guarantor before the Federal High Court, each party to the action is entitled under Nigeria law to notify the Fund of the proceedings.	
(7)	Any judgment rendered by the court in such proceeding shall become binding upon the Fund; provided that the Fund was duly notified in accordance with the relevant rules of court and had the opportunity to intervene as a party to the proceedings notwithstanding that it did not actually intervene.	
32.	Any final judgment rendered by the Federal High Court under regulation 31 of these Regulations shall be recognized and enforceable in each Convention State except where- <p>(i) the judgment was obtained by fraud; or</p> <p>(ii) the defendant was not given reasonable notice and a fair opportunity to present his case.</p>	Recognition and enforcement of judgment.
33.	Where the Federal Government of Nigeria or its relevant Agency has paid compensation for pollution damage in accordance with the relevant Nigerian law, it shall acquire by subrogation the rights which the person so compensated would have enjoyed under the Fund Convention.	Right of subrogation of the Fund.
PART VIII-MISCELLANEOUS		
34.-(1)	In these regulations, unless the context otherwise requires- <p>"Agency" means the Nigerian Maritime Administration and Safety Agency;</p> <p>"Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, concluded in Brussels on November 29, 1969, as amended by the Protocol concluded in London on November 19, 1976 and the Protocol concluded in London on November 27, 1992 and includes any Convention or Protocol which has been ratified by Nigeria and which amends or extends that Convention;</p> <p>"Company" means a body incorporated under the laws of the Federal Republic of Nigeria or of any other country;</p> <p>"Contributing Oil" means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:</p> <p>(a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth</p>	Interpretation.

