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GENERAL NOTICE

NOTICE 1174 OF 2005

Department of Transport

PUBLICATION FOR COMMENTS: MERCHANT SHIPPING (INTERNATIONAL OIL POLLUTION COMPENSATION FUND) BILL, 2005

The above mentioned draft bill is hereby published for comments. This Bill implements the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the **Fund** Convention). It will allow the Republic to participate in the regime established by the Civil Liability and Fund Conventions, which Parliament has approved under section 231(2) of the Constitution.

The Civil Liability and Fund Conventions were adopted under the auspices of the International Maritime Organization (IMO). They deal with questions of liability and compensation for loss or damage caused by contamination resulting from the escape or discharge of persistent oil from tankers (i.e. ships constructed or adapted for the carriage of oil in bulk as cargo).

Whereas the Civil Liability Convention establishes and regulates the liability of the registered ship owner, the Fund Convention establishes an international fund, called the International Oil Pollution Compensation (IOPC) Fund, the purpose of which is to pay compensation to victims of pollution damage (within the meaning of the Civil Liability Convention) where they have been unable to obtain compensation, or compensation in full, under the provisions of the Civil Liability Convention.

The IOPC Fund receives its funds from cargo owners, specifically from persons who receive annually, in the ports or terminal installations of the Contracting States, more than 150,000 tonnes of contributing oil. The total amount of compensation payable by the IOPC Fund in respect of an incident is currently SDR 203,000,000 (± ZAR 1,880,064,200), which, in certain cases, may be increased to SDR 300,740,000 (± ZAR 2,785,273,436).

Copies of the Bill may be obtained from Government Printers or the Department of Transport on request. Interested parties or persons are hereby invited to submit written comments on the draft bill to be filed in terms of the convention by no later than **12 August 2005**.

Submissions should be marked for the attention of **Ms C Kongwa** and maybe posted to the Director-General, Department of Transport, **Private Bag X 193, Pretoria 0001**, Transmitted to **(012) 309 3326** or by e-mail to **kongwac@dot.gov.za**

REPUBLIC OF SOUTH AFRICA

**MERCHANT SHIPPING (INTERNATIONAL OIL POLLUTION
COMPENSATION FUND) BILL**

(As introduced in the National Assembly as a section 75 Bill)

(The English text is the official text of this Bill)

(MINISTER OF TRANSPORT)

[B — 2005]

BILL

To give effect to the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and for related matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

PART 1
PRELIMINARY

Interpretation

- - (1) In this Act, unless the context indicates otherwise—
- (i) "Authority" means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act, **1998 (Act No. 5 of 1998)**;
 - (ii) "Contracting State" means a state specified in a notice under section 5;
 - (iii) "Minister" means the Minister of Transport;
 - (iv) "organ of state" has the meaning it has in section **239** of the Constitution of the Republic of South Africa, **1996**;

- (v) "the Convention" has the meaning given by section **2**;
- (vi) "the Fund" means the International Oil Pollution Compensation Fund **1992** established by the Convention;
- (vii) "the Republic" includes the Prince Edward Islands referred to in section 4;
- (viii) "this Act" includes the regulations made under section **26**.

(2) Unless the context indicates otherwise, an expression used in this Act and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Act, the meaning it has in the Convention.

Meaning of Convention

2. (1) The Convention is the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, **1971**, done at Brussels on **18 December 1971**—

- (a) as modified by the Protocol of **1992** to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, **1971**, done at London on **27 November 1992**; and
- (b) as affected by any amendment made under Article **33** of that Protocol and accepted by the Republic.

(2) Before the commencement of this Act, the Minister must publish a notice in the Gazette setting out the English text of the provisions of the Convention as in force at the commencement.

(3) If an amendment is made under Article 33 of the Protocol and accepted by the Republic, the Minister must publish a notice in the Gazette setting out the English text of the amendment and specifying the day or days on which its provisions enter into force for the Republic.

(4) In interpreting this Act, the Convention is taken to be the English text of the Convention as in force for the Republic and set out in notices in terms of this section.

Act binds State

3. (1) This Act binds the State and every organ of state.

(2) However, this Act does not make the State or any organ of state liable to be prosecuted for an offence.

Operation of Act

4. This Act applies both within and outside the Republic and extends to the Prince Edward Islands within the meaning of section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

Declaration of Contracting States

5. (1) The Minister may, by notice in the Gazette, declare that, for the purposes of this Act, a state, other than the Republic, specified in the notice is a state party to the Convention.

