

Merchant Shipping (Oil Pollution) Act 1994
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LAWS OF MALAYSIA

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Act 515

MERCHANT SHIPPING

(OIL POLLUTION)

ACT 1994

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MERCHANT SHIPPING (OIL POLLUTION)

ACT 1994

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MERCHANT SHIPPING (OIL POLLUTION)

ACT 1994

An Act to make provisions with respect to civil liability for oil pollution by merchant ships and for matters connected therewith. [6 April 1995, P.U. (B) 144/1995]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Merchant Shipping (Oil Pollution) Act 1994.

(2) This Act shall come into force on such date as the Minister may, by notification in the Gazette, appoint and the Minister may appoint different dates for different provisions of this Act. Interpretation

2. (1) In this Act, unless the context otherwise requires— "authorized officer" means a port officer as defined in section 2 of the Merchant Shipping Ordinance 1952 [Ord. 70 of 1952] or any authorized officer under section 25;

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"Court" means the High Court in Malaya and the High Court in Sabah and Sarawak, as the case may be;

"Director of Marine" means the Director of Marine appointed under subsection 8(1) of the Merchant Shipping Ordinance 1952; "exclusive economic zone", in

relation to Malaysia, is the exclusive economic zone determined under the Exclusive Economic Zone Act 1984 [Act 311];

"incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage;

"Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage signed in London on 27 November 1992;

"Liability Convention country" means a country in respect of which the Liability Convention is in force;

"master" has the same meaning assigned to it under the Merchant Shipping Ordinance 1952;

"Minister" means the Minister charged with the responsibility for merchant shipping;

"oil", except in Part III, means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship;

"owner" means the person registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that in relation to a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company;

"person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions;

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"pollution damage" means--

(a) loss or damage caused outside a ship by contamination resulting from the discharge or escape of oil from the ship, wherever such discharge or escape may occur, provided that compensation for impairment of the

environment other than loss of profit from such impairment shall be limited to costs and reasonable measures of reinstatement actually undertaken or to be undertaken; (b) the costs of preventive measures and further loss or damage caused by preventive measures;

"port" means--

(a) a port or place declared to be a port under the Merchant Shipping Ordinance 1952 or under any other written law; (b) a place prescribed as a port under the Merchant Shipping Ordinance 1960 of Sabah [Sabah Ord. 11 of 1960], the Merchant Shipping Ordinance 1960 of Sarawak [Sarawak Ord. 2 of 1960] and regulations made thereunder;

"preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage;

"ship" means any sea going vessel and seaborne craft of any type constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

"terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site; "territorial sea" means the territorial waters of Malaysia determined in accordance with the Emergency (Essential Powers) Ordinance, No. 7 of 1969 [P.U. (A) 307A/1969].

(2) In relation to any pollution damage 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 incident or, if the incident consists of a series of occurrences having the same origin, at the time of the first such occurrence. 8 Laws of Malaysia ACT 515

(3) For the purposes of this Act--

(a) references to any area of Malaysia include the territorial sea of Malaysia and exclusive economic zone of Malaysia and references to any area of any other Liability Convention country include the territorial sea and the exclusive economic zone of that Liability Convention country; and (b) references to the exclusive economic zone of a country are references to the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country determined by that country in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

(4) For the purposes of this Act, the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in annex I of the International Convention on Tonnage Measurement of Ships signed in London on 23 June 1969. PART II

CIVIL LIABILITY FOR OIL POLLUTION

Liability for oil pollution

3. (1) The owner of a ship at the time of an incident, or where the incident consists of a series of occurrences, at the time of the first occurrence, shall, except as otherwise provided for by this Act, be liable for any pollution damage caused by the ship as a result of the incident in area of Malaysia.

(2) Further, the owner of the ship shall be liable for any pollution damage caused to any area of any other Liability Convention country as a result of any incident specified in subsection (1). (3) Where an incident involving two or more ships occurs and pollution damage results from the incident, the owners of all the ships concerned shall, unless exonerated under section 4, be jointly and severally liable for all such pollution damage which is not reasonably separable.

