

**THE MERCHANT SHIPPING (LIABILITY AND COMPENSATION  
FOR OIL POLLUTION DAMAGE) BILL**

(No. II of 2024)

**Explanatory Memorandum**

The main object of this Bill is to give the force of law to the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992, to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, which are maritime treaties dealing with pollution damage caused only by oil tankers which carry oil in bulk as cargo, and to which Mauritius is a party.

2. Accordingly, the Bill makes provisions to ensure that adequate compensation is made available to persons who suffer from pollution damage caused in the territorial sea of Mauritius and the exclusive economic zone of Mauritius (EEZ), pollution damage caused as a result of the discharge or escape of oil, wherever such discharge or escape may occur, where the oil is carried in bulk as cargo on board an oil tanker or where the oil is used or intended to be used for the operation or propulsion of an oil tanker.

3. As a consequence of ensuring that adequate compensation is made available to persons who suffer from pollution damage, the Bill further provides, inter alia, that –

- (a) no oil tanker carrying more than 2,000 tons of oil in bulk as cargo shall enter or leave a port in Mauritius unless there is, in respect of that oil tanker, a certificate of insurance, or such other financial security, satisfying the requirements of Article VII of the CLC against liability for pollution damage;

- (b) a person who, in a year, receives more than 150,000 tons of contributing oil, or any person who receives the oil so imported, shall make contributions to the International Oil Pollution Compensation Fund and to the International Oil Pollution Compensation Supplementary Fund.

**S. MAUDHOO**

*Minister of Blue Economy, Marine Resources,  
Fisheries and Shipping*

03 May 2024

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## A BILL

**To give the force of law to the International Convention on Civil Liability for Oil Pollution Damage, 1992, to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 and to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and to provide for matters related thereto**

ENACTED by the Parliament of Mauritius, as follows –

### PART I – PRELIMINARY

#### 1. Short title

This Act may be cited as the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) Act 2024.

#### 2. Interpretation

“associated person” means any subsidiary or commonly controlled entity;

“bunker oil” means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of an oil tanker, and includes any residues of such oil;

“certificate of insurance” means a certificate of insurance referred to in section 5;

“CLC” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

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

“company” means a body incorporated or registered under the Companies Act or under the laws of any other country;

“contributing oil” means crude oil and fuel oil;

“Court” means a Court of competent jurisdiction in Mauritius;

“crude oil” –

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

(b) includes –

(i) crude oil from which distillate fractions have been removed; or

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

“Director” means the Director of Shipping referred to in section 4 of the Merchant Shipping Act;

“discharge or escape of oil”, in relation to an oil tanker, means the discharge or escape, wherever such discharge or escape may occur, of –

(a) oil which is carried in bulk as cargo on board the oil tanker;

(b) bunker oil from the oil tanker;

“established claim” means a claim which has been recognised by the IOPC Fund or has been accepted as admissible by decision of a competent court binding upon the IOPC Fund not subject to ordinary forms of review and which would have been fully compensated if the limit specified in Article 4, paragraph (4) of the Fund Convention had not been applied to that incident;

“exclusive economic zone of Mauritius” means the EEZ as defined in the Maritime Zones Act;

“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 D396-69)”, or heavier;

“Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

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

“group of companies” means a holding company and its subsidiaries;

“guarantor” means any person providing insurance or other financial security to cover liability for pollution damage of the owner;

“incident” means any occurrence or a series of occurrences having the same origin, resulting in the discharge or escape of oil from an oil tanker which causes pollution damage or a relevant threat of contamination;

“internal waters” has the same meaning as in the Maritime Zones Act;

“IOPC Fund” means the International Oil Pollution Compensation Fund established by the Fund Convention;

“liability for pollution damage” means liability incurred by the owner under section 7;

“Mauritius ship” has the same meaning as in the Merchant Shipping Act;

“Minister” means the Minister to whom responsibility for the subject of shipping is assigned;

“oil” means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board an oil tanker as cargo or in the bunkers of such oil tanker;

“oil tanker” –

- (a) means any seagoing vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that such seagoing vessel or seaborne craft capable of carrying oil and other cargoes shall be regarded as an oil tanker 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; and
- (b) includes an Oil Bulk Ore Carrier (OBO);

