

# MERCHANT SHIPPING (OIL POLLUTION) ACT 1994

## ACT 515

### Preamble

An Act to make provisions with respect to civil liability for oil pollution by merchant ships and for matters connected therewith.

BE IT ENACTED by the Duli Yang Maha Mulia 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:

[Came into force on 6 April 1995 [P.U. (B) 144/1995]]

### PART I

#### PRELIMINARY

##### 1. Short title and commencement.

(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.

##### 2. Interpretation.

(1) In this Act, unless the context otherwise requires-

"authorised officer" means a port officer as defined in section 2 of the Merchant Shipping Ordinance 1952 or any authorised officer under section 25;

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

"Director of Marine" has the same meaning assigned to it under the Merchant Shipping Ordinance 1952;

"incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage;

"Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels on the 29th November 1969 as amended by the Protocol of 1976;

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

"owner" 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;

"pollution damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the discharge or escape of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss of 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, the Merchant Shipping Ordinance 1960 of Sarawak 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 any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo;

"Surveyor of Ships" has the same meaning assigned to it under the Merchant Shipping Ordinance 1952;

"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.

(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 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.

(3) References in this Act to any area of Malaysia include the territorial waters of Malaysia and references to any area of any other Liability Convention country include the territorial waters of that Liability Convention country.

## PART II

### 3. Liability for oil pollution.

#### CIVIL LIABILITY FOR OIL POLLUTION

(1) Where, as a result of an incident taking place, any oil is discharged or escapes from a ship, the owner of the ship shall, except as otherwise provided by this Act, be liable for any pollution damage caused by such discharge or escape in any 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 oil has been discharged or has escaped from two or more ships, and pollution damage results therefrom, the owners of all the ships, unless exonerated under section 4, shall be jointly and severally liable for all such pollution damage which is not reasonably separable.

#### 4. Exceptions from liability under section 3.

(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.

#### 5. Restriction of liability for oil pollution.

Where, as a result of an incident taking place, any oil is discharged or escapes from a ship then, whether or not the owner of the ship incurs a liability under section 3-

(a) he shall not be liable otherwise than under that section for any such damage as is mentioned therein; and

(b) no servant or agent of the owner of the ship shall be liable for any such damage.

#### 6. Limitation of liability under section 3.

(1) Where the owner of a ship incurs a liability under section 3 in respect of any one incident-

(a) the provision relating to the limitation of the liability of the owner of a ship in certain cases of loss or damage under any other written law relating to merchant shipping shall not apply to that liability; but

(b) he may limit that liability in accordance with this Act, and if he does so his liability (that is to say, the aggregate of his liabilities under section 3 in respect of any one incident) shall not exceed one hundred and thirty-three special drawing rights for each ton of the ship's tonnage, provided that this aggregate amount shall not in any event exceed fourteen million special drawing rights.

(2) If the incident occurred as a result of the actual fault or privity of the owner of the ship, he shall be entitled to avail himself of the limitation in paragraph (1)(b).

(3) For the purposes of this Act the ship's tonnage shall be the net registered tonnage and shall be ascertained as follows:

(a) if a deduction has been made for engine room space in arriving at its net registered tonnage, its tonnage shall be its net registered tonnage increased by the amount of that deduction;

(b) if the net registered tonnage of the ship cannot be measured in accordance with the normal rules of tonnage measurement, its net registered tonnage shall be taken to be forty percent of the weight of (expressed in tons of 1016 kilograms) oil which the ship is capable of carrying; or

(c) if the net registered tonnage of the ship cannot be ascertained in accordance with the preceding paragraphs, the Surveyor of Ships shall, if so directed by the Court, certify what, on the evidence specified in the direction, would in his opinion be the net registered tonnage of the ship if ascertained in accordance with those paragraphs, and the net registered tonnage stated in his certificate shall be taken to be the net registered tonnage of the ship.

#### 7. Limitation actions.

(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 any 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

(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 times as the Court may direct or such further 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.

#### 8. Restriction on enforcement of claims after establishment of limitation fund.

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.