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Exceptions from liability under section 3

4. (1) The owner of a ship from which oil has been discharged or has escaped shall not incur any liability for pollution damage under section 3 if he proves that the discharge or escape -- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;

(b) was wholly caused by an act or omission of a third party, which act or omission was done with intent to cause damage; or

(c) was wholly caused by the negligence or wrongful act of a government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(2) Where the owner of a ship from which oil has been discharged or has escaped proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

Restriction of liability for oil pollution damage

5. (1) Where an incident occurs and pollution damage results from the incident, whether or not the owner of the ship incurs a liability under section 3, the owner of the ship shall not be liable for such pollution damage otherwise than under that section. (2) The liability for pollution damage shall not apply to-- (a) any servant or agent of the owner of the ship or any member of the crew;

(b) the pilot or any other person who, not being a member of the crew, performs services for the ship;

(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;

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(e) any person taking preventive measures;

(f) all servants or agents of the persons mentioned in paragraphs (c), (d) and (e),

unless the pollution damage resulted from their own act or omission, committed with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result. Limitation of liability under section 3

6. (1) Where the owner of a ship incurs a liability under section 3 in respect of any one incident, the provision relating to the limitation of liability of the owner of the ship in certain cases of loss or damage under any other written law relating to merchant shipping shall not apply to that liability.

(2) The owner of a ship who incurs a liability under section 3 may limit his liability in accordance with this Act as set out in Part I of this First Schedule.

(3) If it is proved that the pollution damage resulted from an act or omission of the owner of the ship, committed with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result, he shall not be entitled to limit his liability under subsection (2).

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 that liability and directing payment, or deposit of a bank guarantee or security into Court 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 persons making claims in the proceedings; and

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(b) direct the distribution of the amount paid into Court (or, as the case may be, so much of it as does not exceed the liability) among the persons in proportion to their established claims, subject to subsections (3), (4), (5) and (6).

(3) 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 but such time shall not be less than six months from the date the pollution damage occurred. (4) Where any sum has been paid in or towards satisfaction of any claim in respect of the pollution damage to which the liability extends--

(a) by the owner of a ship or any of his servants or agents or the person referred to in section 13 as "the insurer"; or

(b) by any other person,

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.

(5) Where the owner of a ship has voluntarily made any reasonable sacrifices or incurred any reasonable expenses to prevent or minimize pollution 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 sacrifices or expenses.

(6) The Court may, on application by the owner of a ship or any other person who establishes that he may be compelled to pay at a later date, in whole or in part, any amount of compensation, with regard to which he would have enjoyed a right of subrogation under subsection (4) had the compensation been paid before the amount paid into the Court was distributed, order that a sufficient sum be set aside to enable such person to make a claim at a later date.

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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 under section 6 and he has paid a sum or deposited a bank guarantee or security into the Court for a sum not less than that amount-- (a) the Court shall order the release of any ship or other property arrested in connection with the claim in respect of that liability or any bail or other security given to avoid such arrest; and

(b) no judgement or order in respect of any such claim shall be enforced, except so far as it is for costs,

if the claimant has access to the Court and if the payment or the bank guarantee or security or such part thereof as corresponds to the claim will be actually available to the claimant. Limitation fund outside Malaysia

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

Extinguishment of claims

10. No action to enforce a claim in respect of a liability incurred under section 3 shall be considered by any Court in Malaysia unless the action is commenced within three years from the date the pollution damage occurred or within six years from the date of the incident which caused the pollution damage, and where the incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence. Compulsory insurance against liability for pollution

11. (1) Subject to the provisions of this Act relating to Government ships, this section shall apply to any ship carrying in bulk a cargo of more than two

thousand tons of oil.

