

A BILL

entitled

MERCHANT SHIPPING AMENDMENT ACT 2018

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SCHEDULE 1

SCHEDULE 2

WHEREAS it is expedient to amend the Merchant Shipping Act 2002;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Merchant Shipping Amendment Act 2018.

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Amends section 2

2 The Merchant Shipping Act 2002 (in this Act referred to as “the principal Act”) is amended in section 2(1) by inserting the following definition in its proper alphabetical position—

“national contingency plan” means the national contingency plan for preparedness and response required under Article 6 of the International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990 (OPRC Convention);”.

Amends section 8

3 Section 8(2)(a) of the principal Act is amended by deleting “national plan” and substituting “national contingency plan”.

Substitutes section 130

4 The principal Act is amended by deleting section 130 and substituting the following section—

“Discharge of oil from ships into certain Bermuda waters

130 (1) In this section “relevant discharge” means—

- (a) a discharge of oil or a mixture containing oil which is made—
 - (i) from a ship which is an offshore installation; and
 - (ii) into Bermuda national waters which are navigable by sea-going ships; or
- (b) a discharge of oil or a mixture containing oil which is made—
 - (i) from a ship which is not an offshore installation; and
 - (ii) into Bermuda national waters which are navigable by sea-going ships.

(2) If there is a relevant discharge, then the following persons commit an offence—

- (a) the owner or master of the ship, unless he proves that the discharge took place and was caused as mentioned in paragraph (b);
- (b) if the discharge from the ship takes place in the course of a transfer of oil to or from another ship or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place.

(3) Subsection (2) does not apply to any discharge from an offshore installation which—

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(a) is made into the sea; and

(b) is of a kind or is made in circumstances for the time being prescribed by regulations made by the Minister.

(4) A person found guilty of an offence under this section is liable on summary conviction, to a fine of \$500,000 and on conviction on indictment, to a fine of \$1,000,000.

(5) In this section—

“occupier” in relation to any “place on land” with no occupier, means the owner thereof;

“offshore installation” means any mobile or fixed drilling or production platform or any other platform used in connection with the exploration, exploitation or associated offshore processing of sea bed mineral resources;

“place on land” includes anything resting on the bed or shore of the sea, or of any other waters included in Bermuda waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or any such waters;

“sea” includes any estuary or arm of the sea.”.

Amends section 169

5 Section 169 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“(1) In this Chapter—

“Fund” means the International Fund established by the Fund Convention;

“Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;

“Fund Convention Country” means a country in respect of which the Fund Convention is in force;

“Liability Convention” has the same meaning as in Chapter IV of this Part;

“Supplementary Fund” means the International Supplementary Fund established by the Supplementary Fund Protocol;

“Supplementary Fund Protocol” means the Protocol of 2003 to the Fund Convention;

“Supplementary Fund Protocol country” means a country in respect of which the Supplementary Fund Protocol is in force.”; and

(b) by inserting the following subsection next after subsection (2)—

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“(3) Subsection (2) applies in relation to the Supplementary Fund Protocol as it applies in relation to the Fund Convention.”.

Amends section 170

6 Section 170 of the principal Act is amended—

(a) in subsection (1) by inserting the words “and to the Supplementary Fund” next after the word “Fund”;

(b) by repealing subsection (3) and substituting the following subsection—

“(3) Contributions shall also be payable—

(a) to the Fund in respect of oil when first received in any installation in Bermuda after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country; and

(b) to the Supplementary Fund in respect of oil when first received in any installation in Bermuda after having been carried by sea and discharged in a port or terminal installation in a country which is not a Supplementary Fund Protocol country.”; and

(c) by repealing subsection (7) and substituting the following subsection—

“(7) The contributions payable by a person for any year shall—

(a) be of such amount as may be determined—

(i) in the case of contributions to the Fund, by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund; and

(ii) in the case of contributions to the Supplementary Fund, by the Director of the Supplementary Fund under Article 11 of the Supplementary Fund Protocol and notified to that person by the Supplementary Fund; and

(b) be payable in such installments, becoming due at such times as may be so notified to him,

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the Assembly of the Fund or the Assembly of the Supplementary Fund as the case may be, until it is paid.”.

Amends section 171

7 Section 171 of the principal Act is amended—

(a) in subsection (1) by inserting the words “or the Supplementary Fund” next after the word “Fund” wherever it occurs; and

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- (b) in subsection (4) by—
 - (i) inserting the words “or the Supplementary Fund” next after the word “Fund” where it first occurs; and
 - (ii) deleting “the Fund” in the second place where it occurs and substituting the words “either of those Funds”.