“owner”, in relation to an oil tanker, means –

- (a) any person who is registered as the owner of the oil tanker or, in the absence of registration, any person who owns the oil tanker;
- (b) where the oil tanker is owned by a State and is operated by a person registered as the oil tanker’s operator, the person registered as its operator;

“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;

“pollution damage” means –

- (a) loss or damage caused outside an oil tanker by contamination resulting from the discharge or escape of oil from the oil tanker, 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 of 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;

“preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimise pollution damage;

“Protocol” means the Protocol of 2003 to the Fund Convention;

“relevant threat of contamination” includes a grave and an imminent threat of pollution damage which may be caused outside an oil tanker by contamination resulting from the discharge or escape of oil from the oil tanker;

“Supplementary Fund” means the International Oil Pollution Compensation Supplementary Fund established under the Protocol;

“Supplementary Fund Protocol State” means a State which is a party to the Protocol;

“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” has the same meaning as in the Maritime Zones Act;

“territory of Mauritius” means –

- (a) the internal waters of Mauritius;
- (b) the territorial sea of Mauritius; and
- (c) the exclusive economic zone of Mauritius.

### **3. Conventions to have force of law**

Subject to this Act –

- (a) the CLC;
- (b) the Fund Convention; and

(c) the Protocol of 2003 to the Fund Convention,

shall have the force of law in Mauritius.

#### **4. Application of Act**

(1) Subject to subsection (2), this Act shall apply where pollution damage is caused in the territory of Mauritius as a result of the discharge or escape of oil, wherever such discharge or escape may occur, where the oil is –

- (a) carried in bulk as cargo on board an oil tanker; or
- (b) used or intended to be used for the operation or propulsion of an oil tanker.

(2) This Act shall not apply to any warships or other ships owned or operated by a State and used only on government non-commercial service.

(3) Where more than one discharge or escape of oil results from the same occurrence or from a series of occurrences having the same origin, they shall, for the purposes of this Act, be treated as one occurrence.

(4) In relation to any pollution damage or cost resulting from the discharge or escape of oil from an oil tanker, or from a grave and imminent threat of contamination, references in this Act to the owner shall be references to the owner at the time of the occurrence or the first of the occurrences resulting from the discharge or escape or, as the case may be, from the relevant threat of contamination.

(5) This Act shall be in addition to, and not in derogation from, the Merchant Shipping Act.

### **PART II – INSURANCE OR OTHER SECURITY AGAINST POLLUTION DAMAGE**

#### **5. Insurance or other security**

(1) No oil tanker carrying more than 2000 tons of oil in bulk as cargo shall enter or leave a port in Mauritius, or shall arrive at or leave an off-shore terminal in the territorial sea of Mauritius unless there is, in respect of the oil tanker –

- (a) a certificate of insurance; or



- (b) such other financial security,

satisfying the requirements of Article VII of the CLC, against liability of the owner for pollution damage.

- (2) A certificate of insurance shall, in case the oil tanker –
  - (a) is a Mauritius ship, be a certificate issued by the Director;
  - (b) is registered in a CLC State other than Mauritius, be a certificate issued by, or under the authority of, the government of that CLC State; or
  - (c) is registered in a country which is not a CLC State, be a certificate issued by the Director or by, or under the authority of, the government of any CLC State other than Mauritius.

(3) In respect of an oil tanker specified in subsection (1), a certificate of insurance shall be carried on board and shall, on demand, be produced by the master of the oil tanker to the Director.

## **6. Issue of certificate by Director**

(1) Subject to subsection (2), where the Director is satisfied, on an application for a certificate of insurance in respect of an oil tanker which is a Mauritius ship or an oil tanker registered in a non-CLC State, that there is a contract of insurance or other financial security satisfying the requirements of Article VII of the CLC in respect of the oil tanker, the Director shall issue the certificate to the owner.

(2) Where the Director 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 thereunder, or whether the insurance or other financial security will cover the owner's liability for pollution damage in all circumstances, he shall not issue the certificate of insurance.

