

# MERCHANT SHIPPING (OIL POLLUTION) ACT 1981

(No. 15 of 1981)

## ARRANGEMENT OF SECTIONS

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An Act to make provisions with respect to civil liability for oil pollution by merchant ships and for matters connected therewith; and to repeal the Civil Liability (Oil Pollution) Act, 1973 (No. 43 of 1973).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

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**Short title and commencement**

1.—(1) This Act may be cited as the Merchant Shipping (Oil Pollution) Act, 1981, and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) The Minister may appoint different dates for the coming into operation of the different provisions of this Act.

**Interpretation**

2.—(1) In this Act, unless the context otherwise requires —

“Authority” means the Port of Singapore Authority established under the Port of Singapore Authority Act [Cap. 173];

“Convention” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969;

“Convention country” means a country in respect of which the Convention is in force;

“Convention State” means a State which is a party to the Convention;

“Court” means the High Court of Singapore;

“damage” includes loss;

“Director” means the Director of Marine appointed under the Merchant Shipping Act [Cap. 172] and includes the Deputy Director of Marine appointed thereunder;

“master” includes every person, except a pilot, having command or charge of a ship;

“oil” means any persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship;

“owner”, in relation to a ship, means the person registered as the owner of the ship, or, in the absence of registration, the person owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as the operator;

“port” has the same meaning as is assigned to it in the Port of Singapore Authority Act [Cap. 173];

“ship” means any sea-going vessel and any seaborne craft of any type whatsoever carrying oil in bulk as cargo;

“Singapore ship” means a ship registered under Part XIII of the Merchant Shipping Act [Cap. 172].

(2) References in this Act to the area of Singapore include the territorial waters of Singapore and references to the area of any other Convention country include the territorial sea of that Convention country.

### **Liability for oil pollution**

3.—(1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of oil in bulk, any oil carried by the ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship shall be liable, except as otherwise provided by this Act —

- (a) for any damage caused in the area of Singapore by contamination resulting from the discharge or escape;
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or reducing any such damage in the area of Singapore; and
- (c) for any damage caused in the area of Singapore by any measures so taken.

(2) Where a person incurs a liability under subsection (1), he shall also be liable for any damage or cost for which he would be liable under that subsection if the references therein to the area of Singapore included the area of any other Convention country.

(3) Where oil is discharged or escapes from two or more ships and —

- (a) a liability is incurred under this section by the owner of each of them; but

- (b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the damage or cost for which the owners together would be liable under this section.

(4) In relation to any damage or loss resulting from the discharge or escape of any oil from a ship, references in this Act to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape.

(5) For the purposes of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.

(6) The Contributory Negligence and Personal Injuries Act [Cap. 31] shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

### **Exceptions from liability under section 3**

4. The owner of a ship from which oil has been discharged or has escaped shall not incur any liability under section 3 if he proves that the discharge or escape —

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or left undone by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its functions of maintaining lights or other navigational aids for the maintenance of which it was responsible.

**Restriction of liability for oil pollution**

5. Where, as a result of any occurrence taking place while a ship is carrying a cargo of oil in bulk, any oil carried by the ship is discharged or escapes then, whether or not the owner incurs a liability under section 3 —

- (a) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned therein; and
- (b) no servant or agent of the owner nor any person performing salvage or cleaning operations with the agreement of the owner shall be liable for any such damage or cost.

**Limitation of liability under section 3**

6.—(1) Where the owner of a ship incurs a liability under section 3 by reason of a discharge or an escape which occurred without his actual fault or privity —

- (a) section 295 of the Merchant Shipping Act [Cap. 172] (relating to the limitation of liability) shall not apply in relation to that liability; but
- (b) he may limit that liability in accordance with the provisions of this Act, and if he does so his liability (that is to say, the aggregate of his liabilities under section 3 resulting from the discharge or escape) shall not exceed 133 special drawing rights for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) 14 million special drawing rights.

