

MERCHANT SHIPPING BILL 2020: EXPLANATION OF KEY PROVISIONS

The Merchant Shipping Act, 1958 is a comprehensive legislation dealing with merchant shipping in India. The statute had been enacted to foster the development and ensure the efficient maintenance of an Indian mercantile marine ecosystem in a manner best suited to serve the national interests. Presently, the Act contains 560 provisions, as a result of various amendments made to the law, from time to time. Some of these amendments were made to enact the International Maritime Organization conventions ratified by India.

The merchant shipping sector has undergone various changes in the recent years. In order to meet the new challenges faced by the industry, update old provisions, promote the 'Ease of Doing Business' and holistically incorporate India's obligations under various International Conventions, it was felt that a revised statute replace the existing Act. Consequently, the Merchant Shipping Bill, 2020 has been promulgated to replace the Merchant Shipping Act, 1958 and the Coasting Vessels Act, 1838.

The Merchant Shipping Bill, 2020 aims to reduce compliance burden, increase tonnage under Indian flag, enhance the rights and privileges of seafarers, ensure the safety and security of vessels, safety of life at sea, prevent marine pollution and protect India's coastline and related interests, provide for maritime liabilities and compensations, ensure comprehensive adoption of India's obligations under International Conventions, and promote accountability and transparency in the investigation and enforcement procedures.

The key provisions of the Merchant Shipping Bill, 2020 are:

1. **Registration of every Indian vessel**, owned by a wider criterion of individuals and body corporates and in such proportion of ownership to be notified by the Central Government. **(Clause 14)**. The registration of any foreign vessel chartered by an Indian charterer including bareboat charter cum demise **(Clause 15)**. Consequently, the Bill seeks to increase India's tonnage.
2. **Provisional registration of Indian vessels-** The Bill permits conversion of provisional registration into permanent registration as an Indian vessel as an Indian vessel, even on ports outside India, so as to promote ease of doing business, maximizing returns on asset (the vessel) and enhancing investor sentiment for Indian shipping industry. **(Clause 18)**
3. **Monitoring the Maritime education leading to grant of certificate of competency or certificate of proficiency-** The Director-General has been empowered to administer, supervise and monitor all activities related to training and assessment for grant of certificate of competency or certificate of proficiency and to approve training institutes, courses and the method of conducting training for granting such certificates. **(Clause 45)**
4. **Holistic adoption of the Maritime Labour Convention (MLC) regulations in the Bill with suitable delegated legislation power in respect of the MLC standards and guidelines-** The Bill enacts all the MLC regulations **(Clauses 57-76)**, while requiring the Central Government necessarily frame rules adopting the mandatory standards in Part A of the MLC Code, with the intention of uniformly adopting the provisions of the Convention across the parent legislation and delegated legislation, thereby further bolstering the rights and welfare of seafarers. **(Clause 76)**
5. **Electronic database and attribution of ship risk profiles for inspections in discharge of India's Port State responsibilities under MLC-** As part of India's port state responsibilities requiring the maintenance of an updated electronic inspection database, to aid in the implementation of an efficient, effective and coordinated system of regular inspections. **(Clause 75)**
6. **Control measures and detention of unsafe vessels-** The Bill grants the power to the Director-General to provisionally detain unsafe vessels and have them surveyed. The clause envisions control measures such as denial of entry and detention as part of the enforcement measures, and lays down the appeal mechanism for such measures. **(Clause 128)**