	<p>whether or not treated to render it suitable for transportation, and includes-</p> <ul style="list-style-type: none"> (i) crude oils from which distillate fractions have been removed, and (ii) crude oils to which distillate fractions have been added, (b) "<i>Fuel Oil</i>" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier. <p>"<i>Convention Country</i>" means, as the context may require, a State (other than Nigeria) which has been declared to have accepted the Liability Convention or the Fund Convention or any Convention or Protocol amending or extending those Conventions and which has not been subsequently declared to have denounced either of those Conventions;</p> <p>"<i>Convention ship</i>" means a seagoing vessel wherever registered:</p> <ul style="list-style-type: none"> (a) carrying, in bulk as cargo, crude oil, fuel oil, heavy diesel oil, lubricating oil or any other persistent hydrocarbon mineral oil, or (b) on a voyage following any such carriage of such oil, unless it is proven that there is no residue of the oil on board; <p>"<i>discharge</i>" in relation to a pollutant, means any discharge of the pollutant that directly or indirectly results in the pollutant entering the water, and includes spilling, leaking, pumping, pouring, emitting, emptying, throwing and dumping;</p> <p>"<i>discharge</i>", in relation to oil, means any discharge or escape of oil however caused;</p> <p>"<i>discharge or escape</i>", in relation to pollution damage, means the discharge or escape of oil from the ship;</p> <p>"<i>Foreign judgment</i>" means a judgment of a court of a State other than Nigeria that is a Party to the Civil Liability and Fund Conventions;</p> <p>"<i>Fund Convention country</i>" means a country in respect of which the Fund Convention is in force;</p> <p>"<i>importer</i>" means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation, and</p> <p>"<i>import</i>" shall be construed accordingly;</p> <p>"<i>in bulk</i>" means in a hold or tank that is part of the structure of a ship, without any intermediate form of containment;</p> <p>"<i>incident</i>" means any occurrence, or series of occurrences having the same origin, resulting in pollution damage or creates a grave and imminent threat causing such damage;</p> <p>"<i>inspector</i>" means-</p> <ul style="list-style-type: none"> (a) a person appointed and authorized to be an inspector by warrant of the Minister of Transport, or (b) a person appointed and authorized to be a surveyor of ships by warrant of the Minister of Transport under section 218(1) and (2) of the Merchant Shipping Act, 2007, or (c) a sea fisheries protection officer; <p>"<i>Judgment creditor</i>" means a person in whose favour a foreign/local judgment was rendered, and includes the person's assigns, heirs, executors, liquidators of the succession, administrators and other legal representatives;</p> <p>"<i>Judgment debtor</i>" means a person against whom a foreign/local judgment was rendered, and includes a person against whom the foreign/local judgment is enforceable under the law of the State in which it was rendered;</p> <p>"<i>Master</i>", in relation to a ship, means the person having, for the time being, the command or charge of the ship;</p> <p>"<i>Minister</i>" means the minister charged with the responsibility for maritime transportation;</p> <p>"<i>Ministry</i>" means the Federal Ministry of Transport;</p> <p>"<i>Oil</i>" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil, sludge, oil refuse and oil mixed with wastes but does not include dredged spoil, whether carried on board a ship as cargo or in the bunkers of such a ship;</p> <p>"<i>Owner</i>" in relation to a ship, means:</p> <ul style="list-style-type: none"> (a) the person registered as its owner, or (b) if no person is registered as owner of the ship, the person who owns the ship, or (c) in the case of a ship which is owned by a State and is operated by a person who in that State is registered as the ship's operator, "owner" means the person registered as such operator; or (d) the person who for the time being, either by law or by contract, has the rights of the 	
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	<p>owner of the ship with respect to its possession and use.</p> <p><i>"Person"</i> means any individual, partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivision;</p> <p><i>"Persistent Oil"</i> generally contain a considerable proportion of heavy fractions or high-boiling material, in contrast means Non-persistent oils are those that are generally of a volatile nature and are composed of lighter hydrocarbon fractions, which tend to dissipate rapidly through evaporation:</p> <p><i>"pollutant"</i> means:</p> <ul style="list-style-type: none"> (a) a substance that, if added to waters, would degrade or alter or form part of a process of degradation or alteration of the quality of the waters to an extent that is detrimental to its use by humans or by an animal or plant that is useful to humans; and (b) any water that contains a substance in such a quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any waters, degrade or alter or form part of a process of degradation or alteration of the quality of the waters to an extent that is detrimental to its use by humans or by an animal or plant that is useful to humans; <p><i>"pollution damage"</i> means a loss or damage outside a ship carrying oil in bulk as cargo arising from the escape or discharge of oil from a ship, wherever such escape or discharge may occur, and includes the cost of measures taken to prevent or minimize pollution damage and any further loss or damage caused by such measures; and pollution damage within the State or within any Convention Country includes measures taken outside the State or, as the case may be, such Convention Country to prevent or minimize pollution damage within the State or within that Convention Country:</p> <p><i>"preventive measures"</i> mean any reasonable measures taken by any person to prevent or minimize pollution damage, after an incident has occurred;</p> <p><i>"relevant threat of contamination"</i> means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship;</p> <p><i>"Ship"</i> means-</p> <ul style="list-style-type: none"> (a) a seagoing vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo; (b) a seagoing vessel or seaborne craft capable of carrying oil and other cargoes that is for the time being carrying oil in bulk as cargo; (c) a seagoing vessel or seaborne craft capable of carrying oil and other cargoes that, following the unloading from it of a cargo of oil, contains residues of oil in those spaces adapted or constructed for the carriage of oil in bulk as cargo; or (d) a floating storage and off take facility (FSO), floating production, storage and off take facility (FPSO), oil rig or other oil production, storage or transfer platform in the seas; <p><i>"Ship's tonnage"</i> means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969 ;</p> <p><i>"State of the ship's registry"</i> means in relation to registered ships the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is flying;</p> <p><i>"Terminal installation"</i> means any site in the State for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, and includes any facility situated off-shore and linked to such site;</p> <p><i>"the Court"</i> or <i>"Court of competent jurisdiction"</i> means the Federal High Court or a judge thereof in the first instance, and thereafter, any appellate court to which an appeal from the first instance has been lodged;</p> <p><i>"the Fund Convention"</i> means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, done at Brussels on the 18th day of December, 1971, and includes any Convention or Protocol which has been ratified by Nigeria and which amends or extends that Convention;</p> <p><i>"the Fund"</i> means the International Oil Pollution Compensation Fund 1992;</p> <p><i>"ton"</i>, in relation to oil, means a metric ton;</p> <p><i>"Unit of account"</i> means the unit of account of Special Drawing Rights of the International Monetary Fund;</p> <ul style="list-style-type: none"> (a) For the purpose of these regulations; (b) references to the territory of Nigeria include Nigerian waters and references to the 	
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	<p>territory of any other country include the territorial sea and exclusive economic zone of that country;</p> <p>(c) references to the exclusive economic zone of a country are references to the exclusive economic zone of that country established in accordance with international law or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured;</p> <p>(d) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank.</p>	
35.	These Regulations may be cited as the Merchant Shipping (Liability and Compensation) Regulations, 2012.	Citation.

