

1971 年設立油污損害國際賠償基金國際公約

1971 年 12 月 18 日 訂於布魯塞爾，1978 年 10 月 16 日生效

(補充 1969 年油污損害民事責任國際公約)

International Convention on The Establishment of An International Fund for Compensation for Oil Pollution Damage,

Brussels, 18, Dec. 1971; Entered into Force on 16, Oct. 1978

(Supplementary to the International Convention on Civil Liability for Oil Pollution Damage, 1969)

FUND 1971

The States Parties to the present Convention,
Being parties to the International Convention of Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969,
Conscious of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk,
Convinced of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,
Considering that the International Convention of 29 November 1969, on Civil Liability for Oil Pollution Damage, by providing a regime for compensation for pollution damage in Contracting States and for the costs of measures, wherever taken, to prevent or minimize such damage, represents a considerable progress towards the achievement of this aim,
Considering however that this regime does not afford full compensation for victims of oil pollution damage in all cases while it imposes an additional financial burden on shipowners,
Considering further that the economic consequences of oil pollution damage resulting from the escape or discharge of oil carried in bulk at sea by ships should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interests,
Convinced of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the ship-owners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention,
Taking note of the Resolution on the Establishment of an International Compensation Fund for Oil Pollution Damage which was adopted on 29 November 1969 by the International Legal Conference on Marine Pollution Damage,
Have agreed as follows:

本公約締約國，
作為 1969 年 11 月 29 日布魯塞爾油污損害民事責任國際公約之締約國，
鑒於全球海上運載散裝貨油所致污染危險，
確認由此載運船舶洩漏或排出之油之污染所致之損害，有必要對受害者給予適當補償。
認為 1969 年 11 月 29 日油污損害民事責任國際公約所提供締約國間之油污損害及為防止或減少該污損所採取任何措施之費用之賠償制度，係表示對此目標達成相當之進展。

然顧及此制度於所有案例中，並未給予油污損害受害者充分之賠償，反使船舶所有人增加額外之財務負擔。
復認為因船舶在海上運載散裝貨油所洩漏或排出造成油污損害對經濟上之影響，不應專由海運業者所承擔，其部分應由貨油業者承擔。
確信有必要盡力達成一項補充油污損害民事責任國際公約之賠償及補償制度，以確保油污事件之受害者能有效獲得充分賠償，並對因該公約所課以船舶所有人之額外財務負擔亦可給予救濟。

鑒於 1969 年 11 月 29 日國際海洋污染損害國際法律會議所通過設立油污損害國際賠償基金之決議，

爰經協議如次：

GENERAL PROVISIONS

Article 1

For the purposes of this Convention –

1. “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969.
2. “Ship”, “Person”, “Owner”, “Oil”, “Pollution Damage”, “Preventive Measures”, “Incident” and “Organization”, have the same meaning as in Article I of the Liability Convention, provided however that, for the purposes of these terms, “oil” shall be confined to persistent hydrocarbon mineral oils.
3. “Contributing Oil” means crude oil as fuel oil as defined in sub-paragraphs (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 or Number Four Fuel Oil (Designation D 396 – 69)”, or heavier.
4. “Franc” means the unit referred to in Article V, paragraph 9 of the Liability Convention.
5. “Ship’s tonnage” has the same meaning as in Article V, paragraph 10, of the Liability Convention.
6. “Ton”, in relation to oil, means a metric ton.
7. “Guarantor” means any person providing insurance or other financial security to cover an owner’s liability in pursuance of Article VII, paragraph 1, of the Liability Convention.
8. “Terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.
9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

Article 2

1. An International Fund for compensation for pollution damage, to be named, “The International Oil Pollution Compensation Fund” and hereinafter referred to as “The Fund”, is hereby established with the following aims:
 - (a) to provide compensation for pollution damage to the extent

