

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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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



AIDS HELPLINE: 0800-123-22 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).

(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

(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*.