(2) A notice under subsection (1) is evidence that a state specified in the notice is a state party to the Convention.

PART 2

LEGAL RECOGNITION OF FUND

Fund is legal person

6. For the purposes of this Act, the Fund has the same legal personality as a company incorporated under the Companies Act, 1973 (Act No. 61 of 1973), and, in particular, may sue and be sued.

Director is Fund's legal representative

7. For the purposes of this Act, the Director of the Fund is its legal representative.

PART 3

COMPENSATION

Certain provisions of Convention to have force of law

8. (1) The following provisions of the Convention have the force of law as part of the law of the Republic:

Articles 1, 3, 4 and 6; paragraphs 1, 3, 5 and 6 of Article 7; Article 9; Article 35; Article 36 *bis*; paragraph (e) of Article 36 quarter; and Article 36 *quinquies*.

(2) For the purposes of paragraph (a)(i) of Article 3 of the Convention as so having the force of law, a reference to the territorial sea, in so far as it relates to the Republic, is taken to be a reference to the territorial waters of the Republic.

(3) For the purposes of paragraph (a)(ii) of Article 3 of the Convention as so having the force of law, a reference to the exclusive economic zone, in so far as it relates to the Republic, is taken to be a reference to the exclusive economic zone of the Republic within the meaning of section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994).

(4) For the purposes of paragraph 7 of Article 4 of the Convention as so having the force of law, a request by the Authority is taken to be a request by the Republic.

Claims for compensation

9. The High Court of South Africa, exercising its admiralty jurisdiction, has jurisdiction (including jurisdiction for all incidental purposes) to hear and determine claims against the Fund for compensation under Article 4 of the Convention.

Fund may intervene in proceedings under Merchant Shipping (Civil Liability Convention) Act, 2005

10. The Fund may intervene in proceedings for compensation under Part 2 of the Merchant Shipping (Civil Liability Convention) Act, 2005.

Regulations to give effect to Article 8 of Convention

11. (1) The regulations may make provision about giving effect to Article 8 of the Convention, including provision fixing fees to be paid in respect of any matters under regulations made for the purposes of this section.

(2) Subsection (1) does not limit the power of any competent body to make rules of court about a matter that is not provided for in regulations made for the purposes of that subsection.

Evidence in proceedings involving Fund

12. In legal proceedings involving the Fund, evidence of any instrument issued by an organ of the Fund or of any document, or entry in or extract from any document, in the custody of the Fund may be given by producing, without further proof, a copy of the relevant instrument, document, entry or extract, as the case may be, certified as a true copy by an official of the Fund.

PART 4

CONTRIBUTIONS TO FUND

Division I—Liability to make contributions

Liability to make contributions to Fund

13. (1) Article 10 of the Convention (other than subparagraph 2(b)), in so far as it relates to ports or terminal installations in the Republic, has the force of law as part of the law of the Republic.

(2) A person is not liable to contribute to the Fund because of this Part unless the contributions are imposed by another Act.¹

¹ Contributions are imposed by the Merchant Shipping (International Oil Pollution Compensation Fund) (Contributions) Act, 2005.

(3) For the purposes of Article 10 of the Convention as applied by subsection (1)—

(a) reference to a port is taken to include reference to any harbour or place;

(b) the person liable to pay contributions to the Fund because of this Part is—

(i) in the case of contributing oil being imported into the Republic, the importer; and

(ii) otherwise, the person receiving the contributing oil; and

(c) a person (*the first person*) is an associated person in relation to another person (*the second person*) if, and only if—

(i) both the first person and the second person are bodies corporate; and

(ii) the first person is a subsidiary of the second person.

(4) In this section—

"body corporate" means a body incorporated under the law of the Republic or another state;

"importer" means the person by whom or on whose behalf the contributing oil in question is entered for customs or excise purposes on importation, and "import" has a corresponding meaning;

"subsidiary", in relation to a body corporate, means a subsidiary within the meaning of section 1(3) of the Companies Act, 1973 (Act No. 61 of 1973), subject, in the case of a body incorporated outside the Republic, to any necessary modifications of that provision.

Amount of contributions

14. Paragraphs 2 and 3 of Article 12 of the Convention, in so far as they relate to the Republic, have the force of law as part of the law of the Republic.

When contributions are due and payable

15. Contributions required to be paid by a person because of this Part are due and payable on the day or days ascertained under paragraph 4 of Article 12 of the Convention and notified to the person by the Fund.

