

# **The Merchant Shipping (International Fund For Compensation For Oil Pollution Damage) Rules, 2008**

UNION OF INDIA

India

## **The Merchant Shipping (International Fund For Compensation For Oil Pollution Damage) Rules, 2008**

### **Rule**

### **THE-MERCHANT-SHIPING-INTERNATIONAL-FUND-FOR-COMPENSATION OF 2008**

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The Merchant Shipping (International Fund For Compensation For Oil Pollution Damage) Rules, 2008 Published vide Notification G.S.R. 220(E), dated 27.3.2008, published in the Gazette of India, Extraordinary, Part 2, Section 3(i), dated 27.3.2008.

### **16.**

/740In exercise of the powers conferred by section 352-ZA of the Merchant Shipping Act, 1958 (44 of 1958), the Central Government hereby makes the following rules, namely:-

Came into force on 27.3.2008.

## **Part I – Preliminary**

### **1. Short title, commencement and application**

-(1) These rules may be called The Merchant Shipping (International Fund for Compensation for Oil Pollution Damage) Rules, 2008.(2)They shall come into force on the date of their publication in the Official Gazette.(3)They shall apply to-(a)the pollution damage caused by any Indian ship or a foreign ship within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force; and(b)the costs of preventive measures taken

to prevent or minimize pollution damage.

## **2. Definitions**

.- (1) In these rules, unless the context otherwise requires, - (a) "Act" means the Merchant Shipping Act, 1958 (44 of 1958); (b) "Assembly" means the Assembly of all the Contracting States to the Fund Convention; (c) "Director" means the Chief Administrative Officer of the Fund; (d) "Section" means section of the Act; (e) "Ship's tonnage" means the gross tonnage which is calculated in accordance with the Merchant Shipping (tonnage measurement of Ships) Rules, 1987; (f) "Unit of Account" means the Special Drawing Right as defined by the International Monetary Fund in respect of India which shall be converted into rupees on the basis of the value in rupees of the Special Drawing Right as determined by the Reserve Bank of India on the date of decision of the Assembly of the Fund as to the first date of payment of compensation. (2) The words and expressions used in these rules and not defined but defined in Chapter X-B and X-C of the Act shall have the meanings respectively assigned to them in the Act.

## **3. Administration of Fund**

.- (1) Any claims against the Fund shall be settled and distributed in accordance with the decision and approval of the Assembly. (2) The Director, being the Chief Administrative Officer of the Fund, shall collect the contributions made to the Fund and deal with the settlement of claims in accordance with the internal regulations approved by the Assembly and where any dispute arises, he shall be the legal representative of Fund.

## **Part II – Payment Of Compensation**

### **4. Liability of the Fund**

.- (1) Subject to the provisions of sub-rules (2) and (3) and rule 5, the Fund is liable to pay compensation to a person suffering pollution damage where - (a) the liability of the owner for pollution damage does arise under section 352-I; (b) he is unable to obtain full and adequate compensation under section 352-J; (c) the person liable is financially incapable of meeting his obligations in full; (d) the financial security provided under section 352-N is insufficient to satisfy the claims; (e) such pollution damage has resulted from a natural phenomenon of an exceptional, inevitable and irresistible character. (2) The Fund shall not be liable to pay any compensation where - (a) the Fund proves that the pollution damage has resulted from an act of war, hostilities, civil war or insurrection; or was caused by discharge or escape of oil from a warship or ship owned and operated by the Government and used, at the time of the incident, only for the Government non-commercial service; (b) the claimant cannot prove that the pollution damage has resulted from an incident involving one or more ships; (c) any claim to compensation has been made after six years. (3) Where the Fund proves that the pollution damage has resulted wholly or partially from an act or omission done with the intent to cause damage by the person who suffered the pollution damage or from the negligence of such person, the Fund may be exonerated wholly or partially from

its obligation to pay compensation: Provided that the Fund shall be exonerated only to the extent the ship owner may be exonerated under section 352-I: Provided further that the Fund shall not be exonerated in respect of preventive measures taken to prevent or minimize pollution damage.

## **5. Limitation of liability of Fund**

.- (1) Subject to the provisions of sub-rules (2) and (3), the aggregate amount of compensation payable by the Fund under rule 4 shall, in respect of any one incident, be so limited that the total sum of the amount of compensation paid by the Fund under these rules and the amount of compensation actually paid under section 352-I shall not exceed 135 million units of account: Provided that in the case of such incident occurring on or after the 1st November, 2003, the total sum of the amount of compensation payable shall not exceed 203 millions units of account. (2) Subject to the provisions of sub-rule (3), the aggregate amount of compensation payable by the Fund under these rules for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character referred to in clause (e) of sub-rule (1) of rule 4 shall not exceed 135 million units of accounts: Provided that in the case of such incident occurring on or after the 1st November, 2003, the total sum of the amount of compensation payable shall not exceed 203 millions units of account. (3) Where any incident occurring during any period involving three State parties to the Fund Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such State Parties during the preceding calendar year either equalled or exceeded 600 million tons, the maximum amount of compensation referred to in sub-rules (1) and (2) shall be 200 million units of account: Provided that in the case of such incident occurring on or after the 1st November, 2003, the total sum of the amount of compensation payable shall not exceed 300.74 millions units of account. (4) The interest, if any, accrued on the Limitation Fund constituted under section 352-K shall not be taken into account for the purpose of computation of the maximum compensation payable by the Fund under this rule.

