

REPUBLIC OF SOUTH AFRICA

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

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36561 of 13 June 2013)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 19—2013]

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BILL

To enact the International Maritime Organization Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971 into law; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise, any meaning ascribed to a word or expression in the 1992 Fund Convention must bear the meaning so ascribed, and— 5
- “**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);
- “**Minister**” means the Minister of Transport;
- “**the 1971 Fund Convention**” means the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971 done at Brussels on 18 December 1971; 10
- “**the 1992 Fund Convention**” means Articles 1 to 36 *quinquies* of the 1971 Fund Convention as amended by the 1992 Protocol and referred to in paragraph 2 of Article 27 of the 1992 Protocol; 15
- “**the 1992 Protocol**” means the International Maritime Organization Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Oil Pollution Damage of 18 December 1971—
- (a) approved on 23 October 1997 by the National Assembly and on 15 March 1999 by the National Council for Provinces as is required by section 231(2) of the Constitution of the Republic of South Africa, 1996; and 20
- (b) published for general information under Notice No. 1543 of 2009 in *Gazette* No. 32723 of 20 November 2009;
- “**the Fund**” means the International Oil Pollution Compensation Fund, 1992, established by Article 2 of the 1992 Fund Convention; and 25
- “**this Act**” includes any regulation made in terms of section 11.

Enactment of 1992 Protocol into law and interpretation

2. (1) Subject to this Act, the 1992 Protocol has the force of law in the Republic.
- (2) For the purposes of paragraph (a)(i) and (ii) of Article 3 of the 1992 Fund Convention and in so far as it relates to the Republic, the reference to the territorial sea must be construed as a reference to the territorial waters of the Republic referred to in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994). 30
- (3) For the purposes of paragraph (a)(ii) of Article 3 of the 1992 Fund Convention and in so far as it relates to the Republic, the reference to the exclusive economic zone must be construed as 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). 35

(4) For the purposes of this Act, the English text of the 1992 Protocol prevails for the purposes of interpretation.

(5) The Minister may by notice in the *Gazette* publish for general information any changes made to the 1992 Fund Convention under Article 33 of the 1992 Protocol if those changes are binding on the Republic in terms of section 231 of the Constitution of the Republic of South Africa, 1996. 5

Act binds State

3. This Act binds the State and every organ of state contemplated in section 239 of the Constitution of the Republic of South Africa, 1996.

Application of Act 10

4. This Act also applies to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

Legal capacity of Fund

5. The Fund is hereby recognised as a juristic person.

Legal representative of Fund 15

6. The Director of the Fund is hereby recognised as the legal representative of the Fund.

Authority may request Fund for assistance

7. For the purposes of paragraph 7 of Article 4 of the 1992 Fund Convention, a request by the Authority to the Fund for assistance contemplated in that paragraph, must be regarded as a request by the Republic. 20

Jurisdiction of High Court

8. The High Court of South Africa exercising its admiralty jurisdiction under the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), has jurisdiction, including jurisdiction for all incidental purposes, to hear and determine claims against the Fund for compensation under Article 4 of the 1992 Fund Convention. 25

Fund may intervene in proceedings under Merchant Shipping (Civil Liability Convention) Act, 2013

9. The Fund may intervene in proceedings for compensation under Part 2 of the Merchant Shipping (Civil Liability Convention) Act, 2013. 30

Evidence in proceedings involving Fund

10. In any legal proceedings involving the Fund, the mere production of a certified true copy of—

- (a) any document issued by an organ of the Fund; or
 - (b) any entry in or extract from any document in the custody of the Fund, 35
- must be regarded as sufficient evidence of the fact that the document was so issued or is under the custody of the Fund, unless evidence to the contrary is adduced.

Regulations

11. (1) The Minister may make regulations—
- (a) giving effect to Article 8 of the 1992 Fund Convention; 40
 - (b) fixing fees to be paid in respect of any matter arising from the application of Article 8 of the 1992 Fund Convention; and
 - (c) regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 45

(2) Any regulation fixing fees must be made with the concurrence of the Minister of Finance.