Inserts sections 173A and 173B

8 The principal Act is amended by inserting the following sections next after section 173—

“Liability of the Supplementary Fund

173A (1) The Supplementary Fund shall be liable for pollution damage in the territory of Bermuda in accordance with the Supplementary Fund Protocol in the circumstances mentioned in paragraph 1 of Article 4 (inserted as Schedule 4ZA) of that Protocol (cases where full compensation cannot be obtained because of the limit imposed by paragraph 4 of Article 4 of the Fund Convention).

(2) Subsection (1) shall apply with the substitution for the word “Bermuda” of the words “a Supplementary Fund Protocol country” where—

- (a) the headquarters of the Supplementary Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country; or
- (b) the incident has caused pollution damage in the territory of Bermuda and of another Supplementary Fund Protocol country, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country or in Bermuda.

(3) Nothing in this section applies to pollution damage resulting from an incident if—

- (a) in the case of a single occurrence, it took place before the day on which the Supplementary Fund Protocol enters into force in respect of Bermuda; or
- (b) in the case of a series of occurrences having the same origin, the first of those occurrences took place before that day.

Limitation of the Supplementary Fund’s liability under section 173A

173B (1) The Supplementary Fund’s liability under section 173A shall be subject to—

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- (a) paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (inserted as Schedule 4ZA) (which impose an overall limit on the liabilities of the Supplementary Fund); and
 - (b) paragraphs 2 and 3 of Article 15 of the Supplementary Fund Protocol (which prevent the Supplementary Fund from paying compensation temporarily and permanently where obligations to communicate information to the Director under paragraph 1 of Article 13 and paragraph 1 of Article 15 have not been met).
- (2) For the purpose of giving effect to paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol a court giving judgment against the Supplementary Fund in proceedings under section 173A shall notify the Supplementary Fund, and—
- (a) no steps shall be taken to enforce the judgment unless the court gives leave to enforce it;
 - (b) that leave shall not be given unless the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that, it is to be reduced to a specified amount; and
 - (c) in the latter case the judgment shall be enforceable only for the reduced amount.
- (3) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (2) shall be steps to obtain payment in pound sterling, and—
- (a) for the purpose of converting such an amount from special drawing rights into US Dollars, one special drawing right shall be treated as equal to such a sum in pound sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
 - (i) the relevant date, namely the date referred to in paragraph 2(b) of Article 4 of the Supplementary Fund Protocol; or
 - (ii) if no sum has been so fixed for the relevant date, the last day before that date for which a sum has been so fixed; and
 - (b) a certificate given by or on behalf of the Ministry of Finance stating—
 - (i) that a particular sum in sterling has been so fixed for the relevant date; or
 - (ii) that no sum has been so fixed for the relevant date and that a particular sum in US Dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant date,

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shall be conclusive evidence of those matters for the purposes of this Chapter.

(4) Any document purporting to be a certificate mentioned in subsection (3)(b) shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.”.

Amends section 174

9 Section 174 of the principal act is amended—

- (a) in subsection (1) by inserting the words “or the Supplementary Fund” next after the word “Fund”;
- (b) by deleting subsection (2) and substituting the following subsection—

“(2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 151—

- (a) the notice shall be deemed to have been given to the Supplementary Fund as well; and
- (b) any judgment given in the proceedings shall, after it has become final and enforceable, become binding on the Fund and the Supplementary Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund or the Supplementary Fund even if it has not intervened in the proceedings.”; and
- (c) by deleting subsections (4) and (5) and substituting the following subsections—

“(4) Subject to subsections (5) and (6), the Judgments (Reciprocal Enforcement) Act 1958 shall apply, whether or not it would so apply apart from this subsection, to—

- (a) any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 172; and
- (b) any judgment given by a court in a Supplementary Fund Protocol country to enforce a claim in respect of liability incurred under any provision corresponding to section 172.

(5) No steps shall be taken to enforce such a judgment unless the court in which it is registered under the Judgments (Reciprocal Enforcement) Act 1958 gives leave to enforce it; and that leave shall not be given unless—

- (a) in the case of a judgment within subsection (4)(a), the Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 4 and 5 of Article 4 of the Fund Convention (as

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set out in Part 1 of Schedule 5 to this Act) or that it is to be reduced to a specified amount; or

- (b) in the case of a judgment within subsection (4)(b), the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (as set out in Schedule 4ZA) or that it is to be reduced to a specified amount.

(6) Where the court is notified that a claim is to be reduced to a specified amount, the judgment shall be enforceable only for the reduced amount. ”.

Amends section 175

10 Section 175 of the principal Act is amended by inserting the following subsections next after subsection (3)—

“(4) Subsections (1) and (2) apply in relation to claims against the Supplementary Fund as they apply in relation to claims against the Fund (with the substitution for the reference to the Fund in subsection (1)(b) for a reference to the Supplementary Fund).