## **PART III – POLLUTION DAMAGE**

### **Sub-Part A – Liability for Pollution Damage**

#### **7. Liability for pollution damage by owner**

(1) Where, as a result of any incident, oil is discharged or escapes from an oil tanker, the owner shall, subject to this section, be liable –

- (a) in case pollution damage is caused in the territory of Mauritius, for –
  - (i) the damage caused;
  - (ii) the cost of any measures taken to minimise the damage caused, or to minimise or prevent any further damage being caused; and
  - (iii) any further damage caused pursuant to the measures taken under subparagraph (ii);
- (b) in case there is a relevant threat of contamination in the territory of Mauritius, for –
  - (i) the cost of any measures taken to minimise or prevent the damage being caused; and
  - (ii) any further damage caused pursuant to the measures taken under subparagraph (i).

(2) Where liability is incurred under subsection (1) by more than one owner and the pollution damage or cost cannot reasonably be separated from each of the owners, their liability shall be joint and several.

(3) No liability for pollution damage shall attach to the owner where he proves that the pollution damage –

- (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 done with intent to cause damage by a third party; or

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

(4) Where the owner proves that the pollution damage resulted, in whole or in part, 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.

## **8. Liability for pollution damage by another person**

(1) Subject to subsection (2), no claim for compensation for pollution damage under this Act or otherwise shall be made against –

- (a) a servant or an agent of the owner, or any member of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for an oil tanker;
- (c) any charterer of an oil tanker, however described and including a bareboat charterer, or any manager or operator of the oil tanker;
- (d) any person who performs salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) a person taking preventive measures; or
- (f) all servants or agents of a person referred to in paragraph (c), (d) or (e),

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

(2) Nothing in this Act shall prejudice any right of recourse of the owner against third parties.

## **Sub-Part B – Limitation of Liability for Pollution Damage**

### **9. Limitation of liability**

(1) Where liability for pollution damage is incurred by the owner, he may limit his liability in respect of any one incident to an aggregate amount calculated as follows –

- (a) for an oil tanker with a tonnage not exceeding 5,000 tons, 4,510,000 special drawing rights; and
- (b) for an oil tanker with a tonnage exceeding 5,000 tons, 4,510,000 special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of the 5,000 tons, up to a maximum of 89,770,000 special drawing rights.

(2) Subsection (1) shall not apply where it is proved that the pollution damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

### **10. Owner's fund**

(1) For the purpose of availing himself of the benefit of limitation provided for in section 9, the owner shall constitute a fund for the total sum representing the limit of his liability with the Court.

(2) The fund may be constituted either by depositing the sum, or by producing a bank guarantee or any other guarantee as the Court considers adequate.

(3) The fund shall be distributed among the claimants in proportion to the amounts of their established claims.

(4) Where, before the fund is distributed, the owner or any of his servants or agents or any person providing him insurance or other financial security has, as a result of the incident, paid compensation for pollution damage, that person shall, up to the amount he has paid, acquire, by subrogation, the rights which the person so compensated would have enjoyed under this Act.

(5) The right of subrogation under subsection (4) shall extend to any person, other than a person referred to in that subsection, who may have paid any amount of compensation for pollution damage.

(6) Where the owner or any other person establishes that he may be compelled to pay at a later date, in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under subsection (4) or (5) had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

(7) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.

(8) (a) The guarantor shall be entitled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the owner.

(b) A fund referred to in paragraph (a) may be constituted even where, under section 9(2), the owner is not entitled to limit his liability, and its constitution shall, in that case, not prejudice the rights of any claimant against the owner.

(9) A payment into the fund shall be made in rupees and for the purpose of converting the amounts from special drawing rights into rupees, section 202 of the Merchant Shipping Act shall apply.

## **11. Limitation of rights against owner**

(1) Where the owner has, after an incident, constituted a fund in accordance with section 10, and is entitled to limit his liability –

- (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;
- (b) the Court shall order the release of any oil tanker or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that

incident, and shall, in addition, similarly release any other security furnished to prevent such arrest.

(2) Subsection (1) shall apply where the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

### **Sub-Part C – Concurrent Liabilities of Owners**

#### **12. Concurrent liabilities**

When an incident involving 2 or more oil tankers occurs and pollution damage is caused, the owners of all the oil tankers concerned, unless exonerated under section 7(3), shall be jointly and severally liable for all such damage which is not reasonably separable.

