

C-6:INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION
FOR DAMAGE IN CONNECTION WITH THE CARRIAGE
OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 2010

Name of the Convention: International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010

Acronym or short name: 2010 HNS Convention

International organisation in charge: International Maritime Organization (IMO)

Summary description:

2010 HNS Convention aims to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of hazardous and noxious substances (**HNS**). It applies to a) any damage caused in the territory of a State Party, b) environmental contamination damage caused in the exclusive economic zone (**EEZ**) of a State Party, c) damage other than environmental contamination damage caused outside the territory of any State by a HNS cargo carried on board of ships registered in a State Party, and d) prevention measures taken.(art.3)

HNS cargoes stipulated in the Convention relates to any substances, materials as defined by reference to lists of substances included in various IMO Conventions and Codes, as I) oils carried in bulk, ii) noxious liquid substances carried in bulk, iii) dangerous liquid substances carried in bulk, iv) dangerous, hazardous and harmful substances, in packaged form, v) liquid gases carried in bulk, vi) liquid substances carried in bulk with a flashpoint not exceeding 60 C, vii) solid bulk materials possessing chemical hazards, viii) residues from the previous carriage in

bulk of substances referred to above I)~iii), v)~vii). (art.1-5)

HNS Convention defines **damage** as including loss of life or personal injury; loss of or damage to property outside the ship; loss or damage by contamination of the environment; the costs of preventive measures and further loss or damage caused by them.(art.1-6) HNS Convention introduces **strict liability** for the ship-owner, which means the ship-owner is liable even in the absence of fault on his part. (art.7)

The owner of a ship shall be entitled to **limit liability** under HNS Convention according to its ship tonnage. The total possible amount the ship-owner is liable for is limited to **100 million SDR**. (art.9) The owner of a ship registered in a State Party and actually carrying HNS shall be required to maintain **insurance or other financial security** in the amounts fixed by applying the limit of liability prescribed in HNS. **The compulsory insurance certificate** shall be carried on board the ship. Any claim for compensation for damage may be brought directly against the insurer. (art.12)

HNS Convention will make it possible for **up to 250 millions SDR** to be paid out in compensation to victims of accidents involving HNS.(art.14-5) HNS Convention is based on the **two-tier system** established under the CLC and Fund Conventions. It would not be possible to provide sufficient cover by **the ship-owner liability** alone for the damage that could be caused in connection with the carriage of HNS cargo. This liability, which constitutes the first tier of compensation, is therefore supplemented by the second tier, **the HNS Fund** (article 13), financed by cargo interests.

The HNS Fund becomes involved when no liability for damage arises for the ship-owner or the

owner is financially incapable of meeting the obligations under HNS or the damage exceeds the owner's liability established in this Convention.(art.14-1)

Contributions on the second tier will be levied on persons in the Contracting States who receive a certain minimum quantity of HNS cargo during a calendar year. (art.18 & 19) The Fund consists of one general account and three separate accounts for oil, liquefied natural gas (LNG) and liquefied petroleum gas(LPG).(art.16)

When an incident occurs where compensation is payable under the HNS Convention, compensation would first be sought from the ship owner, up to the maximum limit of 100 million SDR. Once this limit are reached, compensation would be paid from the second tier, the HNS Fund, up to a maximum of 250 million SDR(including an amount paid under the first tier).

Although HNS Convention excludes pollution damage covered by the CLC and FUND, it does cover claims for loss of life or personal injury damage, as well as damage caused by fire and/or explosion in connection with carriage of oils.

The 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea,

1996 (HNS Protocol 2010) : (adopted on 30 April 2010, not yet in force)

(The 1996 HNS Convention, as amended by the 2010 HNS Protocol constitutes and is called “the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010”)

The HNS Protocol 2010 introduced the solutions for States to remove difficulties of ratifying the 1996 HNS Convention by,

a) Excluding packaged goods from the definition of contributing cargo with exempting receiving States of such goods from the obligation to make contributions to the HNS Fund.

b) For LNG cargoes, shifting responsibility for payment of contribution from title-holder to receiver of LNG cargoes.

Date of adoption (Entry into force):

HNS 1996: 3 may 1996 (not yet in force, as of 2 December 2013)

HNS Protocol 2010: 30 April 2010 (not yet in force, as of 2 December 2013)

Applicability (situation of ratification):

It will enter into force **18 months after** the date on which **at least 12 States**, including **4 states each with not fewer than 2 millions units of gross tonnage**, have expressed their consent to be bound by it, provided that persons in these States which will have to make payments into the general account have received at least 40 million tonnes of contributing HNS cargo in the preceding calendar year (art.46)

Situation of Ratification:

HNS 1996: 14 States, 13.61% of world tonnage (as of 2 December 2013)

HNS Protocol 2010: Nil (as of 2 December 2013)

Stakes for ports:

HNS Convention is relevant for ports because it applies to damage occurred in port areas:

- HNS Convention shall apply to claims for damage arising from the carriage of hazardous and noxious substances cargoes.(art.3). The cover of damage starts from the time when the HNS cargo enters the ship's equipment or passes its rail, on loading, and the cover ends when the

HNS cargo ceases to be present in any part of the ship's equipment or passes its rail on discharge (art. 1-9).

Liability of ports can arise in the case of failure in maintenance of navigational aids:

- There is no liability for the ship owner if it proves that "the damage was wholly caused by the negligence or other wrongful act of Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function" (art.7-2)

The right of ports to detain a ship is limited by the court or other authority of a State:

- When a fund is constituted by the owner in order to limit his liability, "the court or competent authority of any State Party" shall order the release of any ship belonging to the owner (art.10)

- An owner of a ship must have a compulsory insurance in order to cover its liability for damage.

- HNS Convention requires ship-owners to provide evidence of insurance cover upon the ship's entry into port of any Contracting State to HNS Convention by production of a certificate, regardless of whether the State of the ship's registry is party to the Convention (art.12, annex I).

Links with other Conventions:

[BUNKERS](#), [OPRC-HNS Protocol](#), [MARPOL 73/78](#) (the scope of HNS is defined by reference to existing international lists of substances. The substances include oils and noxious liquid substances carried in bulk as defined in the MARPOL 73/78),

[CLC 69](#) (the HNS Convention shall not apply to pollution damage as defined in CLC).

Key-words: [Hazardous and Noxious substances](#), damage, preventive measures, incident, liability, Fund, certificate of insurance

Internet hyperlink with other website:

<http://www.imo.org/>

<http://www.comitemaritime.org/ratific/imo/imoidx.html>

(full text)

Consolidated Text of HNS 1996 and HNS Protocol 2010, which is called “2010 HNS Convention”

<http://www.imo.org/OurWork/Legal/HNS/Documents/HNS%20Consolidated%20text.pdf>