

# MERCHANT SHIPPING (OIL POLLUTION) (AMENDMENT) ACT 2005

## ACT A1248

An Act to amend the Merchant Shipping (Oil Pollution) Act 1994.

ENACTED by the Parliament of Malaysia as follows:

### 1. Short title and commencement.

(1) This Act may be cited as the Merchant Shipping (Oil Pollution) (Amendment) Act 2005.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

### 2. Amendment of section 2.

The Merchant Shipping (Oil Pollution) Act 1994 [*Act 515*], which is referred to as the "principal Act" in this Act, is amended in section 2—

(a) in subsection (1)—

(i) in the definition of "incident", by inserting after the words "pollution damage" the words "or creates a grave and imminent threat of causing such damage";

(ii) by substituting for the definition of "ship" the following definition:

“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;”

(iii) by substituting for the definition of "pollution damage" the following definition:

“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 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;”

(iv) in the definition of "Liability Convention", by substituting for the words "in Brussels on 29 November 1969 as amended by the Protocol of 1976" the words "in London on 27 November 1992";

(v) by inserting after the definition of "terminal installation" the following definition:

“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*].”

(vi) by substituting for the definition of "oil" the following definition:

&lsquo; "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;&rsquo;;

(vii) by deleting the definition of "Surveyor of Ships";

(viii) by substituting for the definition of "Director of Marine" the following definition:

&lsquo; "Director of Marine" means the Director of Marine appointed under subsection 8(1) of the Merchant Shipping Ordinance 1952;&rsquo;;

(ix) by substituting for the full stop appearing at the end of the definition of "terminal installation" a semicolon; and

(x) by inserting after the definition of "Director of Marine" the following definition:

&lsquo; "exclusive economic zone", in relation to Malaysia, is the exclusive economic zone determined under the Exclusive Economic Zone Act 1984 [*Act 311*];&rsquo;;

(b) in subsection (2), by substituting for the words "resulting from the discharge or escape of any oil from" the words "caused by";

(c) by substituting for subsection (3) the following subsection:

"(3) For the purposes of this Act&mdash;

(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."; and

(d) by inserting after subsection (3) the following subsection:

"(4) For the purposes of this Act, the ship&rsquo;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.".

### **3. Amendment of section 3.**

Section 3 of the principal Act is amended&mdash;

(a) by substituting for subsection (1) the following subsection:

"(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 any area of Malaysia."; and

(b) by substituting for subsection (3) the following subsection:

"(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."

#### **4. Substitution of section 5.**

The principal Act is amended by substituting for section 5 the following section:

"Restriction of liability for 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;

(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."

#### **5. Substitution of section 6.**

The principal Act is amended by substituting for section 6 the following section:

"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 the 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)."

#### **6. Amendment of section 11.**

Subsection 11(2) of the principal Act is amended by substituting for the words "territorial waters" the words "territorial sea".

#### **7. Amendment of section 13.**

Section 13 of the principal Act is amended by substituting for subsection (3) the following subsection:

"(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."

#### **8. Amendment of section 15.**

Section 15 of the principal Act is amended—

(a) in the definition of "the Fund Convention", by substituting for the words "in Brussels on 18 December 1971 as amended by the Protocol of 1976" the words "in London on 27 November 1992"; and

(b) by deleting the definition of "oil".

#### **9. Amendment of section 17.**

Section 17 of the principal Act is amended—

(a) in subsection (1), by inserting after the word "payable" the word "annually";

(b) in paragraph (5)(a), by substituting for the words "Articles 11 and 12" the words "Article 12"; and

(c) in subsection (7), by substituting for the words "and section 18" the words ", and sections 18 and 19".

#### **10. Amendment of section 19.**

Section 19 of the principal Act is amended —

(a) by substituting for subsection (6) the following subsection:

"(6) The Fund's liability under this section shall be subject to the limits as set out in Part II of the First Schedule."; and

(b) in subsection (8)—

(i) by substituting for the words "Article 4 of the Fund

Convention" the words "paragraphs 1, 2, 3, 6, 7

and 8 of Article 4 of the Fund Convention and  
Part II of the First Schedule, as the case may be";  
and

(ii) in paragraph (b), by inserting after the words  
"Article 4" the words "or Part II of the First  
Schedule,".

**11. Deletion of section 20.**

The principal Act is amended by deleting section 20.

**12. Amendment of section 21.**

Section 21 of the principal Act is amended by deleting subsection (3).

**13. Amendment of section 22.**

Section 22 of the principal Act is amended—

(a) by deleting subsection (2); and

(b) by substituting for subsection (3) the following subsection:

"(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."

**14. Amendment of section 24.**

Section 24 of the principal Act is amended—

(a) in paragraph (1)(b), by deleting the words "or 20"; and

(b) in paragraph (2)(a), by substituting for the words "paragraph  
4 of Article 4 of the Fund Convention (as set out in the  
Schedule)" the words "paragraph 1 of Part II of the First Schedule".

**15. New section 30.**

The principal Act is amended by inserting after section 29 the following section:

"30. Power to amend Schedules

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

#### **16. Substitution of First Schedule.**

The principal Act is amended by substituting for the First Schedule the following schedule:

"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 89,770,000 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.

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."

#### **17. Substitution of Second Schedule.**

The principal Act is amended by substituting for the Second Schedule the following schedule:

"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

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

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

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 .".