### **Sub-Part D – Claims Against Guarantors**

#### **13. Claims against guarantors**

(1) Any claim for compensation for pollution damage may be brought directly against the guarantor for the owner's liability for pollution damage.

(2) Where a claim is brought pursuant to subsection (1), the guarantor may, even where the owner is not entitled to limit his liability in accordance with section 9(2), avail himself of the limits of liability provided for under section 9(1).

(3) The guarantor may further avail himself of the defences, other than the bankruptcy or winding up of the owner, which the owner himself would have been entitled to invoke.

(4) The guarantor may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the guarantor shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him.

(5) For the purpose of this section, the guarantor shall have the right to require the owner to be joined in the proceedings.

## **Sub-Part E – Limitation of Action**

### **14. Limitation of action**

- (1) Where –
- (a) oil is discharged or escapes from an oil tanker but does not result in any pollution damage in the territory of Mauritius and no preventive measures are taken; or
  - (b) a relevant threat of contamination arises and no preventive measures are taken in the territory of Mauritius,

no Court in Mauritius shall entertain any action, *in rem* or *in personam*, to enforce a claim arising from any relevant damage or cost against the owner, or against a person to whom section 8(1) applies, unless any such damage or cost resulted from anything done or omitted to be done by the owner or person under section 8(1), as the case may be.

- (2) In subsection (1) –

“relevant damage or cost” means –

- (a) in relation to subsection (1)(a), pollution damage caused in the territory of another CLC State or any cost incurred in taking preventive measures in the territory of another CLC State;
- (b) in relation to subsection (1)(b), any cost for preventive measures taken against a relevant threat of contamination in the territory of another CLC State.

## **PART IV – COMPENSATION FOR POLLUTION DAMAGE**

### **Sub-Part A – Contributions to IOPC Fund**

### **15. Contributions to IOPC Fund**

- (1) Contributions shall be made to the IOPC Fund in respect of contributing oil which is –
- (a) carried by sea to any port or terminal installation in Mauritius;

- (b) carried by sea from or to Mauritius, or from or to any other island of Mauritius; and
  - (c) first received in any installation in Mauritius after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention State.
- (2) Subsection (1)(a) and (b) shall apply –
  - (a) whether or not the contributing oil is being imported into Mauritius;
  - (b) although contributions have been made in respect of carriage of the same oil on a previous voyage.

#### **16. Persons liable to make contributions to IOPC Fund**

(1) A person shall, subject to subsection (2), be liable to make contributions to the IOPC Fund where –

- (a) in case contributing oil is imported into Mauritius, by the importer; and
- (b) in any other case, by the person who receives the contributing oil.

(2) Subject to subsection (3), every person who imports, in a year, more than 150,000 tons of contributing oil, or any person who receives the contributing oil so imported shall be liable to make contributions to the IOPC Fund.

(3) For the purposes of subsection (2), where the quantity of contributing oil received in Mauritius by any person in a calendar year when aggregated with the quantity of contributing oil received in Mauritius in that year by any associated person or persons exceeds 150,000 tons, that person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.

(4) For the purpose of this section –



- (a) all the companies in a group of companies shall be treated as a single person; and
- (b) any 2 or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

**17. Amount of contributions to IOPC Fund**

The contributions to be made to the IOPC Fund by a person for any year shall –

- (a) be of such amount as may be determined by the Director of the IOPC Fund under Article 12 of the Fund Convention; and
- (b) be payable in such instalments, becoming due at such times, as may be so notified to him and, where any amount due from him remains unpaid after the date on which it becomes due, it shall bear, from that date, interest, at a rate determined, from time to time, by the Assembly of the IOPC Fund, until it is paid.

**18. Power to obtain information**

(1) For the purpose of transmitting to the IOPC Fund the name and address of a person who, pursuant to section 16, is liable to make contributions to the IOPC Fund for any year, and the quantity of oil in respect of which he is so liable, the Director shall, 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 subsection (1) may –

- (a) require a company to give such information as may be required to ascertain whether its liability is affected by a group of companies;
- (b) specify the way by which, and the time within which, the notice shall be complied with.

