

**Merchant Shipping
(Civil Liability and Compensation for
Bunker Oil Pollution) Bill**

Bill No. 20/2008.

Read the first time on 25th August 2008.

**MERCHANT SHIPPING
(CIVIL LIABILITY AND COMPENSATION FOR
BUNKER OIL POLLUTION) ACT 2008**

(No. of 2008)

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A BILL

i n t i t u l e d

An Act to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 and to make provisions generally for matters connected therewith, and to make related amendments to the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Chapter 180 of the 1999 Revised Edition) and the Prevention of Pollution of the Sea Act (Chapter 243 of the 1999 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

5 **1.** This Act may be cited as the Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

10 “Authority” means the Maritime and Port Authority of Singapore established under the Maritime and Port Authority of Singapore Act (Cap. 170A);

“Bunker Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

15 “Bunker Convention country” means a country in respect of which the Bunker Convention is in force;

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

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

“Court” means the High Court;

“damage” includes loss;

25 “Director” means the Director of Marine appointed under section 4 of the Merchant Shipping Act (Cap. 179) and includes the Deputy Director of Marine appointed thereunder;

“gross tonnage”, in relation to a ship, means its gross tonnage calculated in accordance with the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969;

30 “master” includes every person, except a pilot, having command or charge of a ship;

“offshore facility” has the same meaning as in the Bunker Convention;

“owner”, in relation to a ship, means the owner, and includes the registered owner, bareboat charterer, manager and operator of the ship;

“port” has the same meaning as in the Maritime and Port Authority of Singapore Act (Cap. 170A);

“registered owner”, in relation to a ship, means the person registered as the owner of the ship, or, in the absence of registration, the person owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered in that State as the ship’s operator, it means the person registered as its operator;

“ship” means any sea-going vessel and seaborne craft of any type;

“Singapore ship” has the same meaning as in the Merchant Shipping Act (Cap. 179).

(2) For the purposes of this Act —

(a) references to the territory of Singapore include the territorial sea and exclusive economic zone of Singapore and references to the territory of any other country include the territorial sea and exclusive economic zone of that country;

(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 and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured;

(c) references to a discharge or an escape of bunker oil from a ship are references to such a discharge or an escape wherever it may occur of bunker oil on board or originating from that ship;

(d) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and

(e) where a relevant threat of contamination referred to in section 3(2) results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(3) Nothing in this Act applies in relation to —

- 5 (a) any occurrence before the date of commencement of this Act; or
- (b) any occurrence in a series of occurrences having the same origin, if the first took place before that date.

PART II

CIVIL LIABILITY FOR BUNKER OIL POLLUTION

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Division 1 — Liability

Liability for bunker oil pollution

3.—(1) Subject to subsection (3), where as a result of any occurrence, any bunker oil is discharged or escapes from a ship, the owner of the ship shall, except as otherwise provided by this Part, be liable —

- 15 (a) for any damage caused outside the ship in the territory of Singapore by contamination resulting from the discharge or escape;
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any
- 20 damage so caused in the territory of Singapore by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of Singapore by any measures so taken.

25 (2) Subject to subsection (3), where as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination that might result if there were a discharge or an escape of bunker oil from the ship, the owner of the ship shall, except as otherwise provided by this Part, be liable —

- 30 (a) for the cost of any measures reasonably taken to prevent or minimise any such damage in the territory of Singapore; and

(b) for any damage caused outside the ship in the territory of Singapore by any measures so taken,

and in this Act, any such threat is referred to as a relevant threat of contamination.

5 (3) There shall be no liability under this section in relation to —

(a) a discharge or an escape of bunker oil from a ship to which the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap. 180) applies; or

10 (b) a threat referred to in subsection (2) arising in relation to a potential discharge or escape of bunker oil from such a ship,

where that bunker oil is also persistent hydrocarbon mineral oil.

(4) Where a person incurs a liability under subsection (1) or (2), he shall also be liable for any damage or cost for which he would be liable under subsection (1) or (2) if the references therein to the territory of Singapore
15 included the territory of any other Bunker Convention country.

(5) Where —

(a) as a result of any occurrence, a liability is incurred under this section by the owner of each of 2 or more ships; but

20 (b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

25 (6) For the purposes of this section, references to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences, resulting in the discharge or escape of bunker oil from the ship or giving rise to the relevant threat of contamination, as the case may be.