(2) For the purposes of this section, the tonnage of a ship shall be ascertained as follows: —

- (a) if the ship is a Singapore ship, its tonnage shall be taken to be its registered tonnage increased, where a deduction has been made for engine room space in arriving at that tonnage, by the amount of that deduction;
- (b) if the ship is not a ship as is mentioned in paragraph (a) and it is possible to ascertain what would be its registered tonnage if it were registered in Singapore, that paragraph

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shall apply (with the necessary modifications) as if the ship were so registered;

- (c) if the ship is not a ship as is mentioned in paragraph (a) and it is not possible to ascertain its tonnage in accordance with paragraph (b), its tonnage shall be taken to be forty per cent of the weight (expressed in tons of two thousand two hundred and forty pounds) of oil which the ship is capable of carrying;
- (d) if the tonnage of the ship cannot be ascertained in accordance with paragraphs (a), (b) and (c), the Director shall, if so directed by the Court, certify what, on the evidence specified in the direction, would in his opinion be the tonnage of the ship if ascertained in accordance with those paragraphs, and the tonnage stated in his certificate shall be taken to be the tonnage of the ship.

### **Limitation actions**

7.—(1) Where the owner of a ship has or is alleged to have incurred a liability under section 3, he may apply to the Court for the limitation of that liability to an amount determined in accordance with section 6.

(2) If on such an application the Court finds that the applicant has incurred such a liability and is entitled to limit it, the Court shall, after determining the limit of liability and directing payment into Court or to the Authority of the amount of that limit —

- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- (b) direct the distribution of the amount paid into Court or to the Authority (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to subsections (4), (5), (6) and (7).

(3) A payment into Court or to the Authority of the amount of a limit determined in pursuance of this section shall be made in Singapore dollar; and

- (a) for the purpose of converting such an amount from special drawing rights into Singapore dollar one special drawing right shall be treated as equal to such a sum in Singapore dollar as the International Monetary Fund have fixed as being the equivalent of one special drawing right for —
- (i) the day on which the determination is made; or
  - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
- (b) a certificate given by or on behalf of the Minister for Finance stating —
- (i) that a particular sum in Singapore dollar has been so fixed for the day on which the determination was made; or
  - (ii) that no sum has been so fixed for that day and that a particular sum in Singapore dollar has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made,

shall be conclusive evidence of those matters for the purposes of this Act;

- (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(4) No claim shall be admitted in proceedings under this section unless it is made within such time as the Court may direct or such further time as the Court may allow.

(5) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends —

- (a) by the owner or the person referred to in section 15 as the insurer; or
- (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 3, for the damage or cost and who is entitled to limit his liability in connection



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with the ship by virtue of section 295 of the Merchant Shipping Act [Cap. 172],

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(6) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended, he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(7) The Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it considers appropriate having regard to any claims that may later be established before a court of any country outside Singapore.

### **Restriction on enforcement of claims after establishment of limitation fund**

8. Where the Court has found that a person who has incurred a liability under section 3 is entitled to limit that liability to any amount and he has paid into Court or to the Authority a sum not less than that amount —

- (a) the Court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs if the sum paid into Court or to the Authority or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 7 had been taken.

**Concurrent liabilities of owners and others**

9. Where, as a result of any discharge or escape of oil from a ship, the owner of the ship incurs a liability under section 3 and any other person incurs a liability, otherwise than under that section for any such damage or cost as is mentioned in subsection (1) of that section, then, if —

- (a) the owner has been found, in proceedings under section 7, to be entitled to limit his liability to any amount and has paid into Court or to the Authority a sum not less than that amount; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 295 of the Merchant Shipping Act [Cap. 172],

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into Court or to the Authority, no further steps shall be taken in the proceedings except in relation to costs.

**Establishment of limitation fund outside Singapore**

10. Where the events resulting in the liability of any person under section 3 also resulted in a corresponding liability under the law of another Convention country, sections 8 and 9 shall apply as if the references to sections 3 and 7 included references to the corresponding provisions of that law and the references to sums paid into Court included references to any sums secured under these provisions in respect of the liability.

**Exclusions**

11.—(1) Sections 6 to 10 shall not apply to a ship which at the time of the discharge or escape was registered in a country —

- (a) which was not a Convention country; and
- (b) which was a country in respect of which the 1957 Convention was in force.

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(2) In this section, “the 1957 Convention” means the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships signed in Brussels on 10th October, 1957.