Security for payment

16. The regulations may make provision about requiring a person who is or may be liable to make contributions required to be paid because of this Part to give security for payment to the Fund.

Offence (failing to give security)

17. (1) A person commits an offence if—
- (a) the person is required to give security for payment under regulations made for the purposes of section 16; and

(b) the person, without reasonable excuse, refuses or fails to give the security.

(2) The offence is punishable upon conviction by a fine or by imprisonment for a period not exceeding two years.

Division 2 —Recovery of contributions

Late payment penalty

18. If—

(a) any annual contribution payable by a person because of this Part remains unpaid after the time when it became due for payment; and

(b) the Internal Regulations of the Fund have fixed, or provided for a method of determining, one or more annual interest rates (***IR rates***)

in accordance with paragraph 1 of Article 13 of the Convention,

the person is liable to pay to the Fund, by way of penalty, an amount (***late payment penalty***) calculated at the annual percentage rate equal to whichever of the IR rates is applicable to the person's circumstances, on the amount unpaid, computed from that time until payment is made.

Recovery of contributions and late payment penalty

19. (1) The following amounts may be recovered by the Fund as if they were recoverable as debts due to the State:

- (a) contributions that are required to be paid because of this Part and that are due and payable;
- (b) late payment penalty that is due and payable.

(2) To avoid doubt, the Fund ~~is~~ not entitled to recover from the State any costs or other expenses it incurs in recovering an amount referred to in subsection (1) -

Regulations about recovery of contributions

20. (1) The regulations may make provision about—

- (a) the way in which contributions required to be paid because of this Part may be paid;
- (b) the way in which late payment penalty may be paid; and
- (c) refunds of, or of overpayments of, contributions.

(2) Without limiting paragraphs (a) and (b) of subsection (1), regulations made for the purposes of those paragraphs may make provision about the making of payments using electronic funds transfer systems.

Division 3—Records and returns**Authority to inform Fund**

21. (1) Article 15 of the Convention, in so far as it relates to the Republic, has the force of law as part of the law of the Republic.

(2) For the purposes of paragraphs 1 and 2 of Article 15 of the Convention as so having the force of law, an obligation imposed on the Republic is taken to be imposed on the Authority.

(3) The Authority may inform the Fund of such additional matters relating to contributions as the Authority considers appropriate.

Record-keeping and returns

22. (1) The regulations may make provision about requiring a person—

- (a) to keep and retain records, if the records are relevant to ascertaining the person's liability to make contributions required to be paid because of this Part;
- (b) to give information and returns to the Authority, if the information or returns are relevant to ascertaining a person's liability to make contributions required to be paid because of this Part; and
- (c) to—
 - (i) produce documents to the Authority; or

- (ii) proceedings for recovery of an amount of late payment penalty.

Offence (failing or refusing to give information or returns)

24. (1) A person commits an offence if—

- (a) the person is required to give information or a return under regulations made for the purposes of this Division; and
- (b) the person, without reasonable excuse, refuses or fails to give the information or return.

(2) The offence is punishable upon conviction by fine or by imprisonment for a period not exceeding three years.

Offence (false information or returns)

25. (1) A person commits an offence if—

- (a) the person gives information or a return that, to the person's knowledge, is false or misleading in a material particular; or
- (b) the person recklessly gives information or a return that is false or misleading in a material particular; and
- (c) the information or return is given in purported compliance with regulations made for the purposes of this Division.

(2) The offence is punishable upon conviction by a fine or by imprisonment for a period not exceeding five years.

PART 5

MISCELLANEOUS

Regulations

26. (1) The Minister may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) However, regulations fixing fees must be made with the consent of the Minister of Finance.

(3) The regulations may prescribe penalties of a fine or of imprisonment for a period not exceeding 12 months for offences in terms of the regulations.

Jurisdiction (offences)

27. (1) An offence in terms of this Act is taken, for purposes in relation to jurisdiction of a court to try the offence, to have been committed within the area of jurisdiction of the court in which the offence is prosecuted.

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(2) Despite anything to the contrary in any law, a magistrates' court has jurisdiction to impose any penalty prescribed by this Act.

Short title and commencement

28. (1) This Act is called the Merchant Shipping (International Oil Pollution Compensation Fund) Act, 2005.

(2) This Act commences on the day fixed by the President by proclamation in the Gazette, being a day not before the day on which the Convention enters into force for the Republic.