#### 9. Limitation fund outside Malaysia.

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.

#### 10. Extinguishment of claims.

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.

#### 11. Compulsory insurance against liability for pollution.

(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.

(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 in any area of Malaysia or, if the ship is registered area in Malaysia, it shall not enter or leave a port in any other country or a terminal installation on the territorial waters 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 authorised 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.

## 12. Issue of certificate by Director of Marine.

(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.

## 13. Rights of third parties against insurers.

(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.

(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 the ship may limit his liability but the insurer may do so whether or not the incident occurred without the owner's actual fault or privity.

(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.

#### 14. Government ships.

(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.

#### 15. Interpretation.

### PART III

#### THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

In this Part, unless the context otherwise requires-

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

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

"oil" , except in section 17 and 18, means persistent hydrocarbon mineral oil;

"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 Brussels on the 18th December 1971 as amended by the Protocol 1976.

16. Legal personality of the Fund.

(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.

17. Contributions by persons who receive oil.

(1) Contributions shall be payable 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 part 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.

(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 Articles 11 and 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 become 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 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.

#### 18. Power to obtain information.

(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

(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.

#### 19. Liability of the Fund.

(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

(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 imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention (as amended by Article 3 of the Protocol dated 19th November 1976 to that Convention) which impose an overall limit on the liabilities of the Fund, and the text of which is set out in the 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 Article 4 of the Fund Convention 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;

(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 provisions of Article 4 or that it is to be reduced to a specified amount; and

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

20. Indemnification where damage is caused by ship registered in Fund Convention country.

(1) Where a liability is incurred under section 3 in respect of a ship registered in or flying the flag of a Fund Convention country the Fund shall indemnify the owner of a ship and his guarantor for that portion of the aggregate amount of the liability which-

(a) is in excess of an amount equivalent to one hundred special drawing right for each ton of the ship's tonnage or of an amount of eight million three hundred and thirty-three thousand special drawing rights, whichever is the less; and

(b) is not in excess of an amount equivalent to one hundred and thirty-three special drawing rights for each ton of the said tonnage or an amount of fourteen million special drawing rights, whichever is the less.

(2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country (but is a Liability Convention Country), and the incident has caused pollution damage in Malaysia (as well as in that other country) subsection (1) shall apply with the omission of the words "under section 3"

(3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner himself.

(4) In proceedings to enforce the Fund's obligation under this section the Court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner of a ship-

(a) the ship did not comply with such requirements as the Minister may by order prescribe for the purposes of this section; and

(b) the incident or damage was caused wholly or partly by that non-compliance.

(5) The requirements referred to in subsection (4) are such requirements as appear to the Minister appropriate to implement the provisions of Article 5(3) and Article 5(4) of the Fund Convention.

(6) An order made under subsection (4)-

(a) may be varied or revoked by a subsequent order so made; or

(b) may contain such transitional or other supplemental provisions as appear to the Minister to be expedient.

(7) Expenses reasonably incurred and sacrifices reasonably made by the owner of a ship voluntarily to prevent or minimize pollution damage shall be treated as included in the owner's liability for the purposes of this section.

21. Extinguishment of claims.

(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) Notwithstanding the preceding provisions of this section, the right of the owner of a ship or his guarantor to bring an action under section 20 shall not be extinguished before six months from the date when the owner or his guarantor first acquired knowledge of the bringing of an action against him under Part II or under the corresponding provisions of the law of any country outside Malaysia giving effect to the Liability Convention.

22. Subrogation and rights of recourse.

(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) The right of the Fund under subsection (1) is subject to any obligation of the Fund under section 20 to indemnify the owner or his guarantor for any part of the liability on which he has defaulted.

(3) In respect of any sum paid-

(a) under paragraph 19(1)(a) or (c); or

(b) under section 20,

the Fund shall acquire by subrogation any right of recourse or subrogation which the owner 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 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 JUDGMENTS

23. Jurisdiction and effect of judgments.

(1) The jurisdiction of the High Court in relation to matters of admiralty under paragraph 24(b) of the Courts of Judicature Act 1964 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.