Short title and commencement

12. This Act is called the Merchant Shipping (International Oil Pollution Compensation Fund) Act, 2013, and takes effect on a date fixed by the President by proclamation in the *Gazette*. 5

**MEMORANDUM ON THE OBJECTS OF THE MERCHANT
SHIPPING (INTERNATIONAL OIL POLLUTION COMPENSATION
FUND) BILL, 2013**

1. PURPOSE OF BILL

The Bill seeks to enact the International Maritime Organization Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 (the Fund Convention) into law. The Bill forms part of a package of measures designed to give effect to the Republic's obligations under the Fund Convention and the International Maritime Organization Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (the Civil Liability Convention). Parliament has already approved the two protocols under section 231(2) of the Constitution of the Republic of South Africa, 1996. The full package includes the Bill and the—

- Merchant Shipping (Civil Liability Convention) Bill, which gives effect to the Civil Liability Convention;
- Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Bill, which is a money Bill contemplated in section 77 of the Constitution; and
- Merchant Shipping (International Oil Pollution Compensation Fund) Administration Bill, which deals with the administrative matters of the money Bill.

2. CIVIL LIABILITY AND FUND CONVENTIONS

- 2.1 The Civil Liability and Fund Conventions were adopted under the auspices of the International Maritime Organization. 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).
- 2.2 Under the Civil Liability Convention claimants are entitled to compensation from the registered shipowner (or the provider of financial security for the shipowner's liability) for pollution damage suffered in the territory (including territorial sea) or exclusive economic zone of a Contracting State. The shipowner's liability is strict (only limited exemptions and defences are available), but this liability is subject to limitation in accordance with the provisions of the Civil Liability Convention. Where limitation applies, the shipowner's liability is determined with reference to the tonnage of the ship concerned.
- 2.3 Whereas the Civil Liability Convention establishes and regulates the liability of the registered shipowner, 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 (\pm ZAR 3.04 billion)*. This amount includes the compensation paid by the shipowner or the shipowner's insurer under the Civil Liability Convention.

* 1 SDR (Special Drawing Right) = ZAR 15.014200 (value on 6 June 2013—see http://www.imf.org/external/np/fin/data/rms_mth.aspx. Website accessed on 7 June 2013).

- 2.4 Because the Fund Convention is supplementary to the Civil Liability Convention, a state cannot become a party to the Fund Convention without, at the same time, also becoming a party to the Civil Liability Convention.

3. SUMMARY OF BILL'S PROVISIONS

- 3.1 *Clause 1* is a standard provision that defines certain words and expressions.
- 3.2 *Clause 2* seeks to enact the Fund Convention into law. It also provides for the interpretation of references in the Fund Convention to territorial sea and exclusive economic zone in a manner that is consistent with the Maritime Zones Act, 1994 (Act No. 15 of 1994).
- 3.3 *Clause 3* is a standard provision dealing with the enactment's application to the State and its organs.
- 3.4 *Clause 4* seeks to extend the application of the Act to the Prince Edward Islands, as provided for in section 4 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948). In terms of section 4 an Act of Parliament does not apply to the Prince Edward Islands unless by such Act it is expressed so to apply.
- 3.5 *Clauses 5 and 6* seek to give effect to paragraph 2 of Article 2 of the Fund Convention. This paragraph requires Contracting States to recognise the IOPC Fund as a legal person under their laws and to recognise the Director of the Fund as the Fund's legal representative.
- 3.6 *Clause 7* seeks to empower the South African Maritime Safety Authority to request assistance on behalf of the Government from the IOPC Fund for the purposes of responding to any pollution incident in respect of which the Fund may be called upon to pay compensation.
- 3.7 *Clause 8* applies to claims for compensation against the IOPC Fund. It confirms the High Court's admiralty jurisdiction in relation to such proceedings.
- 3.8 *Clause 9* gives effect to paragraph 4 of Article 7 of the Fund Convention. This paragraph allows the IOPC Fund to intervene in proceedings brought under Article IX of the Civil Liability Convention.
- 3.9 *Clause 10* deals with the way in which certain documentary evidence may be produced in legal proceedings involving the IOPC Fund.
- 3.10 *Clause 11* seeks to authorise the Minister of Transport to make certain regulations, *inter alia* to give effect to Article 8 of the Fund Convention. (Article 8 deals with the mutual recognition and enforcement of judgments in Contracting States.) Regulations fixing fees are to be made with the concurrence of the Minister of Finance.
- 3.11 *Clause 12* is a standard provision dealing with the short title and commencement of the envisaged Act.

4. CONSULTATION

The Bill was published in *Gazette* No 32094 dated 9 April 2009. Comments were received from Transnet, Shell and the South African Petroleum Industries Association (SAPIA). The Department extensively consulted with the National Treasury from July 2009 to October 2012.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill is not expected to have any financial implications for the State.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Transport are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.