

คำแปลพระราชบัญญัติการช่วยเหลือกู้ภัยทางทะเล พ.ศ.๒๕๕๐

ปิยะพันธ์ พงศ์เทียบฤทธิ์¹

Unofficial Translation

MARITIME SALVAGE ACT, B.E.2550 (2007)

BHUMIBOL ADULYADEJ, REX.

Given on the 15th Day of July B.E.2550

Being the 62nd Year of the Present Reign.

His Majesty King Bhumibhol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on Maritime Salvage;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Article 1. This Act is called “Maritime Salvage Act, B.E. 2550”

Article 2. This Act shall come into force after the expiration of ninety days as from the date of its publication in the Government Gazette.

Article 3. Any other laws, rules and regulations which are already provided in this Act or which are in conflict with or contrary to the provisions of this Act shall be replaced by this Act.

Article 4. In this Act:

“Salvage” means any act or activity undertaken to assist a vessel or other property in danger in the sea or any other waters whatsoever;

“Vessel” means all types of water craft;

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“Sea-going Vessel” means any vessel having descriptions for use in the sea in accordance with the regulations on survey of vessels issued under the law on navigation in Thai waters;

“Property” means any property not permanently and intentionally attached to the shoreline and includes the rights to obtain freight money;

“Damage to the environment” means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents. ;

“Payment” means any reward or special compensation payable under this Act.

Article 5. This Act shall not apply to:

(1) Any salvage operations carrying out in internal waters without sea-going vessel being engaged;

(2) Warships or other non-commercial vessels owned and operated by a State and entitled, at the time of salvage operation, to sovereign immunity under generally recognized principles of international law;

(3) fixed or floating platforms or mobile offshore drilling units when such platforms or drilling units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

Article 6. The Minister of Transport shall be in charge of this Act.

CHAPTER I

Salvage Operations

Part 1

Salvage Contracts

Article 7. The master shall have the authority to conclude contracts for salvage operation on behalf of the owner of the vessel. The master or owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

Article 8. In the enforcement of the salvage, if the court considered that the contract has been entered into under undue influence or the influence of danger and its terms or conditions are inequitable or the payment under the contract is an excessive degree too large or too small for the services actually rendered, it may order :

(1) that the contract shall not wholly or partly be applied to the parties and the provisions in this Act shall be applied instead;

(2) an alteration of the terms or conditions of the contract;

(3) an increase or a reduction of the amount of the payment under the contract to be commensurate to the actual operation.

Part 2

Duties of (the Parties Concerned in) Salvage

Article 9. The salvor shall owe a duty to the owner, master and other property owner in danger :

(1) to carry out the salvage operation with due care;

(2) in performing the duty specified in (1), to exercise due care to prevent or minimize damage to the environment;

(3) whenever circumstances reasonably require, to seek assistance from other salvors;

(4) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

Article 10. The owner or master of the vessel or the owner of other property in danger shall owe a duty to the salvor:

(1) to co-operate fully with him during the course of salvage operation;

(2) in so doing as (1) , to exercise due care to prevent or minimize damage to the environment;

(3) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 11. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.

The owner of vessel shall incur no liability for a breach of the duty of the master under paragraph one.

CHAPTER II

Right of Salvors

Article 12. A salvor shall be entitled to obtain a reward if the salvage operation have had a useful result in saving the vessel or other property.

The fact that the vessel undertaking the salvage operations and the endangered vessel belong to the same owner shall not affect the right to obtain a reward.

Article 13. The reward shall be fixed, with a view to encouraging salvage operations, by taking into account the following criteria:

- (1) the salvaged value of the vessel and other property;
- (2) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (3) the measure of success obtained by the salvor;
- (4) the nature and degree of the danger;
- (5) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (6) the time used and expenses and losses incurred by the salvors;
- (7) the risk of liability and other risks run by the salvors or their equipment;
- (8) the promptness of the services rendered;
- (9) the availability and use of vessels or other property intended for salvage operation;

(10) the state of readiness and efficiency of the salvor's equipment and the value thereof.

Article 14. Payment of the reward shall be made by the persons having interests in the vessel or other property in proportion to the salvaged value of such vessel or other property.

In the case where the salvage operations had a useful result in saving a vessel and property on board the vessel, the salvors shall be entitled to claim the whole of the reward from the owner of the vessel.

In the case where the salvor had exercised his right under paragraph two, the owner of the vessel who made the payment shall be entitled to a right of recourse against the other persons having interests in the vessel or property on board for their respective shares under paragraph one.

Article 15. The rewards, exclusive of any interest and expenses in exercising the claim, shall not exceed the salvaged value of the vessel and other property.