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(2) Any such ship shall not enter or leave a port in Malaysia or arrive at or leave a terminal installation area in any area of Malaysia or, if the ship is registered in Malaysia, it shall not enter or leave a port in any other country or a terminal installation in the territorial sea of 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 financial security satisfying the requirements of Article 7 of the Liability Convention (cover for owner's liability). (3) The certificate shall be--

(a) if the ship is registered in Malaysia, a certificate issued by the Director of Marine;

(b) if the ship is registered in a Liability Convention country other than Malaysia, a certificate issued by or under the authority of the government of that country; and

(c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Director of Marine or a certificate recognized for the purpose of this paragraph by regulations made under this Act.

(4) The certificate issued under paragraphs (3) (a) and (c) by the Director of Marine shall be in the national language and shall also include a translation in the English language.

(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 the Director of Marine or any authorized officer.

(6) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves or attempts to arrive at or leave, a terminal installation 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 fifty thousand ringgit or to imprisonment for a term not exceeding four years or to both. (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 ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(8) If a ship attempts to leave a port or a terminal installation in Malaysia in contravention of this section, the ship may be detained.

Issue of certificate by Director of Marine

12. (1) Subject to subsection (2), if the Director of Marine is satisfied, on an application for such a certificate as is mentioned in section 11 in respect of a ship registered in Malaysia or any country which is not a Liability 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 valid contract of insurance or other financial security satisfying the requirements of Article 7 of the Liability Convention, the Director of Marine shall issue such a certificate to the owner.

(2) If the Director of Marine is of the opinion that there is a doubt whether the person providing the insurance or other financial security will be able to meet his obligations, or whether the insurance or other financial security will cover the owner's liability under section 3 in all circumstances, he may refuse to issue the certificate. (3) The Director of Marine shall maintain a record of any certificate issued by him in respect of a ship registered in Malaysia and this shall be available for public inspection.

Rights of third parties against insurers

13. (1) Where it is alleged that the owner of a ship has incurred a liability under section 3 while there was in force a contract of insurance or other financial security to which such a certificate as is mentioned in section 11 relates, proceedings to enforce a claim in respect of the liability may be instituted against the person who provided the insurance or other financial security (referred to in this section as "the insurer").

(2) In any proceedings instituted against the insurer by virtue of this section, the insurer may invoke the defences (other than bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke, and it shall be a defence to prove that the pollution damage resulted from the wilful misconduct of the owner himself.

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(3) 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 of a ship may limit his liability under subsection 6(2) even if the owner, in

accordance with subsection 6(3), is not entitled to limit his liability.

(4) Where the owner of a ship and the insurer each applies to the Court for the limitation of his liability any payment or any deposit of a bank guarantee or security into the Court in pursuance of either application shall be treated as paid or deposited also in pursuance of the other.

Government ships

14. (1) This Act shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be sufficient compliance with subsection 11(2) if there is in force a certificate issued by the appropriate authority 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 Liability Convention will be met up to the limit prescribed by Article 5 thereof.

(3) Every State which is a party to the Liability Convention shall, for the purposes of any proceedings instituted in a Court in Malaysia to enforce a claim in respect of a liability incurred under section 3, be deemed to have submitted to the jurisdiction of that Court, but nothing in this subsection shall authorize the issue of execution against the property of any State.

PART III

THE INTERNATIONAL OIL POLLUTION

COMPENSATION FUND

Interpretation

15. In this Part, unless the context otherwise requires-- "Fund Convention country" means a country in respect of which the Fund Convention is in force;

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"Fund Convention ship" means a ship registered under the law of a Fund Convention country;

"guarantor" means any person providing insurance or other financial security to cover an owner's liability of the kind described in section 11;

"the Fund" means the International Oil Pollution Compensation Fund established by the Fund Convention;

"the Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage signed in London on 27 November 1992. Legal personality of the Fund

16. (1) The Fund shall be recognized as a legal person capable of assuming rights and obligations and of being a party in legal proceedings before a Court in Malaysia.

(2) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative. Contributions by persons who receive oil

17. (1) Contributions shall be payable annually to the Fund in respect of oil received by sea at ports or terminal installations in Malaysia.