30 (7) The Contributory Negligence and Personal Injuries Act (Cap. 54) shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

Exceptions from liability under section 3

4. No liability shall be incurred by the owner of a ship under section 3 by reason of any discharge or escape of bunker oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or the relevant threat of contamination, as the case may be —

(a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;

(b) was due wholly to anything done or left undone by another person, not being an employee or agent of the owner, with intent to do damage; or

(c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its functions of maintaining lights or other navigational aids for the maintenance of which it was responsible.

Restriction of liability for bunker oil pollution

5.—(1) Where, as a result of any occurrence —

(a) any bunker oil is discharged or escapes from a ship; or

(b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 3 —

(i) he shall not be liable otherwise than under that section for any damage or cost referred to in that section; and

(ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1)(ii) shall apply to —

(a) any servant or agent of the owner of the ship;

(b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship;

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

5 (d) any person taking any of the measures referred to in section 3(1)(b) or (2)(a); and

(e) any servant or agent of a person falling within paragraph (c) or (d).

10 (3) The liability of the owner of a ship under section 3 for any impairment of the environment shall be taken to be a liability only in respect of —

(a) any resulting loss of profits; and

(b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

Limitation of liability under section 3

15 **6.**—(1) Where, as a result of any occurrence, the owner of a ship incurs a liability under section 3 by reason of a discharge or an escape or by reason of any relevant threat of contamination, then, subject to subsection (4), he may limit that liability in accordance with and in the manner provided in section 136 of the Merchant Shipping Act (Cap. 179), and if
20 he does so his liability (being the aggregate of his liabilities under section 3 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1), “the relevant amount” means the limit of liability calculated in accordance with section 136 of the Merchant Shipping Act.

25 (3) The Authority may, with the approval of the Minister, by order published in the *Gazette*, make such amendments to subsection (2) as may be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in Article 6 of the Bunker Convention.

30 (4) Subsection (1) shall not apply in a case where it is proved that the discharge or escape, or the relevant threat of contamination, as the case may be, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 3 or recklessly and in the knowledge that any such damage or cost would probably result.

(5) For the purposes of section 136 of the Merchant Shipping Act (Cap. 179), any liability incurred under section 3 shall be deemed to be a liability to damages in respect of such damage to property referred to in paragraph 1(a) of Article 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.

Limitation actions

7.—(1) Where the owner of a ship has or is alleged to have incurred a liability under section 3, he may apply to the Court for the limitation of that liability to an amount determined in accordance with section 6.

(2) If on such an application the Court finds that the applicant has incurred such a liability and is entitled to limit it, the Court shall, after determining the limit of liability and directing payment into Court or to the Authority 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 several persons making claims in the proceedings; and

(b) direct the distribution of the amount paid into Court or to the Authority (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the provisions of this section.

(3) A payment into Court or to the Authority of the amount of a limit determined under this section shall be made in Singapore dollars, and —

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

(i) the day on which the determination is made; or

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

(b) a certificate given by or on behalf of the Minister for Finance stating —

(i) that a particular sum in Singapore dollars has been so fixed for the day on which the determination was made; or

(ii) that no sum has been so fixed for that day and that a particular sum in Singapore dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made,

5 shall be conclusive evidence of those matters for the purposes of this Part; and

(c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

10 (4) No claim shall be admitted in proceedings under this section unless it is made within such time as the Court may direct or such further time as the Court may allow.

(5) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends —

15 (a) by the owner or the persons referred to in section 14 as “the insurer”; or

(b) by a person who has or is alleged to have incurred a liability, otherwise than under section 3, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of section 136 of the Merchant Shipping Act (Cap. 179),

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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.

(6) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce 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 sacrifice or other measures.

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(7) The Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it considers appropriate having regard to any claims that may later be established before a court of any country outside Singapore.

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(8) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b).

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Restriction on enforcement of claims after establishment of limitation fund

8. Where the Court has found that a person who has incurred a liability under section 3 is entitled to limit that liability to any amount and he has
5 paid into Court or to the Authority a sum not less than that amount —

- (a) the Court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- 10 (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs,

if the sum paid into Court or to the Authority or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings
15 under section 7 had been taken.

Concurrent liabilities of owners and others

9. Where, as a result of any discharge or escape of bunker oil from a ship or as a result of any relevant threat of contamination, the owner of the ship incurs a liability under section 3 and any other person incurs a
20 liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section, then, if —

- (a) the owner has been found, in proceedings under section 7, to be entitled to limit his liability to any amount and has paid into Court or to the Authority a sum not less than that amount; and
- 25 (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 136 of the Merchant Shipping Act (Cap. 179),

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner
30 paid the sum into Court or to the Authority, no further steps shall be taken in the proceedings except in relation to costs.