(3) If the Minister, by order published in the *Gazette*, declares that any country —

(a) is not a Convention country within the meaning of this Act;  
and

(b) is a country in respect of which the 1957 Convention is in force,

or that it was such a country at a time specified in the order, the order shall, while in force, be conclusive evidence of the facts stated in the order.

### **Extinguishment of claims**

**12.** No action to enforce a claim in respect of a liability incurred under section 3 shall be entertained by any court in Singapore unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrences or first of the occurrences resulting in the discharge or escape by reason of which the liability was incurred.

### **Compulsory insurance against liability for pollution**

**13.—**(1) Subject to the provisions of this Act relating to Government ships, subsection (2) shall apply to any ship carrying in bulk a cargo of more than two thousand tons of oil.

(2) The ship shall not enter or leave any port in Singapore or enter or leave the territorial waters of Singapore nor, if it is a Singapore ship, enter or leave any port in any other country, unless there is in force a certificate complying with subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Convention (cover for owner’s liability).

(3) The certificate must be —

(a) if the ship is a Singapore ship, a certificate issued by the Director;

- (b) if the ship is registered in a Convention country other than Singapore, a certificate issued by or under the authority of the government of that Convention country; and
- (c) if the ship is registered in a country which is not a Convention country, a certificate issued by the Director or a certificate recognised for the purposes of this paragraph by regulations made under this section.

(4) The Minister may by regulations provide that certificates in respect of ships registered in any, or any specified, country which is not a Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of paragraph (c) of subsection (3) if the certificates are issued by or under the authority of the government of the country designated in the regulations in that behalf; and the country that may be so designated may be either or both of the following, that is to say: —

- (a) the country in which the ship is registered; and
- (b) any country specified in the regulations for the purposes of this subsection.

(5) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of the Marine Department or of the Authority and, if the ship is registered in Singapore, to any consular officer within the meaning of the Merchant Shipping Act [Cap. 172].

(6) If a ship enters or leaves, or attempts to enter or leave, a port or the territorial waters in contravention of subsection (2), the master or the owner of the ship shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand dollars.

(7) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5), the master of the ship shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand dollars.

(8) If a ship attempts to leave a port in, or the territorial waters of, Singapore in contravention of this section, the ship may be detained by the Director or the officers of the Authority or any police officer or

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any commissioned officer on full pay in the naval or military service of the Government.

(9) Section 377 of the Merchant Shipping Act shall apply with the necessary modifications to the detention of a ship under this Act [Cap. 172].

(10) For the purposes of this section and section 14, references in Article VII of the Convention to Article V of the Convention shall be construed as references to Article V as amended by Article II of the protocol dated 19th November, 1976, to the Convention.

### **Issue of certificates**

**14.**—(1) Subject to subsection (2), if the Director is satisfied, on an application for such a certificate as is mentioned in section 13 in respect of a Singapore ship or any country which is not a Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Convention, the Director may issue such a certificate to the owner.

(2) If the Director is of the opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 3 in all circumstances, he may refuse the certificate.

(3) The Minister may make regulations —

- (a) prescribing the fee to be paid on an application for a certificate to be issued by the Director under this section; and
- (b) providing for the cancellation and delivery up of such a certificate in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under paragraph (b) of subsection (3) to deliver up a certificate fails to do so, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand dollars.

(5) The Director shall maintain a record of any certificate issued by him under this section in respect of a Singapore ship and this shall be available for public inspection.

### **Rights of third parties against insurers**

**15.**—(1) Where it is alleged that the owner of a ship has incurred a liability under section 3 as a result of any discharge or escape of oil occurring while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 13 relates, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (referred to in this section as the insurer).

(2) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape occurred without the owner's actual fault or privity.

(3) Where the owner and the insurer each apply to the Court for the limitation of his liability, any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.

### **Jurisdiction of Singapore courts and registration of foreign judgments**

**16.**—(1) Paragraph (d) of subsection (1) of section 3 of the High Court (Admiralty Jurisdiction) Act [Cap. 6] shall be construed as extending to any claim in respect of a liability incurred by the owner of a ship under this Act.