(2) Subsection (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in Malaysia after having been carried by sea and discharged in a port or terminal installation in any country which is not a Fund Convention country. (4) A person shall be liable to make contributions in respect of the oil received by him in any year if the oil so received in the year exceeds one hundred and fifty thousand tons. Merchant Shipping (Oil Pollution) 17

(5) The contributions payable by a person for any year shall-- (a) be of such amount as may be determined by the Assembly of the Fund under Article 12 of the Fund Convention and notified to him by the Fund;

(b) be payable in such instalments, becoming due at such times, as may be so notified to him,

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the said Assembly, until it is paid. (6) The Minister may, by regulations, impose on persons who are or may be liable to pay contributions under this section, obligations to give security for payment to the Director of Marine or to the Fund, and regulations under this subsection--

(a) may contain such supplemental or incidental provisions as appear to the Minister expedient; and

(b) may impose penalties for contravention of the regulations punishable by a fine not exceeding ten thousand ringgit. (7) In this section, and section 18 and 19 unless the context otherwise requires--

"oil" means crude oil and fuel oil, and--

(a) "crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes--

(i) crude oils from which distillate fractions have been removed; and

(ii) crude oils to which distillate fractions have been added;

(b) "fuel oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.

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Power to obtain information

18. (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 17 are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Director of Marine may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

(2) A notice under this section may specify the way in which, and the time within which, it is to be complied with. (3) In proceedings by the Fund against any person to recover any amount due under section 17, particulars contained in any list transmitted by the Director of Marine to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(4) If a person discloses any information which has been furnished to or

obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made-- (a) with the consent of the person from whom the information was obtained;

(b) in connection with the execution of this section; or (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings, be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) A person who --

(a) refuses or wilfully neglects to comply with a notice under this section; or

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(b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Liability of the Fund

19. (1) Save as provided under subsection (4), the Fund shall be liable for pollution damage in any area of Malaysia if the person suffering the damage has been unable to obtain full compensation under section 3--

(a) because liability under that section is wholly exonerated by section 4;

(b) because the owner of a ship liable for the pollution damage cannot meet his obligations in full or any insurance or other financial security provided under section 11 is insufficient to satisfy the claims; or

(c) because the pollution damage exceeds the liability under section 3 as limited by section 6.

(2) For the purposes of this section the owner of a ship is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps have been taken to pursue the legal remedies available.

(3) Expenses reasonably incurred or sacrifices reasonably made by the owner of

a ship voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purpose of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 3.

(4) The Fund shall not incur an obligation under this section if--

(a) it proved that the pollution damage--

(i) resulted from an act of war, hostilities, civil war or insurrection; or

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(ii) was caused by oil which has been discharged or has escaped from a warship or other ship owned

or operated by a State and used, at the time of the incident, only on government non-commercial

service; or

(b) the claimant cannot prove that the pollution damage resulted from an incident involving one or more ships.

(5) If it is proved that the pollution damage resulted wholly or partly--

(a) from an act or omission done with intent to cause damage by the person who suffered the damage; or

(b) from the negligence of that person,

the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person:

Provided that this subsection shall not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimize pollution damage.

(6) The Fund's liability under this section shall be subject to the limits as set out in Part II of the First Schedule. (7) Notwithstanding any other written law evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document

purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(8) For the purpose of giving effect to the provisions of paragraphs 1, 2, 3, 6, 7 and 8 of Article 4 of the Fund Convention and Part II of the First Schedule, as the may case may be, a Court giving judgement against the Fund in proceedings under this section shall notify the Fund, and--

(a) no steps shall be taken to enforce the judgement unless and until the Court gives leave to enforce it;

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(b) that leave shall not be given unless and until the Fund notifies the Court either that the amount of the claim is not to be reduced under the said provision of Article 4 or Part II of the First Schedule;

(c) in the latter case the judgement shall be enforceable only for the reduced amount.

20. (Deleted by Act A1248). Extinguishment of claims

21. (1) No action to enforce a claim against the Fund under this Part shall be considered by a Court in Malaysia unless-- (a) the action is commenced; or

(b) a third party notice of an action to enforce a claim against the owner of a ship or his guarantor in respect of the pollution damage is given to the Fund,

within three years from the date the pollution damage occurred and in this subsection "third party notice" means a notice of the kind described in subsections 23(3) and (4).