Article 16. If the salvors has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has, either failed to earn a reward under article 13, or earned a reward under article 13 but the amount of the reward is less his expenses, then he shall be entitled to, either special compensation under this article from the owner of that vessel in the amount equivalent to the expenses incurred by him or the differences between the expenses incurred by him and the reward under article 13, as the case may be.

If, in the circumstance set out in paragraph one, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor may be increased up to a maximum of thirty percents of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, may increase such special compensation further, but in no event shall the total increase be more than two times of the expenses incurred by the salvor.

Salvor's expenses for the purpose of paragraphs one and two means the expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, (8), (9) and (10)

If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article, as the case may be.

Nothing in this Article shall effect any right of recourse on the part of the owner of the vessel.

Article 17. In the case where there are many salvors, the criteria under Article 13 shall be applied in the apportionment of a reward among those salvors.

Article 18. In apportionment of a reward between the owner of a salving vessel and the seamen in the service of the vessel in the case where the salvage operation has been carried out from a Thai vessel, it shall be first established whether such salvage relies on risky operation of the vessel or on the seamen's skill or seamen's personal ability. If risky operation of the vessel is the case, the owner shall be entitled to the majority of a reward. If the seamen's skill or seamen's personal ability is the case, the seamen shall be entitled to the majority of a reward. In the latter case, the seamen are among themselves entitled to equal proportion of the reward. However, all the above-mentioned provisions shall not apply in the case where it has been otherwise expressly agreed.

In the case where the salvage operation has been carried out from a foreign vessel, the apportionment of a reward between the owner of a salving vessel and the seamen in the service of the vessel shall be determined by the law of the flag state of that vessel.

Article 19. If the salvage has not been carried out from a vessel, the apportionment of a reward between the salvor and his employees in service of the operation shall be determined by the law governing the contract between the salvor and such employees.

If the law governing the contract between the the salvor and his employees is Thai law, the provisions in paragraph one of Article 18 shall be applied, *mutatis mutandis*.

Article 20. A person who saved life of person in danger is not entitled to claim any payment from the person whose life is saved.

In the salvage operation where life of person in danger is saved, the person who acts as life saver shall be entitled to obtain a fair share of the payment awarded to the salvors.

Article 21. In the case where life of person in danger is saved, if the person who acts as life saver also acts as a salvor simultaneously, the court may increase the payment to be obtained by such person who acts as the life saver.

Article 22. In the case where a contract has been entered into before arising of the danger, the services as rendered in accordance with the contract shall not give rights to payment except for the service which is beyond the scope of duties under the contract.

Article 23. A salvor may be deprived of the whole or part of the payment due, if the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part.

If the salvor has conducted fraudulently or dishonestly, he shall be deprived of the whole of the payment.

Article 24. A salvage operation shall not give rights to payment if it has been carried out notwithstanding the express and reasonable prohibition of the following persons:

(1) the owner or master of the vessel, in case of salvage operation of vessel or property on board or used to be on board;

(2) the owner of any other property in danger which is not and has not been on board.

CHAPTER III

Claims for Payment and Actions

Article 25. The salvor shall have maritime lien on the vessel in respect of the claim for payment due to him from the salvage operation, but he may not invoke such maritime lien if satisfactory security for his claim has been provided.

Article 26. Upon the request of the salvor a liable person for a payment shall provide satisfactory security for the claim for the payment including interest and expenses in exercising the claim.

Article 27. Before the cargo is released, whether or not being requested by the salvor, the owner of the salvaged vessel shall use his best endeavors to ensure that the owners of the cargo provide satisfactory security for the claims for the payment including interest and expenses in exercising the claim.

Article 28. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim for payment against the relevant vessel or property.

Article 29. Action relating to the claims arising from salvage operation under this Act shall be under the jurisdiction of the Intellectual Property and International Trade Court.

Article 30. In the claim which solely the issue of payment is in dispute, at any time before the judgment is issued by the court, the salvor may file with the court an ex parte application seeking the court's order to the effect that the undisputed amount of payment be paid by the liable person. Having received the said application, the court may make an inquiry, as appropriate. The court may issue an order to the effect that the requested amount of payment be paid to the salvor.

When the salvor has received the said amount of payment, the security provided by liable persons for required payment under article 26 shall be reduced proportionately.

Article 31. Any claim for payment under this Act shall be time-barred if judicial proceedings have not been instituted within a period of two years from the day on which the salvage operation are terminated.

Article 32. Non-commercial cargoes owned by a State and entitled to sovereign immunity are not subject to legal seizure, arrest or detention, unless the State owner consents.

Article 33. Humanitarian cargoes donated by any State is not subject to legal seizure, arrest or detention, provided that such State has agreed to pay the payment.

Provisional Provisions

Article 34. This Act shall not apply to the salvage operation being carried out before the date of entry into force of this Act.

Countersigned by:

General Surayud Julanond

Prime Minister