Establishment of limitation fund outside Singapore

10. Where the events resulting in the liability of any person under section 3 also resulted in a corresponding liability under the law of

another Bunker Convention country, sections 8 and 9 shall apply as if the references to sections 3 and 7 included references to the corresponding provisions of that law and the references to sums paid into Court included references to any sums secured under these provisions in respect of the liability.

Extinguishment of claims

11. No action to enforce a claim in respect of a liability incurred under section 3 shall be entertained by any court in Singapore unless the action is commenced not later than 3 years after the claim arose nor later than 6 years after the occurrence or first of the occurrences resulting in the discharge or escape, or in the relevant threat of contamination, as the case may be, by reason of which the liability was incurred.

Division 2 — Compulsory Insurance

Compulsory insurance against liability for bunker oil pollution

12.—(1) Subsection (2) shall apply to any ship having a gross tonnage greater than 1,000.

(2) The ship shall not enter or leave any port in Singapore or enter or leave any offshore facility in the territorial sea of Singapore nor, if it is a Singapore ship, enter or leave any port in any other country or any offshore facility in the territorial sea of any other country, unless there is in force —

(a) a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunker Convention; and

(b) a certificate complying with subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements.

(3) The certificate shall be —

(a) if the ship is a Singapore ship, a certificate issued by the Director;

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

(c) if the ship is registered in a country which is not a Bunker Convention country, a certificate issued by the Director or by or under the authority of the government of any Bunker Convention country other than Singapore.

5 (4) The Authority may, with the approval of the Minister, by regulations provide that certificates in respect of ships registered in any country or any specified country which is not a Bunker Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of subsection (3)(c) if the certificates are issued by or
10 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:

(a) the country in which the ship is registered; and

(b) any country specified in the regulations for the purposes of this
15 subsection.

(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 any officer of the Authority and, if the ship is a Singapore ship, to any consular officer within the meaning of the Merchant Shipping Act
20 (Cap. 179).

(6) If a ship enters or leaves, or attempts to enter or leave a port or the territorial sea in contravention of subsection (2), the master or the registered owner of the ship shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million.

25 (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 \$20,000.

30 (8) If a ship attempts to leave a port in, or the territorial sea of, Singapore in contravention of this section, the ship may be detained by the Director or the officers of the Authority or any police officer or any commissioned officer on full pay in the Singapore Armed Forces.

(9) Section 209 of the Merchant Shipping Act shall apply, with the necessary modifications, to the detention of a ship under this Act.

Issue of certificates

13.—(1) Subject to subsection (2), if the Director is satisfied, on an application for a certificate referred to in section 12 in respect of a Singapore ship or a ship registered in any country which is not a Bunker Convention country, that there will be in force in respect of the ship,
5 throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunker Convention, the Director may issue such a certificate to the owner.

10 (2) If the Director is of the opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 3 in all circumstances, the Director may refuse to issue the certificate.

15 (3) The Director shall maintain a record of any certificate issued by him under this section in respect of a Singapore ship which shall be available for public inspection.

Rights of third parties against insurers

14.—(1) Where it is alleged that the owner of a ship has incurred a liability under section 3 as a result of any discharge or escape of bunker oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which a certificate referred to in section 12 is related, proceedings to enforce a claim in respect of the liability may be brought against the person who
20 provided the insurance or other security (referred to in this Act as the insurer).
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(2) In any proceedings brought against the insurer by virtue of this section, it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or the relevant
30 threat of contamination, as the case may be, was due to 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 may limit his liability but the insurer may do so whether or not the
35 discharge or escape, or the relevant threat of contamination, as the case

may be, resulted from anything done or omitted to be done by the owner as mentioned in section 6(4).

(4) Where the owner and the insurer each apply to the Court for the limitation of his liability, any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.

Division 3 — Supplementary

Jurisdiction of Singapore courts and registration of foreign judgments

15.—(1) Section 3(1)(d) of the High Court (Admiralty Jurisdiction) Act (Cap. 123) shall be construed as extending to any claim in respect of a liability incurred by the owner of a ship under this Part.