(2) No action to enforce a claim against the Fund under this Part shall be considered by a Court in Malaysia unless the action is commenced within six years from the date of the incident which caused the pollution damage.

(3) (Deleted by Act A1248).

Subrogation and rights of recourse

22. (1) In respect of any sum paid under paragraph 19(1) (b) the Fund shall acquire by subrogation the rights of the recipient against the owner of a ship or his guarantor.

(2) (Deleted by Act A1248).

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(3) In respect of any sum paid under paragraph 19(1) (a) or (c), the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner of the ship or his guarantor or any other person has in respect of his liability for the damage in question.

(4) In respect of any sum paid by a public authority in Malaysia or other State as compensation for pollution damage, that public authority or State shall acquire by subrogation any rights which the recipient has against the Fund under this Part. PART IV

JURISDICTION AND EFFECT OF JUDGEMENTS

Jurisdiction and effect of judgements

23. (1) The jurisdiction of the High Court in relation to matters of admiralty under paragraph 24(b) of the Courts of Judicature Act 1964 [Act 91] shall extend to any claim in respect of a liability incurred under this Act, including a liability falling on the Fund under Part III.

(2) Where any oil is discharged or escapes from a ship but does not result in any pollution damage in any area of Malaysia and no preventive measures are reasonably taken to prevent or minimize such damage in that area, no Court in Malaysia shall consider an action (whether in rem or in personam) to enforce a claim arising from--

(a) any pollution damage caused in any area of another Liability Convention country resulting from the discharge or escape; (b) any expenses incurred in taking preventive measures to prevent or minimize such damage in any area of another Liability Convention country; or

(c) any damage caused by preventive measures so taken. Merchant Shipping (Oil Pollution) 23

(3) Where the Fund has been given notice of proceedings instituted against the owner of a ship or his guarantor in respect of liability under section 3, any judgement given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and findings in the judgement may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

(4) Where a person incurs a liability under the law of a Fund Convention country corresponding to Part II for damage which is partly in any area of Malaysia subsection (3) shall, for the purpose of proceedings under Part III, apply with any necessary modifications to a judgement in proceedings under that law of the said country. Enforcement of judgements

24. (1) Subject to subsection (3), Part II of the Reciprocal Enforcement of Judgements Act 1958 [Act 99] shall apply to any judgement given by a Court in-

(a) a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 3; or

(b) a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 19,

and in its application to such a judgement the said Part II shall have effect with the omission of subsections 5(2) and (3) of that Act.

(2) In respect of paragraph (1) (b), no steps shall be taken to enforce such a judgement unless and until the Court in which it is registered under Part II of the Reciprocal Enforcement of Judgements Act 1958 gives leave to enforce it and-- (a) that leave shall not be given unless and until the Fund notifies the Court either that the amount of the claim is not to be reduced under paragraph 1 of Part II of the First Schedule or that it is to be reduced to a specified amount; and

(b) in the latter case the judgement shall be enforceable only for the reduced amount.

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(3) For the purposes of this Act, subsection 3(2) of the Reciprocal Enforcement of Judgements Act 1958 shall apply with the following modifications:

(a) the reference to the Yang di-Pertuan Agong shall be construed as a reference to the Minister;

(b) the reference to the First Schedule shall be construed as a reference to the Second Schedule to this Act; and (c) the High Court of the country or territory shall be deemed to be the superior court of that country or territory. PART V

ENFORCEMENT

Director of Marine to carry out powers and duties under this Act or regulations made thereunder

25. (1) Subject to such terms and conditions as may be imposed or such directions as may be given by the Minister, it shall be the responsibility of the Director of Marine to carry out all or any of the powers and duties under this Act or any regulations made thereunder.