(3) In any proceedings by the IOPC Fund against a person to recover any amount due under section 17 –

- (a) particulars contained in any list transmitted by the Director to the IOPC 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
- (b) 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.

### **Sub-Part B – Compensation by IOPC Fund**

#### **19. Compensation payable by IOPC Fund**

(1) The IOPC Fund shall pay compensation in accordance with the Fund Convention where the person suffering the damage has been unable to obtain full compensation because –

- (a) the owner is exonerated from liability under section 7(4);
- (b) the owner or guarantor liable for the damage is, subject to subsection (2), not capable of meeting his obligations in full;
- (c) the damage exceeds the liability as limited under section 9;  
or
- (d) the financial security under CLC does not cover, or is insufficient to satisfy, the claims for compensation for the damage.

(2) Expenses reasonably incurred for preventive measures, and sacrifices reasonably made, by the owner shall be treated as pollution damage for the purpose of this section, and he shall, accordingly, be in the same position with respect to claims against the IOPC Fund under this section as if he had a claim in respect of liability for pollution damage.

(3) The IOPC Fund shall incur no obligation under this section where –

- (a) pollution damage resulted from an act of war, hostilities, civil war or insurrection;
- (b) pollution damage was caused by oil which has been discharged or has escaped from a warship or other oil tanker

owned or operated by a State and used, at the time of the occurrence, only on government non-commercial service; or

(c) the claimant cannot prove that the damage resulted from an incident involving one or more oil tankers.

(4) Where pollution damage resulted wholly or partly –

(a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage; or

(b) from the negligence of that person,

the IOPC Fund may, subject to subsection (6), be exonerated wholly or partly from its obligations to pay compensation to that person.

(5) Where liability for pollution damage is, pursuant to section 9, limited, the IOPC Fund shall, subject to subsection (6), be exonerated to the same limit.

(6) Subsections (4) and (5) shall not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

## **20. Limitation of compensation payable by IOPC Fund**

(1) The IOPC Fund shall pay compensation under section 19 subject to the limits imposed by section 21 which sets out an overall limit on its liabilities.

(2) A certificate issued by the Director of the IOPC Fund stating that paragraph 4(c) of Article 4 of the Fund Convention is applicable to any claim under section 19 shall be conclusive evidence, for the purposes of this Sub-part, that it is so applicable.

(3) For the purpose of giving effect to section 21, the Court shall, in delivering judgment against the IOPC Fund in proceedings under section 19, notify the IOPC Fund that –

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

(b) leave shall not be given unless and until the IOPC Fund notifies the Court either that the amount of the claim is not

to be reduced under those paragraphs, or that it is to be reduced to a specified amount; and

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

(4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of a judgment referred to in subsection (3) shall be steps to obtain payment in rupees, and –

- (a) for the purpose of converting such an amount from special drawing rights into rupees, one special drawing right shall be treated as equal to such a sum in rupees as the International Monetary Fund has fixed as being the equivalent of one special drawing right for –

- (i) the relevant day, namely the day on which the Assembly of the IOPC Fund decides the date for the first payment of compensation in respect of the incident; or

- (ii) if no sum has been fixed for the relevant day, the last day before that day for which a sum has been so fixed; and

- (b) a certificate given by or on behalf of the Minister stating –

- (i) that a particular sum in rupees has been so fixed for the relevant day; or

- (ii) that no sum has been so fixed for the relevant day and that a particular sum in rupees has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

shall be conclusive evidence of those matters for the purposes of this Sub-part.

(5) Any document purporting to be a certificate under subsection (2) or (4)(b) shall, in any legal proceedings, be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

## **21. Limitation of liability pursuant to Fund Convention**

(1) Except as otherwise provided for in subsections (2) and (3), the aggregate amount of compensation payable by the IOPC Fund under this section 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 section 7 within the scope of application of the CLC and Fund Convention does not exceed 203,000,000 special drawing rights.

(2) Except as otherwise provided for in subsection (3), the aggregate amount of compensation payable by the IOPC Fund under this section for pollution damage resulting from an exceptional, inevitable and irresistible natural phenomenon shall not exceed 203,000,000 special drawing rights, including the compensation available under the CLC.