(2) Where —

(a) any bunker oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of Singapore and no measures are reasonably taken to prevent or minimise such damage in that territory; or

(b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of Singapore,

no court in Singapore shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost —

(i) against the owner of the ship;

(ii) against any person to whom section 5(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result; or

(iii) against any person taking any of the measures referred to in subsection (3)(a) or (b), unless any such damage or cost resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(3) In subsection (2), “relevant damage or cost” means —

- 5 (a) in relation to any discharge or escape referred to in subsection (2)(a), any damage caused in the territory of another Bunker Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunker Convention country;
- 10 (b) in relation to any relevant threat of contamination referred to in subsection (2)(b), any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunker Convention country; or
- (c) any damage caused by any measures referred to in paragraph (a) or (b).

15 (4) Part I of the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265) shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Bunker Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 3, and in its application to such a judgment that Part shall have effect with the omission of section 5(2) and (3) of that Act.

20 **Restriction on enforcement of judgments given by court in country not party to Bunker Convention**

25 **16.** Notwithstanding Part I of the Reciprocal Enforcement of Foreign Judgments Act and any rule of law relating to the recognition and enforcement of foreign judgments, any judgment given by a court in a country which is not a Bunker Convention country in respect of any liability for bunker oil pollution incurred by the owner of a ship in that country may be recognised and enforced by the Court only up to the limit of liability prescribed by section 6.

Government ship

30 **17.—**(1) Notwithstanding the other provisions of this Part, this Part shall not apply in relation to any warship or any ship for the time being used by the government of any State otherwise than for commercial purposes.

35 (2) In relation to a ship owned by a State and for the time being used for commercial purposes, it shall be a sufficient compliance with

section 12(2) if there is in force a certificate issued by the government 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 Bunker Convention will be met up to the limit prescribed by Article 7 of the Bunker Convention.

(3) Every Bunker Convention State shall, for the purposes of any proceedings brought in a court in Singapore to enforce a claim in respect of a liability incurred under section 3, be deemed to have submitted to the jurisdiction of that court, and accordingly Rules of Court may provide for the manner in which those proceedings are to be commenced and carried on.

(4) Nothing in subsection (3) shall authorise the issue of execution against the property of any State.

Saving for recourse actions

18. Nothing in this Part shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Part may have against another person in respect of that liability.

Power to detain ship

19.—(1) Where the Authority has reasonable cause to believe that any bunker oil has been discharged or has escaped from any ship or that a relevant threat of contamination has arisen, and the owner of the ship has incurred a liability under section 3 and the damage only affects, or is likely only to affect, the territory of Singapore, the Authority may detain the ship and the ship may be so detained until the owner of the ship deposits with the Authority an amount which meets the owner's liability or furnishes such security which will, in the opinion of the Authority, be adequate to meet the owner's liability.

(2) If any ship is detained under this Act and the ship proceeds to sea before it is released by the Authority, the master of the ship, and also the owner thereof and any person who sends the ship to sea, if that owner or person is party or privy to the act of sending the ship to sea, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Power of arrest

20. Any officer of the Authority or any police officer may arrest without warrant any person who has committed or whom he reasonably believes to have committed an offence under this Part and take him before a District Court or a Magistrate's Court, as the case may be, to be dealt with according to law.

Sale of ship

21. Where the owner or the master of a ship has been convicted of an offence under the provisions of this Part and any fine imposed under this Part is not paid at the time ordered by the Court, the Court may, in addition to any powers for enforcing payment, direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

PART III

MISCELLANEOUS

Director may authorise person to exercise powers and duties

22. The powers conferred and the duties imposed on the Director under this Act may, subject to his directions, be exercised and carried out by any officer of the Authority generally or specially authorised by name or office by the Director.

Power to board and search ship

23.—(1) The Director may, where he has reason to believe that an offence has been committed under this Act —

- (a) board and search any ship;
- (b) enter and search any premises; or
- (c) summon any person before him and require him to answer questions,

and the Director may carry out such inspection and examination as he may consider necessary and may seize any book, paper, document, record, electronic material or other thing found in those places which may furnish evidence of the commission of an offence under this Act and may make

copies of, or take extracts from or samples of, such book, paper, document, record, electronic material or other thing.

(2) Any person who assaults, hinders, impedes or obstructs the Director 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 \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) In this section, “Director” includes an officer of the Authority authorised by the Director to exercise any powers referred to in subsection (1).

10 **Offences by bodies corporate, etc.**

24.—(1) Where an offence under this Act committed by a body corporate is proved —

(a) to have been committed with the consent or connivance of an officer; or

15 (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved —

25 (a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

30 (a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” includes a limited liability partnership which has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“officer” —

(a) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(6) The Minister may, by regulations, provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Protection from personal liability

25. No action, suit or other legal proceeding shall lie personally against the Director, any officer of the Authority or any other person acting under the direction of the Director or the Authority for anything which is in good faith done or intended to be done in the execution or purported execution of this Act.