(2) The Director of Marine may authorize in writing any officer as he deems fit to carry out any of the powers and duties conferred on him under this Act or any regulations made thereunder. (3) An authorized officer mentioned under subsection (2) shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

Power of arrest, detention and prosecution

26. (1) The Director of Marine or any authorized officer may, where he has reason to believe that an offence has been committed under this Act, without a warrant--

(a) arrest any person who he has reason to believe has committed an offence under this Act; and

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(b) detain any ship which he has reason to believe has been used in the commission of such an offence:

Provided that when any person has been arrested as aforesaid he shall thereafter be dealt with as provided by the Criminal Procedure Code [Act 593].

(2) Where a ship has been detained under subsection (1) the Director of Marine or any authorized officer may release such ship to the owner, master or agent thereof subject to sufficient security being furnished to the satisfaction of the Director of Marine or any authorized officer that the ship shall be surrendered to him on demand.

(3) The Director of Marine or any authorized officer shall have the authority to appear in court and conduct any prosecution in respect of any offence under this Act or any regulations made thereunder.

Power to board and search ships

27. (1) The Director of Marine or any authorized officer may, where he has reason to believe that an offence has been committed under this Act or any regulations made thereunder, without a warrant--

(a) board and search any ship; or

(b) enter and search any premises,

and may carry out such inspection and examination as he may consider necessary and may seize any books, papers, documents or other things found in those places which may furnish evidence of the commission of an offence under this Act or any regulations made thereunder and may make copies of, or take extracts from, any such books, papers or documents.

(2) Any person who assaults, hinders, impedes or obstructs the Director of Marine or any authorized officer in the performance of his duties under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

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PART VI

MISCELLANEOUS

Offences by body corporate

28. Where an offence under this Act or any regulations made thereunder has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such capacity shall, as well as such body corporate, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Power to make regulations

29. (1) The Minister may from time to time make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made--

(a) to prescribe the amount of fees to be paid on an application for the issue of a certificate under subsection 12(1); (b) to prescribe the form of the certificate to be issued under subsection 12(1) and the validity period of such certificate; (c) to provide for the cancellation and delivery up of a certificate issued under subsection 12(1) in such circumstances as may be prescribed by the regulations; (d) to provide that certificates in respect of ships registered in any, or any specified, country which is not a Liability Convention country shall, in such circumstances as may be specified in the regulations, be recognized for the purposes of paragraph 11(3) (c) if issued by or under the authority of the government of the country designated in Merchant Shipping (Oil Pollution) 27

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--

(i) the country in which the ship is registered; and (ii) any country specified in the regulations for the purposes of this paragraph;

(e) to provide for the conversion of the special drawing rights referred to in this Act into the amount of money expressed in Ringgit Malaysia;

(f) to provide for any other matter which is required by any provisions of this Act to be provided for by regulations. (3) If a person required by regulations under paragraph (2) (c) 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 ringgit.

Power to amend Schedules

30. The Minister may by order published in the Gazette amend, add to or vary the Schedules to this Act.

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FIRST SCHEDULE

PART I

[Subsection 6(2)]

LIMITATION OF LIABILITY OF OWNER OF SHIP

The owner of a ship shall be entitled to limit his liability in respect of any

one incident to an aggregate amount calculated as follows: (a) for a ship not exceeding five thousand units of tonnage, 4,510,000 special drawing rights;

(b) for a ship with a tonnage in excess of five thousand units of tonnage, 4,510,000 special drawing rights plus an additional 631 special drawing rights for each additional unit of tonnage:

Provided however, that this aggregate amount shall not in any event exceed 89,770,00 special drawing rights.

PART II

[Subsection 19(6)]

OVERALL LIMIT ON LIABILITY OF FUND

1. (1) Except as otherwise provided in subparagraphs (2) and (3), the aggregate amount of compensation payable by the Fund shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under Part II of this Act for pollution damage within the scope of this Act shall not exceed 203,000,000 special drawing rights. (2) Except as otherwise provided in subparagraph (3), the aggregate amount of compensation payable by the Fund for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 203,000,000 special drawing rights.