總 則

第 1 條

為本公約之目的：

1. 「責任公約」係指 1969 年 11 月 29 日於布魯塞爾所通過之油污損害民事責任國際公約。
2. 「船舶」、「人」、「所有人」、「油」、「污損」、「防止措施」、「事故」及「該組織」與責任公約第 1 條之意義相同，但除為此用語之目的外，「油」應限於持續性之碳氫礦油。
3. 「攤款油」謂依下列(a)款及(b)款定義之原油及燃料油：
 - (a) 「原油」係指於地底自然產生之任何液態碳氫混合物，不論其是否業經處理及適於運輸。其並包括業已除去某些餾化物之原油(通稱「高級原油」)或業已加進某些餾化物之原油(通稱「改質」或「再生」原油)。
 - (b) 「燃油」係指自原油加重蒸餾所得殘留物或混合物，用作燃料可供產生性質相當於「美國材料試驗協會」第 4 號燃油(編號 D396-69)之熱或能或更重者。
4. 「法郎」係指責任公約第 5 條第 9 項所述之貨幣單位。
5. 「船舶噸位」與責任公約第 5 條第 10 項同義。
6. 「噸」與油有關者，指公噸。
7. 「保證人」係指依責任公約第 7 條第 1 項提供保險或其他財務保證而擔保所有人責任之任何人。
8. 「終端設備」係指任何儲放散裝貨油之場所，而該場所能經水路運送而收受油料，並包括位於離岸與該場所相連結之任何設施。
9. 於一事故由一系列事件組成者，應以該等事件首次發生之日視為已發生之日。

第 2 條

1. 污損賠償國際基金定名為「國際油污賠償基金」，以下簡稱為「基金」，其設立目的如下：
 - (a) 於責任公約無法給予適當保護之

that the protection afforded by the Liability Convention is inadequate;

- (b) to give relief to shipowners in respect of the additional financial burden imposed on them by the Liability Convention, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions;
 - (c) to give effect to the related purposes set out in this Convention.
2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceeding before the courts of the State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as "The Director") as the legal representative of the Fund.

Article 3

This Convention shall apply:

1. With regard to compensation according to Article 4, exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State, and to preventive measures taken to prevent or minimize such damage;
2. With regard to indemnifications of shipowners and their guarantors according to Article 5, exclusively in respect of pollution damage caused on the territory, including the territorial sea, of a State party to the Liability Convention by a ship registered in or flying the flag of a Contracting State and in respect of preventive measures taken to prevent or minimize such damage.

COMPENSATION AND INDEMNIFICATION

Article 4

1. For the purpose of fulfilling its function under Article 2, paragraph 1(a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention,
 - (a) because no liability for the damage arises under the Liability Convention;
 - (b) because the owner liable for the damage under the Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the

範圍內，提供污損之賠償；

- (b) 對責任公約所可以船舶所有人之額外財務負擔給予救濟，該救濟並以確能符合海上人命安全及其他公約之規定為條件；
- (c) 實行本公約之有關目的；

2. 基金於各締約國內應被承認為該國法院法律程序之一法律實體，並於該國法律下具有同樣之權利及義務，各締約國應承認基金之董事(以下簡稱為「董事」)為基金之法定代表。

第 3 條

本公約應適於：

1. 依照第 4 條僅在締約國領域包括其領海所造成之污損，及用以防止或減少該損害所採預防措施之有關賠償。
2. 於任一締約國登記或懸掛其國旗之船舶，僅對責任公約之締約國領域，包括其領海，造成污損時，依第 5 條關於船舶所有人及其保證人之補償，及用以防止或減少該損害所採預防措施之有關補償。

賠償及補償

第 4 條

1. 為達成第 2 條第 1 項(a)款目的，如遭受污損之人其所受污損依責任公約規定未能獲得充分及適當之賠償時，基金應對此遭受污損之任何人給予賠償：
 - (a) 因依責任公約無損害責任；
 - (b) 因依責任公約，對損害應負責之所有人於財務上無法充分履行其義務，且依該公約第 7 條所提供之任何財務擔保，無法賠償或無法滿足損害賠償之要求；所有人於財務上無法充分履行其義務，及財務擔保不充分之認定，以受到損害之人於採取所有合理步驟尋求適當之法律救濟後，仍無法完全獲得依責任公約規定所應得

Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

- (c) because the damage exceeds the owner's liability under the Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purpose of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

(a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Governmental non-commercial service; or

(b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person provided, however, that there shall be no such exoneration with regard to such preventive measures which are compensated under paragraph 1. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the Liability Convention.

4.

(a) Except as otherwise provided in subparagraph (b) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of this Convention, shall not exceed 450 million francs.

(b) The aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 450 million francs.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available 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 the Liability Convention and this Convention shall be the same for all claimants.

之賠償額為定；

- (c) 因依責任公約第 5 條第 1 項規定之限制，或依其他於本公約簽訂日業已生效、公開供簽署、批准或加入之任何國際公約之規定，損害超過所有人之責任。

依本條之目的，所有人為防止或減少污損自願所耗費之合理損失或負擔之費用，應列為污損賠償。

2. 於有下列情況時，基金不依前述擔負義務：

(a) 經證明污損係因戰爭行為、敵對行為、內戰或暴亂，或由軍艦或其他政府作非商業用途使用之國有或徵用船舶，所洩漏或排出之油所致；或

(b) 求償者無法證明損害係由一事故所涉及之一艘或多艘船舶所致。

3. 若基金能證明污損之全部或一部係由於受害人之故意作為或不作為，或因其過失所致者，基金得全部或部分免除對該受害人賠償義務，然依第 1 項有關防止措施之賠償，不得予以免除。於任何情況下，依責任公約第 3 條第 3 項船舶所有人得以免責範圍內，基金亦應免除之。

4.