Jurisdiction of court

26. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

Composition of offences

27.—(1) The Director may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$2,000.

(2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.

(3) The Authority may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded.

All moneys recovered to be paid to Authority

28. All moneys recovered or charges or composition sums collected under this Act shall be paid into and form part of the moneys of the Authority.

Regulations

29.—(1) The Authority may, with the approval of the Minister, make regulations for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may, with the approval of the Minister, make regulations for or with respect to all or any of the following matters:

- (a) prescribe the amount of fees to be paid on an application for the issue of a certificate under section 13(1);
- (b) provide for the cancellation and delivery up to the Director of a certificate issued under section 13(1);
- (c) provide for matters relating to the conversion of amounts referred to in section 7(3) from special drawing rights to such sums in Singapore dollars;
- (d) provide for any other matter which is required or authorised by any provision of this Act to be provided for by regulations;

- (e) provide that any contravention or failure to comply with any of such regulations shall be an offence punishable with a fine not exceeding \$10,000 or with imprisonment for a term not exceeding 12 months or with both.

5 **Related amendments to other written laws**

30.—(1) Section 13 of the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap. 180) is amended —

- (a) by deleting subsection (2) and substituting the following subsection:

10 “(2) The ship shall not enter or leave any port in Singapore or enter or leave any offshore terminal in the territorial sea of Singapore nor, if it is a Singapore ship, enter or leave any port in any other country or any offshore terminal in the territorial sea of any other country, unless there is in force a certificate complying with subsection (3) and showing that there is in
15 force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention.”; and

- (b) by inserting, immediately after subsection (9), the following subsection:

20 “(10) In subsection (2), “offshore terminal” has the same meaning as in the Liability Convention.”.

(2) Section 18 of the Prevention of Pollution of the Sea Act (Cap. 243) is amended by deleting subsection (4) and substituting the following
25 subsection:

- “(4) This section shall not apply in relation to any discharge of —

- (a) oil or oily mixture where section 3 of the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap. 180) applies; and
30 (b) bunker oil where section 3 of the Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008 applies.”.
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EXPLANATORY STATEMENT

This Bill seeks to enable Singapore to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention) which was adopted by the International Conference on Liability and Compensation for Bunker Oil Pollution Damage in London on 23rd March 2001 and which will come into force on 21st November 2008, and to make provisions generally for matters connected therewith. Singapore acceded to the Bunker Convention in 2006.

The Bill also seeks to make related amendments to the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap. 180) and the Prevention of Pollution of the Sea Act (Cap. 243).

The Bunker Convention is an international treaty covering liability and compensation for pollution damage caused by spills of oil, when carried as fuel in ships' bunkers. Current regimes covering oil spills do not include bunker oil spills from vessels other than tankers.

The Bunker Convention will make the shipowner, defined broadly so as to include the owner, registered owner, bareboat charterer, manager and operator of a ship, liable to pay compensation for bunker oil pollution damage (including the costs of preventative measures) caused in the territory, including the territorial sea of a State Party, as well as in its exclusive economic zone or, if a State Party has not established one, in an equivalent area.

When the Bunker Convention is in force, any ship of over 1,000 gross tonnage registered in a State Party to the Convention will be required to carry on board a certificate certifying that the ship has insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for bunker oil pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime. In all cases, this amount should not exceed an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended, which Singapore gives effect to in Part VIII of the Merchant Shipping Act (Cap. 179).

The Bunker Convention substantially follows the earlier International Convention on Civil Liability for Oil Pollution Damage 1992, which Singapore gives effect to in the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act. The Bill substantially adopts key provisions from that Act with the necessary modifications for the purposes of the Bunker Convention.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill. The definition of "bunker oil", a key term in the Bill, adopts substantially the meaning given to this term in the Bunker Convention.

PART II

CIVIL LIABILITY FOR BUNKER OIL POLLUTION

Division 1 — Liability

Clause 3 makes a shipowner liable for pollution damage in Singapore resulting from the discharge or escape of bunker oil from a ship, for the cost of measures taken to prevent or minimise such damage (including measures taken where there is a grave and imminent threat of such damage) and for any damage in Singapore resulting from such measures. Where such damage occurs both in Singapore and a Bunker Convention country, the shipowner is also liable for the damage or cost of the measures taken in that country. The clause also makes clear that there will be no liability under the clause in certain circumstances.