(5) For the purposes of this section—

- (a) a person who commences an action to enforce a claim against the Fund in relation to any damage shall be deemed to have also commenced an action to enforce any claim he may have against the Supplementary Fund in relation to that damage; and
- (b) a person who gives a third party notice to the Fund in relation to any damage as mentioned in subsection (1)(b) shall be deemed to have also given a notice to the Supplementary Fund in relation to that damage.”.

Amends section 176

11 Section 176 of the principal Act is amended—

(a) by inserting the following subsection next after subsection (1)—

“(1A) In respect of any sum paid by the Supplementary Fund as compensation for pollution damage, the Supplementary Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.”; and

(b) (in subsection (2) by inserting “or the Supplementary Fund” next after “Fund”.

Amends section 177

12 Section 177 of the principal Act is amended by inserting the following subsection next after subsection (2)—

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“(3) Subsections (1) and (2) apply in relation to the Supplementary Fund as they apply in relation to the Fund (with the substitution for references to the Director, any organ or an official of the Fund for references to the Director, any organ or an official of the Supplementary Fund).”.

Amends section 178

13 Section 178(3) of the principal Act is amended by inserting the following words next after the word “country”, in the last place where it occurs—

“or a Supplementary Fund Protocol country (as the case may be)”.

Inserts section 188A

14 The principal Act is amended by inserting the following section next after section 188—

“Inserts section 188A

188A (1) Subject to subsections (2) and (3), the Minister may make Regulations requiring that, in such cases as may be prescribed by the Regulations, while a ship is in Bermuda waters, there must be in force in respect of the ship—

- (a) a contract of insurance insuring such person or persons as may be specified by the Regulations, against such liabilities as may be so specified and satisfying such other requirements, as may be so specified; or
 - (b) such other security relating to those liabilities as satisfies requirements specified by or under the Regulations.
- (2) Regulations made under this section shall not apply in relation to—
- (a) a qualifying foreign ship while it is exercising—
 - (i) the right of innocent passage; or
 - (ii) the right of transit passage through straits used for international navigation;
 - (b) any warship; or
 - (c) any ship for the time being used by the government of any State for other than commercial purposes.

(3) Regulations made under this section may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed by section 163 or by an order made under section 178B.

(4) Regulations made under this section may require that, where a person is obliged to have in force in respect of a ship, a contract of insurance or other security, such documentary evidence as may be specified by or under the

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Regulations, of the existence of the contract of insurance or other security, must be carried in the ship and produced on demand, by such persons as may be specified in the Regulations, to such persons as may be so specified.

- (5) Regulations, made under this section may provide—
- (a) that in such cases as are prescribed, a ship which contravenes the Regulations shall be liable to be detained and that section 242 shall have effect, with such modifications (if any) as are prescribed by the Regulations, in relation to the ship;
 - (b) that a contravention of the Regulations shall be an offence punishable on summary conviction by a fine of an amount not exceeding \$50,000, or such less amount as is prescribed by the Regulations, and on conviction on indictment by a fine; and
 - (c) that any such contravention shall be an offence punishable only on summary conviction, by a fine of an amount not exceeding \$50,000, or such less amount as is prescribed by the Regulations.
- (6) Regulations made under this section may—
- (a) make different provisions for different cases;
 - (b) make provision in terms of any document which the Minister or any person considers relevant from time to time; and
 - (c) include such incidental, supplemental and transitional provisions as appear to the Minister to be expedient for the purposes of the Regulations.”.

Inserts Part IXA

15 The principal Act is amended by inserting the following Part next after section 216—

“PART IXA
WRECK REMOVAL CONVENTION

Preliminary

Wreck Removal Convention

216A (1) In this Part—

“Wrecks Convention” means the Nairobi International Convention on the Removal of Wrecks 2007 concluded in Nairobi on 18 May 2007 (see Schedule 7A);

“Wrecks Convention State” means a State which is a party to the Wrecks Convention.

(2) Bermuda Convention Area comprises—

- (a) Bermuda;
- (b) Bermuda territorial waters; and
- (c) the Bermuda exclusive economic zone.

Reporting, marking and removing wreck reports

216B (1) Where an accident results in a wreck in a Convention area, the persons responsible for any Bermuda ship involved in the accident must report the wreck without delay.

(2) If the wreck is in Bermuda's Convention area, it must be reported to the Minister.

(3) If the wreck is in the Convention area of any other State, it must be reported to the government of that State.

(4) The following are responsible for a ship—

- (a) the master of the ship; and
- (b) the operator of the ship.

(5) A report under subsection (1) must include the information mentioned in paragraph 2 of Article 5 of the Wrecks Convention (so far as it is known).

