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REPUBLIEK VAN SUID-AFRIKA

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Kaapstad,

THE PRESIDENCY

No. 993 10 December 2013

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 24 of 2013: Merchant Shipping (International Oil Pollution Compensation Fund) Act, 2013

DIE PRESIDENSIE

No. 993 10 Desember 2013

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No 24 van 2013: Wet op Handelskeepvaart (Internasionale Skadevergoedingsfonds vir Oliebesoedeling), 2013



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

(English text signed by the President)
(Assented to 9 December 2013)

ACT

To enact the International Maritime Organization Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971 into law; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise, any meaning ascribed to a word or expression in the 1992 Fund Convention must bear the meaning so ascribed, and—
- “**Authority**” means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);
 - “**Minister**” means the Minister of Transport;
 - “**the 1971 Fund Convention**” means the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971 done at Brussels on 18 December 1971;
 - “**the 1992 Fund Convention**” means Articles 1 to 36 *quinquies* of the 1971 Fund Convention as amended by the 1992 Protocol and referred to in paragraph 2 of Article 27 of the 1992 Protocol;
 - “**the 1992 Protocol**” means the International Maritime Organization Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Oil Pollution Damage of 18 December 1971—
 - (a) approved on 23 October 1997 by the National Assembly and on 15 March 1999 by the National Council of Provinces as is required by section 231(2) of the Constitution of the Republic of South Africa, 1996; and
 - (b) published for general information under Notice No. 1534 of 2009 in *Gazette* No. 32723 of 20 November 2009;
 - “**the Fund**” means the International Oil Pollution Compensation Fund, 1992, established by Article 2 of the 1992 Fund Convention; and
 - “**this Act**” includes any regulation made in terms of section 11.

Enactment of 1992 Protocol into law and interpretation

2. (1) Subject to this Act, the 1992 Protocol has the force of law in the Republic.
- (2) For the purposes of paragraph (a)(i) and (ii) of Article 3 of the 1992 Fund Convention and in so far as it relates to the Republic, the reference to the territorial sea must be construed as a reference to the territorial waters of the Republic referred to in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994).
- (3) For the purposes of paragraph (a)(ii) of Article 3 of the 1992 Fund Convention and in so far as it relates to the Republic, the reference to the exclusive economic zone must be construed as a reference to the exclusive economic zone of the Republic within the meaning of section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994).

(Engelse teks deur die President geteken)
(Goedgekeur op 9 Desember 2013)

WET

Ten einde die “International Maritime Organisation Protocol of 1992” te verorden om die “International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage” van 18 Desember 1971, tot Wet te wysig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

Die Parlement van die Republiek van Suid-Afrika bepaal, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy die samehang anders aandui, moet enige betekenis in die 1992-Fondskonvensie aan ’n woord toegeskryf die sodanig toegeskrewe betekenis hê, en beteken— 5

“**die Fonds**” die “International Oil Pollution Compensation Fund,” 1992, by Artikel 2 van die 1992-Fondskonvensie ingestel;

“**die 1971-Fondskonvensie**” die “International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971,” op 18 Desember 1971 by Brussels gedoen; 10

“**die 1992-Fondskonvensie**” Artikel 1 tot 36 *quinquies* van die 1971-Fondskonvensie soos gewysig deur die 1992-Protokol en bedoel in paragraaf 2 van Artikel 27 van die 1992-Protokol;

“**die 1992-Protokol**” die “International Maritime Organization Protocol of 1992” tot wysiging van die “International Convention on the Establishment of an International Fund for Oil Pollution Damage”, van 18 Desember 1971— 15

(a) op 23 Oktober 1997 deur die Nasionale Vergadering goedgekeur en op 15 Maart 1999 deur die Nasionale Raad van Provinsies goeagekeur, soos vereis in artikel 231(2) van die Grondwet van die Republiek van Suid-Afrika, 1996; en 20

(b) ter algemene inligting by Kennisgewing No. 1534 van 2009 in *Staatskoerant* No. 32723 van 20 November 2009 gepubliseer;

“**hierdie Wet**” ook enige regulasie ingevolge artikel 11 uitgevaardig;

“**Minister**” die Minister van Vervoer; en

“**Owerheid**” die Suid-Afrikaanse Maritieme Veiligheidsowerheid ingestel by artikel 2(1) van die Wet op die Suid-Afrikaanse Maritieme Veiligheidsowerheid, 1998 (Wet No. 5 van 1995). 25

Verordening van 1992-Protokol tot wet en uitleg

2. (1) Behoudens hierdie Wet het die 1992-Protokol regsrag in die Republiek. 30

(2) By die toepassing van paragraaf (a)(i) en (ii) van Artikel 3 van die 1992-Fondskonvensie en in soverre dit op die Republiek betrekking het, word die verwysing na die territoriale see geag ’n verwysing na die territoriale waters van die Republiek bedoel in artikel 4 van die Wet op Maritieme Sones, 1994 (Wet No. 15 van 1994), te wees. 35

(3) By die toepassing van paragraaf (a)(ii) van Artikel 3 van die 1992-Fondskonvensie en in soverre dit op die Republiek van toepassing is, word die verwysing na die eksklusiewe ekonomiese sone geag ’n verwysing na die eksklusiewe ekonomiese sone van die Republiek binne die bedoeling van artikel 7 van die Wet op Maritieme Sones, 1994 (Wet No. 15 van 1994), te wees.

(4) For the purposes of this Act, the English text of the 1992 Protocol prevails for the purposes of interpretation.

(5) The Minister may by notice in the *Gazette* publish for general information any changes made to the 1992 Fund Convention under Article 33 of the 1992 Protocol if those changes are binding on the Republic in terms of section 231 of the Constitution of the Republic of South Africa, 1996. 5

Act binds State

3. This Act binds the State and every organ of state contemplated in section 239 of the Constitution of the Republic of South Africa, 1996.