(3) The maximum amount of compensation referred to in subparagraphs (1) and (2) shall be 300,740,000 special drawing rights with respect to any incident occurring during any period when there are three Fund Convention countries in respect of which the combined relevant quantity of oil received by persons in the territories of such countries during the preceding calendar year is not less than 600 million tons.

(4) Interest accrued on the amount paid into Court under section 7 of this Act, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Act.

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2. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 1, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Act shall be the same for all claimants.

3. A certificate given by the Director of the Fund stating that subparagraph 1(3) is applicable to any claim under section 19 shall be conclusive evidence for the purposes of Part III of this Act.

SECOND SCHEDULE

[Subsection 24 (3)]

STATE PARTIES TO THE CIVIL LIABILITY CONVENTION

Algeria Latvia

Angola Liberia

Antigua and Barbuda Lithuania

Argentina Madagascar

Australia Malta

Bahamas Marshall Islands

Bahrain Mauritius

Barbados Mexico

Belgium Monaco

Belize Morocco

Brunei Darussalam Mozambique

Bulgaria Namibia

Cambodia Netherlands

Cameroon New Zealand

Canada Nigeria

Cape Verde Norway

Chile Oman

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China Panama

Colombia Papua New Guinea

Comoros Philippines

Congo Poland

Croatia Portugal

Cyprus Qatar

Denmark Republic of Korea

Djibouti Romania

Dominica Russian Federation

Dominican Republic Saint Vincent and Grenadines

Egypt Samoa

El Salvador Seychelles

Fiji Sierra Leone

Finland Singapore

France Slovenia

Gabon Spain

Georgia Sri Lanka

Germany Sweden

Ghana Switzerland

Greece Tonga

Grenada Trinidad and Tobago

Guinea Tunisia

Iceland Turkey

India United Arab Emirates

Indonesia United Kingdom

Ireland United Republic of Tanzania

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Italy Uruguay

Jamaica Vanuatu

Japan Venezuela

Kenya Vietnam

STATE PARTIES TO THE FUND CONVENTION

Algeria Liberia

Angola Lithuania

Antigua and Barbuda Madagascar

Argentina Malta

Australia Marshall Islands

Bahamas Mauritius

Bahrain Mexico

Barbados Monaco

Belgium Morocco

Belize Mozambique

Brunei Darussalam Namibia

Cambodia Netherlands

Cameroon New Zealand

Canada Nigeria

Cape Verde Norway

China (Hong Kong Special Oman

Administrative Region)

Colombia Panama

Comoros Papua New Guinea

Congo Philippines

Croatia Poland

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Cyprus Portugal

Denmark Qatar

Djibouti Republic of Korea

Dominica Russian Federation

Dominican Republic Saint Vincent and Grenadines

Fiji Samoa

Finland Seychelles

France Sierra Leone

Gabon Singapore

Georgia Slovenia

Germany Spain

Ghana Sri Lanka

Greece Sweden

Grenada Tonga

Guinea Trinidad and Tobago

Iceland Tunisia

India Turkey

Ireland United Arab Emirates

Italy United Kingdom

Jamaica United Republic of Tanzania

Japan Uruguay

Kenya Vanuatu

Latvia Venezuela

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LAWS OF MALAYSIA

Act 515

MERCHANT SHIPPING (OIL POLLUTION)

ACT 1994

LIST OF AMENDMENTS

Amending law Short title In force from

Act A1248 Merchant Shipping 15-09-2005

(Oil Pollution) (Amendment)

Act 2005

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DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA

LAWS OF MALAYSIA

Act 515

MERCHANT SHIPPING (OIL POLLUTION)

ACT 1994

LIST OF SECTIONS AMENDED

Section Amending authority In force from

2 Act A1248 15-09-2005

3 Act A1248 15-09-2005

5 Act A1248 15-09-2005

6 Act A1248 15-09-2005

11 Act A1248 15-09-2005

13 Act A1248 15-09-2005

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First Schedule Act A1248 15-09-2005

Second Schedule Act A1248 15-09-2005



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