(3) The maximum amount of compensation referred to in subsections (1) and (2) shall be 300,740,000 special drawing rights with respect to any incident occurring during any period when there are 3 Fund Convention States in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such States, during the preceding calendar year, equalled or exceeded 600 million tons.

(4) Interest accrued on the amount paid into the Court pursuant to section 10, if any, shall not be taken into account for the computation of the maximum compensation payable by the IOPC Fund under this section.

(5) Where the amount of established claims against the IOPC Fund exceeds the aggregate amount of compensation payable under this section, 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 Sub-part shall be the same for all claimants.

## **22. Proceedings by or against IOPC Fund**

Any proceedings by or against the IOPC Fund may either be instituted by or against the IOPC Fund in its own name or be instituted by or against the Director of the Fund as the IOPC Fund's representative.

## **Sub-Part C – Compensation by Supplementary Fund**

### **23. Contributions to Supplementary Fund**

(1) Contributions shall be made to the Supplementary Fund in respect of contributing oil, the total quantity of which exceeds 150,000 tons in a year, which is –

- (a) carried by sea to any port or terminal installation in Mauritius;
- (b) carried by sea from or to Mauritius, or from or to any other island of Mauritius; and
- (c) first received in any installation in Mauritius after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention State.

(2) Subsection (1)(a) and (b) shall apply –

- (a) whether or not the contributing oil is being imported into Mauritius;
- (b) although contributions have been made in respect of carriage of the same oil on a previous voyage.

(3) Notwithstanding subsection (1), for the purposes of the Protocol, there shall be deemed to be a minimum receipt of one million tons of contributing oil in Mauritius.

### **24. Persons liable to make contributions to Supplementary Fund**

Every person who imports, in a year, more than 150,000 tons of contributing oil, or any person who receives the oil so imported shall be liable to make contributions to the Supplementary Fund.

### **25. Compensation paid by Supplementary Fund**

(1) The Supplementary Fund shall pay compensation to any person suffering pollution damage where such person has not obtained full compensation for an established claim under section 7 because the total

damage exceeds, or there is a risk that it will exceed, the applicable limit under section 20 in respect of any one incident.

(2) The aggregate amount of compensation payable by the Supplementary Fund shall, in respect of any one incident, be limited such that the total sum of that amount together with the amount of compensation actually paid under section 9 and section 20 shall not exceed 750 million special drawing rights.

(3) For the purpose of converting the amount under subsection (2) from special drawing rights into rupees, section 202 of the Merchant Shipping Act shall apply.

(4) Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under subsection (2), 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 Part shall be the same for all claimants.

## **PART V – MISCELLANEOUS**

### **26. Reporting obligations**

(1) (a) The Director shall ensure that any person who receives oil within the territory of Mauritius in such quantities that he is liable to contribute to the IOPC Fund appears on a list to be established and kept by him in accordance with this subsection.

(b) For the purpose of paragraph (a), the Director shall communicate to the Director of the IOPC Fund the name and address of any person who in respect of that State is liable to contribute to the IOPC Fund, and data on the relevant quantities of oil received by any such person during the preceding calendar year.

(c) For the purposes of ascertaining who, at any given time, are the persons liable to contribute to the IOPC Fund and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be prima facie evidence of the facts stated therein.

(2) The Director shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with subsection

(1) and the Director shall keep a list of those persons who are liable to contribute to the Supplementary Fund.

## **27. Time limit for proceedings**

No action to enforce a claim in respect of liability for pollution damage shall be entertained by a Court unless that action is commenced not later than –

- (a) 3 years after the claim arose; or
- (b) 6 years after the occurrence, or the first of the occurrences resulting in the –
  - (i) discharge or escape of oil; or
  - (ii) grave and imminent threat of contamination, by reason of which the liability was incurred.

## **28. Extinguishment of claims**

(1) Subject to subsection (2), rights of compensation under this Act shall be extinguished unless an action is brought within 3 years from the date the pollution damage occurred.

(2) (a) No action shall be brought after 6 years from the date of the incident which caused the pollution damage.