(2) Where any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the area of Singapore and no measures are reasonably taken to prevent or reduce such damage in that area, no court in Singapore shall entertain an action (whether in rem or in personam) to enforce a claim arising from —

- (a) any damage caused in the area of another Convention country by contamination resulting from the discharge or escape;

- (b) any cost incurred in taking measures to prevent or reduce such damage in the area of another Convention country; or
- (c) any damage caused by any measures so taken.

(3) Part I of the Reciprocal Enforcement of Foreign Judgments Act [Cap. 25] shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 3, and in its application to such a judgment that Part shall have effect with the omission of subsections (2) and (3) of section 5 of that Act.

### **Government ships**

17.—(1) The provisions of this Act shall not apply in relation to any warship or any ship for the time being used by the government of any State other than for commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes, it shall be a sufficient compliance with subsection (2) of section 13 if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article 1 of the Convention will be met up to the limit prescribed by Article V of the Convention as amended by Article II of the protocol dated 19th November, 1976, to the Convention.

(3) Every Convention State shall, for the purposes of any proceedings brought in a court in Singapore to enforce a claim in respect of a liability incurred under section 3, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

### **Liability for cost of preventive measures where section 3 does not apply**

18.—(1) Where —

- (a) after a discharge or an escape of oil from a ship measures are reasonably taken for the purpose of preventing or

reducing damage in the area of Singapore which may be caused by contamination resulting from the discharge or escape; and

- (b) any person incurs, or might but for the measures have incurred, a liability, otherwise than under section 3 for any such damage,

then, notwithstanding that paragraph (b) of subsection (1) of that section does not apply, he shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty.

(2) For the purposes of section 295 of the Merchant Shipping Act [Cap. 172], any liability incurred under this section shall be deemed to be a liability to damages in respect of such loss, damage or infringement as is mentioned in paragraph (d) of subsection (1) of that section.

### **Saving for recourse actions**

**19.** Nothing in this Act shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Act may have against another person in respect of that liability.

### **Power to detain ship**

**20.—**(1) Where the Authority or the Director has reasonable cause to believe that any oil has been discharged or has escaped from any ship and the owner of the ship has incurred a liability under section 3 and the damage only affects the area of Singapore, the Authority or the Director may detain the ship and the ship may be so detained until the owner of the ship deposits with the Authority an amount which meets the owner's liability or furnishes such security which will in the opinion of the Authority be adequate to meet the owner's liability.

(2) If any ship is detained under this Act and the ship proceeds to sea before it is released by the Authority or the Director, the master of the ship, and also the owner thereof and any person who sends the ship to sea, if that owner or person is party or privy to the act of sending the ship to sea, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand dollars or to



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imprisonment for a term not exceeding two years or to both such fine and imprisonment.

### **Power of arrest**

**21.** An officer of the Authority, the Director or a police officer may arrest without warrant any person who has committed or whom he reasonably believes to have committed an offence under this Act and take him before a Magistrate's Court or a District Court, as the case may be, to be dealt with according to law.

### **Prosecutions**

**22.—(1)** Proceedings for an offence under this Act shall not be instituted except by the Public Prosecutor or by any other person with the written consent of the Public Prosecutor.

(2) A prosecution for an offence under this Act may be conducted by an officer employed by the Authority.

### **Court for trial of offences**

**23.** Any offence under this Act may be tried by a District Court or a Magistrate's Court and such Court shall, notwithstanding the provisions of the Criminal Procedure Code [Cap. 113] and any other written law, have jurisdiction to impose the maximum penalty provided for by this Act.

### **Sale of vessel**

**24.** Where the owner or the master of a ship has been convicted of an offence under the provisions of this Act and any fine imposed under this Act is not paid at the time ordered by the Court, the Court may, in addition to any powers for enforcing payment, direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

### **Offences committed by body corporate**

**25.** Where a body corporate is guilty of an offence under this Act and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body

corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

### **Protection from personal liability**

**26.** No suit, prosecution or other legal proceeding shall lie against the Director or any officer of the Marine Department or the Authority or other person acting under the direction of the Director or the Authority for anything which is in good faith done or intended to be done in the execution or purported execution of this Act.

### **Repeal**

**27.** The Civil Liability (Oil Pollution) Act, 1973 [Act 43 of 1973], is repealed.

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