7. **Powers to take measures for containment of pollution and measures for detection of pollution-** Provisions have been incorporated that allow and mandate active enforcement of pollution prevention standards, including powers of monitoring and surveillance to adequately detect incidents of pollution, and powers to deny entry, detain, or remove vessels, where reasonable grounds for suspecting polluting activity is established. **(Clauses 138 and 140)**
8. **Consolidation of provisions dealing with survey, audit and certification-** The Bill consolidates the regime for survey, audit and certification of vessels in Part VIII, thereby simplifying and eliminating the redundancy in the various provisions in the Act. **(Clauses 145-153)**
9. **Greater adoption of the 1910 Convention** for the unification of certain rules of law with respect to Collision between vessels in the statute and allowing High Courts to task assessors with the duty of determining the degrees of fault of vessels involved in a collision. **(Clause 155)**
10. **Right to invoke limitation without constitution of a limitation fund-** Shipowners or salvors or insurers can invoke their right to limit liability under Chapter II of Part IX of the Bill, even without setting up a limitation fund. In such cases, the provision on bar on other actions will not be triggered, unless the fund is duly constituted **(Clause 169)**. A limitation fund can be constituted with the Central Government or with the High Court. **(Clause 170)**
11. **Compulsory insurance or other financial security for maritime claims subject to limitation** has been introduced, for every Indian ship and other ship operating in India's coastal waters, in order to make the claims more financially secure. **(Clause 173)**
12. **Jurisdiction of High Courts in respect of oil pollution-** The admiralty jurisdiction of the High Courts have been specifically extended to incidents of oil pollution within the scope of the Act, including incidents in the Exclusive Economic Zone of India. **(Clause 180)**
13. Part IX, Chapter IV of the Bill gives effect to the **International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001**, in line with India's international obligations in this regard.**(Clauses 197- 211)**
14. **Power of the Central Government to establish Fund-** The Central Government has been granted the power to establish a fund for compensating oil pollution damage exceeding that covered by the International Convention on Civil Liability for Oil Pollution Damage, 1992, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.**(Clause 222)**
15. The Bill introduces a statutory framework for regulating maritime **emergency response for marine incidents**, to prevent it from becoming a wreck or any other catastrophic event. The Nodal Authority, to be appointed by the Central Government, has been empowered to administer and supervise the marine incident and the corresponding maritime emergency response **(Clause 226)**. The Nodal Authority has the power to issue directions to government bodies and requisition services or resources of any officer or office of the Central Government. **(Clause 229)**
16. **Applicability of Part XII-** The application of Part XII of the Bill has been expanded to wrecks located within the territory of India, including its coastal waters. **(Clause 237)**
17. **Determination of hazard-** In compliance with Article 6 of the Nairobi Convention on the Removal of Wrecks, 2007, the Bill provides the criteria for determining whether wrecks pose a hazard or not. The responsibility for determining whether a wreck constitutes a hazard has been assigned to the Central Government in order to provide clarity. **(Clause 241)**
18. **Mandatory execution of salvage contracts** between the owner and the salvor in compliance with Article 6 of the International Convention on Salvage **(Clause 257)**

19. **Rights and duties of the Central Government in relation to salvage operations-** This clause seeks to provide for the measures to be taken by the Central Government to protect its coastline from threat of pollution consequential to occurrence of maritime casualty and empowers the Central Government to issue directions to the owner or the master or salvor and other public authorities associated with salvage operations, and seek their cooperation to initiate salvage services for vessel in distress. It further empowers the Central Government to prescribe circumstances in which the salvage operation shall be exercised by the Central Government. **(Clause 261)**
20. **Power to notify salvors-** The Central Government is empowered to notify such salvors complying with the prescribed terms and conditions. **(Clause 262)**
21. **Adjudication of disputes between shipowners and salvors-** The Director General has been empowered to redress regular disputes arising between the salvor and the shipowner with regard to a salvage operation by way of an amicable settlement. In case the dispute is not resolved, the parties may resolve the dispute through arbitration. An appeal against an arbitral award shall lie before the High Court. **(Clauses 263 and 264)**
22. **Enhancing penalties-** In line with the parent provisions in the Bill, the schedule of penalties has been revised. Old penalty amounts have been revised and certain offences have been decriminalised. **(Clause 286)**
23. **Vessels without nationality-** A vessel under the flags of two or more countries, using them according to convenience, may not claim the nationality of any such country and may be deemed to be a vessel without nationality. The Bill empowers the Central Government to take charge and detain such vessels in India's coastal waters. **(Clause 310)**
24. **All-inclusive freight to be specified in the Bill of Lading,** so as to ensure that excess charges are not levied by service providers or agents, for Indian ships or other ships operating in India's coastal waters. **(Clause 323)**
25. **Abandoned Vessels-** The Central Government has been empowered to direct various authorities to take actions in respect of abandoned vessels, which has been appropriately defined, posing a threat to life, property or environment. **(Clause 319)**