## **6. Manner of payment of compensation**

.- (1) Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under rule 5, the available amount of the Fund shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this rule shall be the same for all claimants. (2) Where the Assembly of the Fund decides that in exceptional cases the compensation in accordance with this rule can be paid even if the owner of the ship has not constituted a fund under section 352-K, then, in such cases, the units of account payable as compensation shall be converted into rupees on the basis of the value in rupees of the Special Drawings Right as determined by the Reserve Bank of India on the date of such decision of the Assembly of the Fund as to the first date of payment of compensation. (3) The Fund may, subject to such conditions as may be specified in its internal regulations, provide credit facilities for taking preventive measures against pollution damage arising from incident in respect of which it is required to pay compensation: Provided that in such cases, the Fund may, on the request of the Contracting State, use its good offices to assist that State to secure promptly personnel, material and services that may be necessary to prevent or mitigate pollution damage arising from such incident. (4) Where any action for claim against the Fund for

compensation for pollution damage brought before the High Court under sub-section (1) of section 352-X has become enforceable against the Fund by virtue of any judgment passed in such proceeding, the Fund in such cases shall be distributed in the manner provided in section 352-M.

## **Part III – Contribution To The Fund**

### **7. Contribution to the Fund**

.-Annual contribution to the Fund shall be made by a person where-(a)such person has received, in a calendar year, contributing oil in total quantities exceeding 1,50,000 tons in the territory of India in accordance with the provisions of section 352-T.(b)the quantity of contributing oil received in the territory of India by such person in a calendar year when aggregated with the quantity of contributing oil received by any associated person or persons in India in that year exceeds 1,50,000 tons.Explanation.-For the purposes of this rule, "associated person" shall mean any subsidiary or commonly controlled entity.

## **Part IV – Accounts Of The Fund**

### **8. Accounts of the Fund**

.- (1) For the purposes of assessing the amount of annual contributions due, if any, and for maintaining sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of-(i)expenditure such as-(a)costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;(b)payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Chapter II, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed four million units of account;(c)payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Chapter II, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of anyone incident is in excess of four million units of account;(ii)income such as-(a)surplus funds from operations in preceding years, including any interest;(b)annual contributions, if required the budget;(c)any other income.(2)The Assembly shall decide the total amount of contributions to be levied and on the basis of that decision, the Director shall, in respect of each contracting State calculate for each person referred to in rule 7, the amount of his annual contribution-(a)in so far as the contribution is for the satisfaction of payments under sub-clauses (a) and (b) of clause (i) of sub-rule (1) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and(b)in so far as the contribution is for the satisfaction of payments under sub-clause (c) of clause (i) of sub-rule (1) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident occurred, provided that India was a party to the Fund Convention on the date of such incident.(3)The sums referred to in sub-rule (2) shall be arrived at by dividing the relevant total amount of contributions required by the total

amount of contributing oil received in all Contracting States including India in the relevant year.(4)The annual contribution shall be made on such date as may be decided by the Fund as per its internal regulations and the Assembly may decide on a different date of payment.

## Part V – Obligations To The Fund

### 9. Obligation of persons receiving contributing oil

.-Any person who is liable to contribute to Fund under rule 7 shall give a report of such receipts and such other information as may be required by the Central Government in Form I and a Summary.

### 10. Obligation of Central Government to Report to Fund

.-The Central Government shall transmit to the Fund the list of names and addresses of the person receiving oil who is liable to contribute to the Fund and the quantity of contributing oil received by such person during the preceding calendar year in Form II.

### 11. Penalty

.-Whoever contravenes any of the provisions of these rules shall be punishable with fine in accordance with the provisions of section 458.FORM I(See rule 9)Declaration By Importer Or Persons Receiving Oil For The Year.....

Sl.No.	Name of Importer/person including associated person receiving oil	Address of Importer/person including association person receiving oil	Quantity of Contributing oil received in tons C.O.	Remarks F.O.
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Date.....Signature of the importer/person receiving oil AuthorisedName.....FORM II-A(See rule 9)Summarised Statement On Contribution Oil Received In India For The Calendar Year .....

Name/Address Fax/Email of O.C.I./R Oil Exporting Countries	(A) (B) (C) (D) (E) (F)	Remarks(in metric Tonnes)
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Total received from other countries

Coastal Movement

Grand Total

Remarks :Note. - O.C.I. Oil Contributing Importers and O.C.R. Oil Contributing Receivers in India.

Seal or stamp of Authority Authorised Signatory of the Port Date.....

Name of the Official.....

FORM II-B Report To The Iopc Funds On Receipts Of Contribution

State in which oil was received

Year in which oil received

Fund to which report is being made, i.e., to the 1992 Fund only, 1992 Fund Supp. Fund Both  
to the Supplementary Fund only or to both Funds. only only Funds

Company Or Entity Receiving Contributing Oil Please give details exactly as you would like them to  
appear on invoices

Company or Entity

For the Attention of

Address

Contact person In case of queries

Name

Job title

Telephone No.

Fax No.

E-mail address

Associated Companies or Entities which may also have received contributing oil

Receipts Of Contributing Oil

Quantity in metric tonnes, rounded to the nearest tonne

A. Received directly after carriage by sea Imported from other State

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