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Notification No. B 53 — The Merchant Shipping (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 19th day of October 2004.

Merchant Shipping (Amendment) Bill

Bill No. 53/2004.

Read the first time on 19th October 2004.

A BILL

i n t i t u l e d

An Act to amend the Merchant Shipping Act (Chapter 179 of the 1996 Revised Edition) to give effect to the Convention on Limitation of Liability for Maritime Claims, 1976, and for matters connected therewith.

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

Short title and commencement

1. This Act may be cited as the Merchant Shipping (Amendment) Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2(1) of the Merchant Shipping Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately after the definition of “name”, the following definition:

10 “ “natural resources” means the mineral and other non-living resources of the seabed and its subsoil;”;

(b) by inserting, immediately after the definition of “officer”, the following definition:

“ “off-shore industry mobile unit” means —

15 (a) a vessel that is used or intended for use in exploring or exploiting the natural resources of the subsoil of any seabed, or in any operation or activity associated with or incidental thereto, by drilling the seabed or its subsoil, or by obtaining
20 substantial quantities of material from the seabed or its subsoil, with equipment that is on or forms part of the vessel; and

25 (b) a barge or like vessel fitted with living quarters for more than 12 persons and used or intended for use in connection with the construction, maintenance or repair of any fixed structure used or intended for use in exploring or exploiting the natural resources of the subsoil of any seabed, or in any
30 operation or activity associated with or incidental thereto;”;

(c) by deleting the definition of “ship” and substituting the following definition:

“ “ship” means any kind of vessel used in navigation by water, however propelled or moved and includes —

- (a) a barge, lighter or other floating vessel;
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water; and
- (c) an off-shore industry mobile unit;”.

5 **Repeal and re-enactment of Part VIII**

3. Part VIII of the principal Act is repealed and the following Part substituted therefor:

“PART VIII

LIABILITY OF SHIPOWNERS AND SALVORS
FOR MARITIME CLAIMS

10

Interpretation of this Part

134. In this Part —

“Convention” means the Convention on Limitation of Liability for Maritime Claims, 1976, as set out in the Schedule;

15

“ship” in the Convention includes —

- (a) any air-cushion vehicle designed to operate in or over water while so operating; and
- (b) any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship.

20

Exclusion of liability

135.—(1) Subject to subsection (3), the owner of a Singapore ship is not liable for any loss or damage —

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- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their

owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3), where the loss or damage arises from anything done or omitted by any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) also excludes the liability of —

(a) the master, member of the crew or servant; and

(b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in Article 4 of the Convention.

(4) In this section, “owner”, in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

Limitation of liability for maritime claims

136.—(1) Subject to this Part, the provisions of the Convention, other than paragraph 1(d) and (e) of Article 2 of the Convention, shall have the force of law in Singapore.

(2) For the purposes of paragraph 3 of Article 6 of the Convention, it is hereby provided that a claim in respect of damage to harbour works, basins, waterways or aids to navigation has priority over any other claim under paragraph 1(b) of that Article.

(3) Notwithstanding paragraph 2 of Article 1 of the Convention, the right to limit liability under the Convention applies in relation to any ship whether seagoing or not, and “shipowner” in that paragraph has a corresponding meaning.

General limits

137.—(1) In the application of Article 6 of the Convention —

(a) to a ship licensed as a harbour craft under the Maritime and Port Authority of Singapore Act (Cap. 170A), that Article has effect as if the aggregate of the amounts in

paragraph 1(a)(i) and (b)(i) referred to the sum insured under the policy of insurance for the time being required by the Port Master under that Act to be in force in relation to that harbour craft in respect of third party risks; and

5 (b) to any other ship with a tonnage less than 300 tons, that Article has effect as if —

(i) paragraph 1(a)(i) referred to 166,667 Units of Account; and

(ii) paragraph 1(b)(i) referred to 83,333 Units of Account.

10 (2) For the purposes of Article 6 of the Convention and subsection (1)(b), a ship's tonnage is its gross tonnage calculated in such manner as may be prescribed by an order made by the Minister.

(3) Any order under this section shall, so far as appears to the Minister to be practicable, give effect to the regulations in Annex I of
15 the International Convention on Tonnage Measurement of Ships, 1969.

Limit for passenger claims

138. In the case of a passenger ship within the meaning of Part V, the ship's certificate mentioned in paragraph 1 of Article 7 of the
20 Convention is the passenger ship's certificate issued under or recognised by regulations made under section 100.

Constitution and distribution of fund

139.—(1) The Authority may, from time to time, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of
25 Article 11 of the Convention.

(2) Where a fund is constituted with the High Court in accordance with Article 11 of the Convention for the payment of claims arising out of any occurrence, the Court may stay any proceedings relating to any claim arising out of that occurrence which are pending against
30 the person by whom the fund has been constituted.

(3) No lien or other right in respect of any ship or property shall affect the proportions in which under Article 12 of the Convention the fund is distributed among several claimants.

Bar to other actions

5 **140.** Where the release of a ship or other property is ordered under paragraph 2 of Article 13 of the Convention, the person on whose application it is ordered to be released is deemed to have submitted to the jurisdiction of the High Court to adjudicate on the claim for which the ship or property was arrested or attached.