SCHEDULE 1

Regulation 24

NOTES ON CONTRIBUTING OIL REPORT

<p>A report should be submitted for each company or entity that received more than 150000 metric tonnes of contributing oil (crude oil and heavy fuel oil as set out on page 4 of this form) in any calendar year. Company or entity includes any individual or partnership, any public or private body, whether corporate or not, and a State or any of its sub-divisions, such as provinces or agencies.</p> <p>However, a report should also be submitted for any individual entity that received less than 150 000 tonnes of contributing oil in any calendar year if it forms part of a group of "associated" companies or other entities which together received more than 150000 tonnes of contributing oil in the same State in that year. "Associated" means any subsidiary or commonly controlled entity. Whether or not an entity is associated shall be determined by the national law of the State concerned.</p>	<p>Company or entity receiving contributing oil.</p>
<p>All contributing oil received during the relevant calendar year should be reported if it was:</p> <p>(a) received in the ports or terminal installations in the Member State directly after carriage by sea;</p> <p style="padding-left: 40px;">(i) having been imported from other States, or</p> <p style="padding-left: 40px;">(ii) following coastal movement within the same State (e.g. from terminals at sea, from floating storage tanks, from offshore oil fields by vessel or after cabotage); or</p> <p>(b) received by other modes of transport (e.g. by pipeline, non-seagoing barge, road or rail transport) from a non-Member State, after having been received in a port or terminal installation in that State after carriage by sea. Such oil is only liable for contributions on first receipt in a Member State.</p> <p>Discharge into a floating tank within the territorial waters of the Member State (including its ports) constitutes a receipt, irrespective of whether the tank is connected with onshore installations via pipeline or not. Ships are considered to be floating tanks in this connection if they are 'dead' ships, ie if they are not ready to sail, or if they are permanently or semi-permanently at anchor.</p> <p>"Received" does not include ship-to-ship transfer, irrespective of whether such a transfer-</p> <p style="padding-left: 40px;">(i) takes place within a port area or outside the port but within territorial waters, or</p> <p style="padding-left: 40px;">(ii) is done solely by using the ships' equipment or by means of a pipeline passing over land, or</p> <p style="padding-left: 40px;">(iii) is between two sea-going vessels or from a sea-going vessel to an internal waterway vessel.</p> <p>When the oil, after having been transferred in this way from a sea-going vessel to another vessel, has been carried by the latter to an onshore installation situated in the same Member State or in another Member State, the receipt in that installation shall be considered as receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship, it has to be reported as oil received at that tank in that State.</p> <p>"Carriage by sea" does not include movement within the same port area.</p>	<p>Receipts of contributing oil.</p>
<p>The form should be signed by a competent officer of the company or entity receiving contributing oil as certification that the figures are correct. Should a Member State have declared that it assumes itself the liability to pay contributions in respect of oil received in the territory of that State, such a signature is not obligatory.</p> <p>The form should also be signed by a responsible official of the Government or competent Government authority to indicate that the Government or authority is satisfied that the information given is complete and that the figures are correct.</p>	<p>Signature.</p>

SCHEDULE 2

(Regulation 24)

FORM FOR REPORT TO THE IOPC FUNDS ON RECEIPTS OF CONTRIBUTING OIL

Before completing this form, please read the notes in schedule 2 and the definition of contributing oil in schedule 3

STATE in which oil was received						
YEAR in which oil was received						
FUND to which report is being made ie to the 1992 Fund only, to the Supplementary Fund only or to both Funds	1992 Fund Only		Supp. Fund only		Both Funds	

COMPANY OR ENTITY RECEIVING CONTRIBUTING OIL	
COMPANY OR ENTITY	
FOR THE ATTENTIO OF	
ADDRESS	
CONTACT PERSON in case of queries	Name
	Job title
	Telephone no.
	Fax no.
	Email address
ASSOCIATED COMPANIES OR	

RECEIPTS OF CONTRIBUTING OIL		
		QUANTITY in metric tonnes, rounded to the nearest tonne
A. Received directly after carriage by sea		
	Imported from other States	
	After coastal movement within the same State	
B. Received by other modes of transport e.g. by pipeline, after carriage by sea		
	From a non-Member State	
	State from which received	Mode of transport
TOTAL QUANTITY OF CONTRIBUTING OIL RECEIVED		