(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 judgment 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 judgment 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 judgment in proceedings under that law of the said country.

#### 24. Enforcement of judgments.

(1) Subject to subsection (3), Part II of the Reciprocal Enforcement of Judgments Act 1958 shall apply to any judgment 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 or 20, and in its application to such a judgment 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 judgment unless and until the Court in which it is registered under Part II of the Reciprocal Enforcement of Judgments 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 4 of Article 4 of the Fund Convention (as set out in the Schedule) or that it is to be reduced to a specified amount; and

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

(3) For the purposes of that Act, subsection 3(2) of the Reciprocal Enforcement of Judgments 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

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

(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 authorise 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 authorised officer mentioned under subsection (2) shall be deemed to be public servant within the meaning of the Penal Code.

26. Power or arrest, detention and prosecution.

(1) The Director of Marine or any authorised 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

(b) detain any ship which he has reason to believe has been under 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.

(2) Where a ship has been detained under subsection (1) the Director of Marine or any authorised 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 authorised officer that the ship shall be surrendered to him on demand.

(3) The Director of marine or any authorised 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.

27. Power to board and search ships.

(1) The Director of Marine or any authorised 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 authorised 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.

## PART VI

### MISCELLANEOUS

#### 28. Offences by body corporate.

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.

### MISCELLANEOUS

#### 29. Power to make regulations.

(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 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 regulation 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.

## FIRST SCHEDULE

(Subsection 19(6))

### OVERALL LIMIT ON LIABILITY OF FUND

#### Article 4 Paragraphs 4, 5 and 6

4. (a) Except as otherwise provided in subparagraph (b) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article 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 the Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the fund is under an obligation to indemnify the owner pursuant to Article 5 paragraph 1 of this Convention, shall not exceed 30 million special drawing rights.

(b) The aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of the exceptional, inevitable and irresistible character shall not exceed 30 million special drawing rights.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, 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 the Liability Convention and this Convention shall be the same for all claimants.

6. The Assembly of the Fund (hereinafter referred to as "the Assembly") may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 30 million special drawing right referred to in paragraph 4 subparagraphs (a) and (b), shall be changed provided however, that this amount shall in no case exceed 60 million special drawing rights or be lower than 3 million special drawing rights. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

## SECOND SCHEDULE

(Subsection 24(3))

### STATE PARTIES TO THE CIVIL LIABILITY CONVENTION

Algeria Lebanon Australia Liberia Bahamas Luxembourg Belgium Maldives Belize Malta Benin Monaco Brazil Morocco Brunei Darussalam Netherlands Cameroon New Zealand Canada Nigeria Chile Norway China Oman Colombia Panama Cote d'Ivoire Papua New Guinea Croatia Peru Cyprus Poland Denmark Portugal Djibouti Qatar Dominican Republic Republic of Korea Ecuador Russian Federation Egypt Senegal Estonia Saint Vincent and the Grenadines Fiji Seychelles Finland Singapore France Slovenia Gabon South Africa Gambia Spain Germany Sri Lanka Ghana Sweden Greece Switzerland Guatemala Syrian Arab Republic Iceland Tunisia India Tuvalu Indonesia United Arab Emirates Ireland United Kingdom Italy Vanuatu Japan Venezuela

Kenya Yemen Kuwait Yugoslavia Latvia

### STATE PARTIES TO THE FUND CONVENTION

Algeria Liberia Bahamas Maldives Benin Malta Brunei Darussalam Monaco Cameroon Morocco  
Canada Netherlands Cote D'Ivoire Nigeria Croatia Norway Cyprus Oman Denmark Papua New  
Guinea Djibouti Poland Estonia Portugal Fiji Qatar Finland Republic of Korea France Russian  
Federation Gabon Seychelles Gambia Slovenia Germany Spain Ghana Sri Lanka Greece Sweden  
Iceland Syrian Arab India Tunisia Indonesia Tuvalu Ireland United Arab Emirates Italy United  
Kingdom Japan Vanuatu Kenya Venezuela Kuwait Yugoslavia