Clause 4 provides for a number of exceptions from the liability imposed by clause 3.

Clause 5 restricts the shipowner's liability for the damage and costs referred to in clause 3, in circumstances covered by that clause, to liability under the Bill. The clause also excludes certain persons, such as the shipowner's servants or agents, from being liable for such damage or cost.

Clause 6 allows a shipowner to limit his liability under clause 3. The shipowner cannot limit his liability if the discharge or escape of bunker oil or the relevant threat of contamination resulted from his act or omission, committed with intent to cause such damage or cost, or recklessly and in the knowledge that such damage or cost would probably result.

Clauses 7 and 8 prescribe the procedure to be followed when a shipowner claims that he is entitled to limit his liability in accordance with clause 6.

Clause 7 provides for the payment into the High Court or to the Maritime and Port Authority of Singapore (the Authority) of an amount determined in accordance with clause 6 and for the distribution of that amount and for the conversion of special drawing rights into Singapore dollars.

Clause 8 provides for the release of the ship and other property under arrest when the amount determined in accordance with clause 6 has been paid into the High Court or to the Authority.

Clause 9 restricts proceedings against certain persons (such as charterers) who might be liable for any damage or cost referred to in clause 3, if the shipowner is entitled to limit his liability in accordance with clause 6 and has paid the appropriate amount into the High Court or to the Authority. However, this restriction only applies if that other person is entitled to limit his liability in connection with the ship by virtue of section 136 of the Merchant Shipping Act (Cap.179).

Clause 10 applies clauses 8 and 9 to cases where liability for bunker oil pollution is also incurred and proceedings brought in another Bunker Convention country.

Clause 11 provides that no action to enforce a claim is to be brought under clause 3 more than 3 years after the claim arose or 6 years after the original incident.

Division 2 — Compulsory Insurance

Clause 12 requires any ship registered in Singapore having a gross tonnage greater than 1,000, wherever it may be, and any ship having such gross tonnage registered elsewhere entering or leaving Singapore waters, to have a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunker Convention and a certificate attesting that insurance or other security satisfying those requirements is in force in relation to that ship.

Clause 13 provides for the issue by the Director of Marine (the Director) of certificates referred to in clause 12.

Clause 14 makes provision in respect of the rights of third parties against an insurer or other person who provides security in respect of liability under clause 3.

Division 3 — Supplementary

Clause 15 gives the High Court jurisdiction to hear claims in respect of liability under the Part, and provides for the registration of judgments of courts in Bunker Convention countries.

Clause 16 provides that any judgment given against a shipowner for bunker oil pollution damage by a court in a country which is not a Bunker Convention country may be recognised and enforced by the High Court only up to the limit prescribed by clause 6.

Clause 17 makes special provision in respect of government ships.

Clause 18 saves any action a person incurring liability under the Part may have against another person in respect of that liability.

Clause 19 empowers the Authority to detain any ship if the Authority has reasonable cause to believe that its owner has incurred a liability under clause 3 in respect of that ship.

Clause 20 confers on officers of the Authority and police officers certain powers of arrest.

Clause 21 empowers the High Court to sell a ship whose owner or master has been convicted of any offence under the Part for the purpose of recovering the amount of any unpaid fine.

PART III

MISCELLANEOUS

Clause 22 enables the Director to authorise any officer of the Authority to exercise any of the Director's powers and duties under the Bill.

Clause 23 confers certain powers upon the Director in relation to the search for and seizure of evidence of the commission of an offence under the Bill.

Clause 24 makes certain officers of a body corporate, a partnership or an unincorporated association liable for offences committed by the body corporate, partnership or unincorporated association.

Clause 25 confers upon the Director, officers and employees of the Authority and any other person acting under his or its direction protection from action or liability for anything done in good faith for the purposes of carrying out the provisions of the Bill.

Clause 26 confers jurisdiction on a District Court to try any offence under the Bill and to impose the full penalty or punishment in respect of the offence.

Clause 27 provides for the composition of offences under the Bill.

Clause 28 provides that all moneys recovered, charges and composition sums collected under the Bill are to be paid into and form part of the moneys of the Authority.

Clause 29 empowers the Authority, with the approval of the Minister, to make regulations for carrying out the purposes and provisions of the Bill.

Clause 30 makes related amendments to section 13 of the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap. 180) and section 18 of the Prevention of Pollution of the Sea Act (Cap. 243).

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