Meaning of “State Party”

10 **141.** The Minister may, by order published in the *Gazette*, declare that any State specified in the order is, or was at a date specified in the order, a party to the Convention in respect of a particular country, and any such order shall be conclusive evidence that that State is, while the order remains in force, or was at that date, a party to the Convention in respect of that country.

Units of Account

15 **142.—**(1) For the purposes of Article 6 of the Convention, the Authority may certify the respective amounts in Singapore dollar which are to be taken as equivalent for a particular day to the sums expressed in special drawing rights in that Article.

20 (2) A certificate given by the Authority under subsection (1) shall be conclusive evidence of the matters referred to in that subsection for the purposes of that Article; and 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.

25 (3) The Authority may charge such fee as it may determine for any certificate given by it under this section.

Amendment of Schedule

30 **143.** The Minister may, by order published in the *Gazette*, amend the Schedule in accordance with any revision to the Convention or to any protocol to the Convention which may apply to Singapore from time to time.

Saving

144. Nothing in the Merchant Shipping (Amendment) Act 2004 shall apply in relation to any liability arising out of an occurrence which took place before the coming into operation of that Act, and

the repealed Part VIII in force immediately before the coming into operation of that Act shall continue to apply to that occurrence as if that Act had not been enacted.”.

New Schedule

- 5 **4.** The principal Act is amended by inserting, immediately after section 217, the following Schedule:

“THE SCHEDULE

Sections 134 and 143

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Part I

Text of Convention

CHAPTER I

THE RIGHT OF LIMITATION

ARTICLE 1

Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term “shipowner” shall mean the owner, charterer, manager and operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
5. In this Convention, the liability of a shipowner shall include liability in an action brought against the vessel herself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

5 7. The act of invoking limitation of liability shall not constitute an admission of liability.

ARTICLE 2

Claims subject to limitation

1. Subject to Articles 3 and 4, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

- 10 (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- 15 (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- 20 (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- 25 (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

30 2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

ARTICLE 3

Claims excepted from limitation

The rules of this Convention shall not apply to:

- (a) claims for salvage or contribution in general average;
- 5 (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29th November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- 10 (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such
15 servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

ARTICLE 4

Conduct barring limitation

- 20 A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

ARTICLE 5

Counterclaims

- 25 Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER II

LIMITS OF LIABILITY

ARTICLE 6

The general limits

- 5 1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:
- (a) in respect of claims for loss of life or personal injury,
 - (i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons;
 - 10 (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in sub-paragraph (i):
 - for each ton from 501 to 3,000 tons, 500 Units of Account;
 - for each ton from 3,001 to 30,000 tons, 333 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 250 Units of Account; and
 - 15 for each ton in excess of 70,000 tons, 167 Units of Account;
 - (b) in respect of any other claims,
 - (i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons;
 - 20 (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in sub-paragraph (i):
 - for each ton from 501 to 30,000 tons, 167 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 125 Units of Account; and
 - for each ton in excess of 70,000 tons, 83 Units of Account.
- 25 2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).
- 30 3. However, without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1(b) as is provided by that law.

4. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

5. For the purpose of this Convention, the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

ARTICLE 7

The limit for passenger claims

10 1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

15 2. For the purpose of this Article, "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

- (a) under a contract of passenger carriage; or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

20 ARTICLE 8

Unit of Account

25 The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

ARTICLE 9

Aggregation of claims

30 1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible;

- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
- (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

ARTICLE 10

Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III

THE LIMITATION FUND

ARTICLE 11

Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

ARTICLE 12

5

Distribution of the fund

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

10 2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

15 3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

20 4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

ARTICLE 13

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Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

30 2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However,
35 such release shall always be ordered if the limitation fund has been constituted:

- (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter;

- (b) at the port of disembarkation in respect of claims for loss of life or personal injury;
- (c) at the port of discharge in respect of damage to cargo; or
- (d) in the State where the arrest is made.

5 3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

ARTICLE 14

Governing law

10 Subject to the provisions of this Chapter, the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV

SCOPE OF APPLICATION

15 ARTICLE 15

This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.”.

EXPLANATORY STATEMENT

This Bill seeks to repeal and re-enact Part VIII of the Merchant Shipping Act (Cap. 179) to enable Singapore to give effect to the Convention on Limitation of Liability for Maritime Claims, 1976 (the Convention) and to replace the present law on this subject.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) to define new terms “natural resources” and “off-shore industry mobile unit”, and to re-define “ship” so as to include any off-shore industry mobile unit.

Clause 3 repeals and re-enacts Part VIII to enable Singapore to give effect to the Convention and to replace the present Part VIII relating to the liability limits of a shipowner which gave effect to the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships. However, the present

Part VIII would continue to apply to any liability arising out of an occurrence which took place before the new Part VIII comes into operation.

The Convention as set out in the Schedule (to be inserted by clause 4) would have the force of law in Singapore with the adjustments set out in the new Part VIII.

Clause 4 inserts a new Schedule to set out the Convention with the necessary adjustments.

EXPENDITURE OF PUBLIC MONEY

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