SIGNATURES			
OFFICER OF COMPANY OR ENTITY		GOVERNMENT OFFICIAL	
Signed		Signed	
Date		Date	
Name		Name	
Job title		Job title	
		Body	

FUND USE ONLY	File:	Associated to:	92 Fund	SF	Entered	Checked	FUND USE ONLY
	CTR/						

SCHEDULE 3

CONTRIBUTING OIL

"Contributing oil" means crude oil and fuel oil as defined under (a) and (b) below:

- (a) "Crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).
- (b) "Fuel oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials Specification for Number Four Fuel Oil (Designation D396-69)", or heavier.

The following list of contributing and non-contributing oil is intended as a guide for contributors -

<i>Contributing Oil</i>	<i>Non-Contributing Oil</i>
<i>Crude Oils</i>	Crude Oils
All naturally occurring crude oils	Natural gas
Liquids Condensate<1>	Condensate <1>
Topped crudes	Casing head naphtha
Spiked crudes	Natural gasoline
Reconstituted crudes	Cohasset -panuke
<i>Finished Products</i>	<i>Finished Products</i>
N ^o 4 fuel (ASTM)	LNG and LPG
Navy special fuel	Aviation gasolines
Light fuel oil	Motor gasoline (petrol, essence)
N ^o 5 fuel (ASTM)-light	White spirit
Medium fuel oil	Kerosene
N ^o 5 fuel (ASTM)-heavy	Aviation kerosene
Bunker C fuel oil	-Jet 1 A
Heavy fuel oil	-N ^o I fuel (ASTM)
Marine fuel oil	Gasoil
N ^o 6 fuel oil (ASTM)	Heating oil
Blended fuel oils by viscosity or sulphur content	N ^o 2 fuel (ASTM) Lubricating oil
Bituminous emulsions and fuel oil emulsions<2>	Marine diesel
<i>Intermediate or Process Stocks</i>	<i>Intermediate or Process Stocks</i>
Fuel oil blend stocks	Straight run naphthas
	Light cracked naphtha
	Heavy cracked naphtha
	Platformate
	Reformate
	Steam-cracked naphtha
	Polymers
	Isomers
	Alkylates
	Catalytic cycle oil
	Reformer feed
	Steam cracker feed
	Gas oil blend stocks
	Catalytic cracker feedstock
	Visbreaker feedstock
	Aromatic tar

<1> To be considered as 'non-contributing oil' if more than 50% by volume distils at a temperature of 340°C and at least 95% by volume distils at a temperature of 370°C, when tested by the ASTM Method D 86/78 or any subsequent revision thereof.

<2> Quantity of emulsion received should be reported with no allowance for its water content.

SCHEDULE 4

Regulation 7

FORM OF CERTIFICATE OF INSURANCE OR OTHER FINANCIAL
SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of these Regulations further to Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

<i>Name of Ship</i>	<i>Distinctive Number or Letters</i>	<i>Port of Registry</i>	<i>Name and Address of Owner</i>

This is to certify that there is in force in respect of the above mentioned ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

TYPE OF SECURITY:

.....
.....

(if security in several forms. to be enumerated)

DURATION OF SECURITY:

.....

Starting from:

.....

NAME AND ADDRESS OF THE INSURER(S)

Name:

.....

Address:

.....

This certificate is valid until

.....

Certified by the Nigerian Maritime Administration and Safety Agency (NIMASA) on behalf of the Government of the Federal Republic of Nigeria

At.....on

.....

(Place)

(Date)

.....

Signature Director-General

MADE at Abuja this 1st day of June, 2012

*SENATOR IDRIS UMAR,
Honourable Minister of Transport*

EXPLANATORY NOTE

*(This note does not form part of these Regulations but
is intended to explain their purport)*

These Regulations give effect in Nigeria to the Civil Liability Convention and the Fund Convention, which together, creates a scheme of liability for oil polluters and compensation for victims of oil pollution and made provisions strengthen inspection regime, address cross jurisdictional issues including contributions payable by persons who contribute oil as importers or receivers. It set out detailed rules and operational guidelines to regulate liability for pollution damage caused by ship to ensure that certificates in respect of insurance are up to date.