(b) Where the incident consists of a series of occurrences, the 6-year period shall run from the date of the first occurrence.

## **29. Subrogation**

(1) In respect of any sum paid to a person by the IOPC Fund as compensation for pollution damage, the IOPC Fund shall, by subrogation, acquire any rights in respect of the damage which that person has, or, but for the payment would have, against any other person.

(2) In respect of any sum paid to a person by the Supplementary Fund as compensation for pollution damage, the Supplementary Fund shall, by subrogation, acquire any rights that that person may enjoy under subsection (1) against the owner or his guarantor.



(3) In respect of any sum paid by a public authority in Mauritius to a person as compensation for pollution damage, that authority shall, by subrogation, acquire any rights which that person has against the IOPC Fund or against the Supplementary Fund.

### **30. Evidence of instrument or document in legal proceedings**

(1) Evidence of any instrument issued by any organ of the IOPC Fund or Supplementary Fund, or evidence of any document in the custody of the IOPC Fund or Supplementary 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 the Director of the IOPC Fund or Supplementary Fund.

(2) Any certified copy referred to in subsection (1) shall, in any such legal proceedings, be received in evidence without proof of the official position or handwriting of the person who signed the certificate.

### **31. Effect of judgments**

(1) Notwithstanding any other enactment, where, in accordance with applicable rules of the Court, the IOPC Fund or Supplementary Fund has been given notice of proceedings brought against the owner or guarantor in respect of liability for pollution damage, any judgment given in the proceedings shall, after that judgment has become final and enforceable, become binding upon the IOPC Fund or Supplementary Fund, and the facts and evidence in the judgment may not be disputed by the IOPC Fund or Supplementary Fund even if the IOPC Fund or Supplementary Fund has not intervened in the proceedings.

(2) Where a person incurs liability for pollution damage under the laws of a Fund Convention State or Supplementary Fund Protocol State, or for pollution damage which is partly in the territory of Mauritius, subsection (1) shall, for the purpose of proceedings under this Act, apply with such adaptations and modifications as are necessary.

(3) Any judgment given by a court in a CLC State, Fund Convention State or Supplementary Fund Protocol State to enforce a claim in respect of liability incurred for pollution damage shall, notwithstanding any other enactment, be enforceable in Mauritius by the Court, except where –

- (a) the judgment was obtained by fraud; or
- (b) the defendant was not given reasonable notice and a fair opportunity to present his case.

### **32. Offences and jurisdiction**

(1) Where an oil tanker carrying more than 2000 tons of oil in bulk as cargo enters or leaves a port in Mauritius in contravention of section 5(1), the master or owner shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

(2) Where the master of an oil tanker fails to produce, on demand, a certificate of insurance under section 5(3), he shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

(3) Any person who otherwise contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10 million rupees and to imprisonment for a term not exceeding 10 years.

(4) No prosecution shall be instituted in relation to an offence under this Act except on information filed with the consent of the Director of Public Prosecutions.

(5) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided in this Act.

### **33. Regulations**

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide –

- (a) for the persons who are or may be liable to pay contributions under the IOPC Fund or the persons who have an obligation to give security for payment to the Minister or the Fund;
- (b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10 million rupees and to imprisonment for a term not exceeding 10 years.

#### **34. Revocation**

The Merchant Shipping (Civil Liability for Oil Pollution Damage and International Fund for Compensation for Oil Pollution Damage) Regulations 1996 are revoked.

#### **35. Consequential amendments**

(1) The Environment Protection Act is amended, in section 3, by deleting the definition of “spill” and replacing it by the following definition –

“spill” –

- (a) means a discharge of a pollutant into the environment from or out of a structure, vehicle, vessel, craft, or other carrier or container, which –
  - (i) is abnormal having regard to all the circumstances of the discharge; and
  - (ii) poses a serious threat to the environment; but
- (b) does not include the discharge or escape of oil under the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) Act 2024;

(2) The Ports Act is amended, in section 2(1), by inserting, in the appropriate alphabetical order, the following new definition –

“polluting substance or waste” does not include the discharge or escape of oil under the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) Act 2024;

#### **36. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

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