Application of Act 10

4. This Act also applies to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

Legal capacity of Fund

5. The Fund is hereby recognised as a juristic person.

Legal representative of Fund 15

6. The Director of the Fund is hereby recognised as the legal representative of the Fund.

Authority may request Fund for assistance

7. For the purposes of paragraph 7 of Article 4 of the 1992 Fund Convention, a request by the Authority to the Fund for assistance contemplated in that paragraph, must be regarded as a request by the Republic. 20

Jurisdiction of High Court

8. The High Court of South Africa exercising its admiralty jurisdiction under the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), has jurisdiction, including jurisdiction for all incidental purposes, to hear and determine claims against the Fund for compensation under Article 4 of the 1992 Fund Convention. 25

Fund may intervene in proceedings under Merchant Shipping (Civil Liability Convention) Act, 2013

9. The Fund may intervene in proceedings for compensation under Part 2 of the Merchant Shipping (Civil Liability Convention) Act, 2013. 30

Evidence in proceedings involving Fund

10. In any legal proceedings involving the Fund, the mere production of a certified true copy of—

- (a) any document issued by an organ of the Fund; or
 - (b) any entry in or extract from any document in the custody of the Fund, 35
- must be regarded as sufficient evidence of the fact that the document was so issued or is under the custody of the Fund, unless evidence to the contrary is adduced.

Regulations

11. (1) The Minister may make regulations— 40
- (a) giving effect to Article 8 of the 1992 Fund Convention;
 - (b) fixing fees to be paid in respect of any matter arising from the application of Article 8 of the 1992 Fund Convention; and

(4) By die toepassing van hierdie Wet geniet die Engelse teks van die 1992-Protokol voorkeur vir die doeleindes van uitleg.

(5) Die Minister kan by kennisgewing in die *Staatskoerant* enige veranderinge wat kragtens Artikel 33 van die 1992-Protokol aan die 1992-Fondskonvensie gemaak is ter algemene inligting publiseer indien daardie veranderinge ingevolge artikel 231 van die Grondwet van die Republiek van Suid-Afrika, 1996, bindend op die Republiek is. 5

Wet bindend op Staat

3. Hierdie Wet bind die Staat en elke staatsorgaan beoog in artikel 239 van die Grondwet van die Republiek van Suid-Afrika, 1996.

Toepassing van Wet 10

4. Hierdie Wet is ook van toepassing op die Prince Edward-eilande bedoel in artikel 1 van die Wet op die Prince Edward-eilande, 1948 (Wet No. 43 van 1948).

Regshoedanigheid van Fonds

5. Die Fonds word hierby as 'n regs persoon erken.

Regsverteenwoordiger van Fonds 15

6. Die Direkteur van die Fonds word hierby as die regsverteenwoordiger van die Fonds erken.

Owerheid mag bystand van Fonds versoek

7. By die toepassing van paragraaf 7 van Artikel 4 van die 1992-Fondskonvensie, moet 'n versoek om bystand in daardie paragraaf beoog, van die Owerheid aan die Fonds, geag word 'n versoek van die Republiek te wees. 20

Jurisdiksie van Hooggeregshof

8. Die Hooggeregshof van Suid-Afrika wat sy admiraliteitsjurisdiksie kragtens die Wet op die Reëling van Admiraliteitsjurisdiksie, 1983 (Wet No. 105 van 1983), uitoefen, het jurisdiksie, met inbegrip van jurisdiksie vir alle gepaardgaande doeleindes, om eise teen die Fonds vir skadevergoeding kragtens Artikel 4 van die 1992-Fondskonvensie aan te hoor en daaroor te beslis. 25

Fonds kan ingryp in verrigtinge kragtens Wet op Handelskeepvaart (Konvensie oor Siviele Aanspreeklikheid), 2013

9. Die Fonds kan ingryp in verrigtinge vir skadevergoeding kragtens Deel 2 van die Wet op Handelskeepvaart (Siviele Aanspreeklikheid), 2013. 30

Bewyse in verrigtinge waarby Fonds betrokke is

10. In enige regsverrigtinge waarby die Fonds betrokke is, moet die blote verstrekking van 'n gesertifiseerde ware kopie van— 35

(a) enige dokument deur 'n orgaan van die Fonds uitgereik; of

(b) enige aantekening in of uittreksel uit enige dokument in besit van die Fonds, geag word voldoende bewys te wees van die feit dat die dokument aldus uitgereik is of in besit van die Fonds is, tensy bewyse tot die teendeel aangevoer word.

Regulasies

11. (1) Die Minister kan regulasies uitvaardig— 40

(a) wat gevolg gee aan Artikel 8 van die 1992-Fondskonvensie;

(b) wat gelde vasstel wat betaal moet word ten opsigte van enige aangeleentheid wat uit die toepassing van Artikel 8 van die 1992-Fondskonvensie voortspruit; en

(c) regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Any regulation fixing fees must be made with the concurrence of the Minister of Finance.

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Short title and commencement

12. This Act is called the Merchant Shipping (International Oil Pollution Compensation Fund) Act, 2013, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

- (c) aangaande enige aanvullende of gepaardgaande administratiewe of prosedurele aangeleentheid wat voorgeskryf moet word vir die behoorlike inwerkingstelling of administrasie van hierdie Wet.
- (2) Enige regulasie wat gelde vasstel moet met die instemming van die Minister van Finansies uitgevaardig word.

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Kort titel en inwerkingtreeding

12. Hierdie Wet heet die Wet op Handelskeepvaart (Internasionale Skadevergoedingsfonds vir Oliebesoedeling), 2013, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