(a) 除本項(b)款另有規定外，依本條規定基金所能給付之賠償總額，應依任一事故加以限制，因此對於在諸締約國領域內所造成損害之賠償總額及依油污損害責任公約實際付出之賠償金額，包括依照本公約第 5 條第 1 項有關規定基金有義務補償所有人之任何金額，不應超過 4 億 5 千萬法郎。

(b) 污損若係因特殊、無法避免及不可抵抗之意外自然現象，則依本條規定基金所能給付之賠償合計總額，不應超過 4 億千萬法郎。

5. 對基金所確定之求償金額，如超過依第 4 項所能給付之賠償總額時，所有求償者所能獲得之金額將依任何所確定之求償額間與責任公約及本公約實際獲得之賠償金額間以同一比例分配之。

6. The Assembly of the Fund (hereinafter referred to as "the Assembly") may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 450 million francs referred to in paragraph 4, sub-paragraphs (a) and (b), shall be changed; provided, however, that this amount shall in no case exceed 900 million francs or be lower than 450 million francs. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.
 7. The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.
 8. The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident in respect of which the Fund may be called upon to pay compensation under this Convention.
6. 基金大會(以下簡稱爲「大會」)基於已發生事故之經驗，尤其是對於因此所生之損害金額，與幣值變動等加以考慮後，得決定在第 4 項(a)款及(b)款所述之 4 億 5 千萬法郎之金額得予以變更；然此項金額在任何情況下決不能超過 9 億法郎或低於 4 億 5 千萬法郎。該變更之金額並適用於決定作成變更之日後所發生之事故。
 7. 於締約國提出請求時，基金應視需要善用其職責，協助該國迅速獲得所需人員、物質及服務，以使該國能採取措施防止或減少事故所致，得依本公約向基金請求支付賠償之污損。
 8. 基金依其內部規則之規定得提供信貸機制，以針對因特定事故所生，得依本公約向基金請求支付賠償之污損，採取防止措施。

Article 5

1. For the purpose of fulfilling its function under Article 2, paragraph 1(b), the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of liability under the Liability Convention which:
 - (a) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less, and
 - (b) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less,
 provided, however, that the Fund shall incur no obligation under this paragraph where the pollution damage resulted from the wilful misconduct of the owner himself.
2. The Assembly may decide that the Fund shall, on conditions to be laid down in the Internal Regulations, assume the obligations of a guarantor in respect of ships referred to in Article 3, paragraph 2, with regard to the portion of liability referred to in paragraph 1 of this Article. However, the Fund shall assume such obligations only if the owner so requests and if he maintains adequate insurance or other financial security covering the owner's liability under the Liability Convention up to an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less. If the Fund assumes such obligations, the owner shall in each Contracting State be considered to have complied with Article VII of the Liability Convention in respect of the portion of his liability mentioned above.
3. The Fund may be exonerated wholly or partially from its obligations under paragraph 1 towards the owner and his

第 5 條

1. 為達成第 2 條第 1 項(b)款之任務，基金應依責任公約所規定下列責任總額之部分，給予所有人及其保證人補償：
 - (a) 依船舶噸位計算，每噸超過相當於 1,500 法郎，或其總額超過 125 百萬法郎，2 者採較少者，及
 - (b) 依船舶噸位計算，每噸未超過相當 2,000 法郎，或其總額未超過 210 百萬法郎，2 者採較少者。
 然如污損係由所有人本身之故意不當行為所致者時，基金不負擔本項所規定之義務。
2. 大會得依其內部規則之規定，決定基金應對第 3 條第 2 項所稱之船舶及本條第 1 項所述之責任部分承擔其保證人之義務。然基金所承擔之是項義務，僅在所有人提出此項要求且維持充分保險，或依責任公約規定能抵償所有人責任之其他財務擔保，已達到按船舶噸位計算每噸相當於 1,500 法郎之金額或其總額達 125 百萬法郎，二者採較少者。如基金承擔此義務，則於每締約國對於前述所有人本身之責任部分，得被認為已符合責任公約第 7 條之規定。
3. 如基金能證明事故係因所有人對下列事項之知情或實際過失所致，得全部