

- q. Farm No 942, situated in the Cape Registration Division, Western Cape Province, and measuring 72.7743 hectares in extent and held by Title Deed No. T86078/2006;
 - r. The remaining extent of the farm No. 963 situated in the Cape Registration Division, Western Cape Province, measuring 69.9144 hectares in extent and held by Title Deed No. T3723/1956;
 - s. The remaining extent of portion 3 of the farm Welcome Cottage , No 967 situated in the Cape Registration Division, Western Cape Province, measuring 7.0943 hectares in extent and held by Title Deed No. T222/1958
 - t. Farm 972 Title Deed No. = T3723/1956 .
 - u. Farm 973 Title Deed No. = T3723/1956 .
 - v. The farm name = Medusa 977.
 - w. Remainder of the farm No. 985 situated in the Cape Registration Division, Western Cape Province, measuring 3.8812 hectares in extent and held by Title Deed No. T86078/2006;
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GENERAL NOTICES

NOTICE 352 OF 2009

DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: MERCHANT SHIPPING (INTERNATIONAL OIL POLLUTION COMPENSATION FUND) BILL, 2009

The Minister of Transport is hereby publishing the abovementioned draft Bill for public comments. Interested persons are requested to submit written comments on the abovementioned draft Bill by not later than 22 May 2009.

Comments should be posted to the Director-General, Department of Transport for the attention of Adv. Adam Masombuka at:

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REPUBLIC OF SOUTH AFRICA

MERCHANT SHIPPING (INTERNATIONAL OIL POLLUTION
COMPENSATION FUND) BILL, 2009

(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 — 2009]

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

Definitions

1. (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) "Minister" means the Minister of Transport;
 - (iii) "organ of state" has the meaning it has in section 239 of the Constitution of the Republic of South Africa, 1996;
 - (iv) "the Convention" has the meaning given by section 2;

- (v) "the Fund" means the International Oil Pollution Compensation Fund 1992 established by the Convention;
- (vi) "the Republic" includes the Prince Edward Islands referred to in section 4;
- (vii) "this Act" includes the regulations made under section 12.

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

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).

PART 2**LEGAL RECOGNITION OF FUND****Fund is legal person**

5. For 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

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

PART 3**COMPENSATION****Certain provisions of Convention have force of law**

7. (1) These 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 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 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 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

8. 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, 2009

9. The Fund may intervene in proceedings for compensation under Part 2 of the Merchant Shipping (Civil Liability Convention) Act, 2009.

Regulations to give effect to Article 8 of Convention

10. (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

11. 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

MISCELLANEOUS

Regulations

12. (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.

Short title and commencement

13. (1) This Act is called the Merchant Shipping (International Oil Pollution Compensation Fund) Act, 2009.

(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.

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

1 PURPOSE OF BILL

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*). The Bill forms part of a package of measures designed to give effect to South Africa's obligations under the Fund Convention and the 1992 Protocol to 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. The full package includes the Merchant Shipping (International Oil Pollution Compensation Fund) (Contributions) Bill, which is a Money Bill, and the Merchant Shipping (Civil Liability Convention) Bill, which gives effect to the Civil Liability Convention.

2 CIVIL LIABILITY AND FUND CONVENTIONS

2.1 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).

2.2 Under the Civil Liability Convention claimants are entitled to compensation from the registered shipowner (or the provider(s) 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 convention. Where limitation applies, the shipowner's liability is determined with reference to the tonnage of the ship concerned, subject to an overall liability limit of SDR 89,770,000 (\pm ZAR 831,395,878)*.

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

*1 SDR = ZAR 9.261400 (22 March 2005). Source: IMF.

currently SDR 203,000,000 (\pm ZAR 1,880,064,200), which, in certain cases, may be increased to SDR 300,740,000 (\pm ZAR 2,785,273,436).

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 expressions and deals with other matters of interpretation.

3.2 *Clause 2* deals specifically with the meaning of the Fund Convention. It requires the Minister of Transport to give publicity to the Convention and its amendments by appropriate notification in the *Gazette*.

3.3 *Clause 3* is a standard provision dealing with the enactment's application to the State and its organs.

3.4 *Clause 4* is a standard provision dealing with the geographical application of the enactment. The clause provides for extraterritorial application, which is consistent with the Fund Convention, and specifically extends the enactment to the external territories of the Prince Edward Islands, which is consistent with section 4 (Limitation on future application of laws) of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

3.5 *Clauses 5 and 6* 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 its legal representative.

3.6 *Clause 7* gives certain provisions of the Fund Convention the force of law; these provisions relate mainly to the IOPC Fund's liability to pay compensation. Subclauses (2) and (3) provide for the interpretation of references to territorial sea and exclusive economic zone in a manner that is consistent with the Maritime Zones Act, 1994 (Act No. 15 of 1994). Subclause (4) allows the South African Maritime Safety Authority, on behalf of the Government, to request assistance from the IOPC Fund for the purpose 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. Another Bill — the Merchant Shipping (Civil Liability Convention) Bill — implements the Civil Liability Convention.

3.9 *Clause 10* allows regulations about giving effect to Article 8 of the Fund Convention; this Article deals with the mutual recognition and enforcement of judgments in Contracting States. Subclause (2) confirms the power to make rules of court with respect to matters not provided for in the regulations.

3.10 *Clause 11* deals with the way in which certain documentary evidence may be given in legal proceedings involving the IOPC Fund. It

allows evidence of certain documents held or issued by the IOPC Fund to be given by production of a copy that has been certified as a true copy by an official of the Fund.

3.11 *Clause 12* is a standard provision allowing the Minister of Transport to make regulations under the enactment. Regulations fixing fees are to be made with the consent of the Minister of Finance.

3.12 *Clause 13* is a standard provision dealing with the enactment's short title and commencement. Subclause (2) requires the President to fix the commencement date by proclamation in the *Gazette*.