(6) If one of the persons responsible for a ship makes a report under subsection (1), the others are no longer under a duty to make a report.

(7) Failure to comply with the reporting requirement is an offence.

(8) A person found guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding \$100,000; or
- (b) on conviction on indictment, to an unlimited fine.

Locating and marking wrecks

216C (1) This section applies where an accident results in a wreck in Bermuda's Convention area.

(2) The Minister must ensure that Bermuda complies with its obligations under Articles 7 and 8 of the Wrecks Convention (locating and marking of wrecks).

(3) The Minister may, for those purposes, direct any of the following to take specified steps in relation to the wreck if it is within their area—

- (a) a lighthouse authority; and
- (b) a harbour authority.

(4) A direction—

- (a) must be in writing; or

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(b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as reasonably practicable.

(5) An authority to whom a direction is given must comply with it.

Removal by registered owner

216D (1) This section applies where—

(a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in Bermuda's Convention area; and

(b) the Minister has determined that the wreck poses a hazard.

(2) The Minister must take all reasonable steps to give a notice (a "wreck removal notice") requiring the registered owner to comply with the obligations imposed on registered owners by paragraphs 2 and 3 of Article 9 of the Wrecks Convention (removal of wrecks and production of evidence of insurance).

(3) The notice must be in writing and must—

(a) specify the deadline set under paragraph 6(a) of that Article, for the removal of the wreck; and

(b) inform the registered owner of the other matters set out in paragraph 6(b) and (c) of that Article.

(4) A registered owner who fails, without reasonable excuse, to comply with a notice by the specified deadline commits an offence.

(5) A registered owner found guilty of the offence under subsection (4) is liable—

(a) on summary conviction, to a fine not exceeding \$100,000; or

(b) on conviction on indictment, to an unlimited fine.

Imposition of conditions about removal

216E (1) This section applies if the Minister has given a registered owner, a wreck removal notice.

(2) The Minister may impose conditions as to the removal of the wreck in accordance with paragraph 4 of Article 9 of the Wrecks Convention.

(3) A condition is imposed by giving notice of it to the registered owner.

(4) A registered owner who fails, without reasonable excuse, to comply with a condition, commits an offence.

(5) A registered owner found guilty of the offence under subsection (4) is liable—

(a) on summary conviction, to a fine not exceeding \$100,000; or

- (b) on conviction on indictment, to an unlimited fine.

Removal in default

216F (1) The Minister may remove a wreck in Bermuda's Convention area in the circumstances set out in paragraph 7 or 8 of Article 9 of the Wrecks Convention.

(2) The Minister may, instead of exercising the power under subsection (1), direct that the power be exercised by a harbour authority.

(3) A direction may be given to an authority only in relation to a wreck within the authority's area.

(4) A direction—

(a) must be in writing; or

(b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as reasonably practicable.

(5) An authority to whom a direction is given must comply with it.

Liability for costs

216G (1) This section applies where—

(a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in Bermuda's Convention area; and

(b) costs have been incurred complying with section 216C or 216F (locating and marking and removal of wrecks).

(2) The person who incurred the costs is entitled to recover them from the ship's registered owner unless the owner proves that an exception set out in paragraph 1(a), (b) or (c) of Article 10 of the Wrecks Convention applies.

(3) The owner is not liable for costs under this section if or to the extent that liability would conflict with—

(a) a convention listed in paragraph 1 of Article 11 of the Wrecks Convention (exceptions to liability);

(b) an enactment implementing such a convention; or

(c) any other provision specified by Order made by the Minister.

(4) Where the registered owner of each of two or more ships is liable for costs under this section but the costs for which each is liable cannot reasonably be separated, the registered owners shall be jointly liable for the total costs.

(5) This section does not prevent the exercise of the right (if any) to limit liability by virtue of section 181.

(6) An Order made under subsection (3)(c) shall be subject to the affirmative resolution procedure.

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(7) An Order may include incidental, supplemental or transitional provisions.

Limitation period

216H An action to recover costs under section 216G shall not be brought after the end of whichever of the following, ends earlier—

- (a) the period of three years beginning with the date on which a wreck removal notice was given in respect of the wreck; and
- (b) the period of six years beginning with the date of the accident which resulted in the wreck.

Expenses of port authorities

216I Costs incurred by a port authority in complying with a direction under section 216C or 216F shall be paid out of the Consolidated Fund if or to the extent that they are not recovered under section 216G; but section 213 shall apply as if they were expenses of the authority falling within subsection (1) of that section other than establishment expenses.

Insurance

Wreck removal insurance

216J (1) This section applies to ships with a gross tonnage of 300 or more.

(2) A Bermuda ship shall not enter or leave a port in Bermuda or elsewhere, unless—

- (a) the ship has wreck removal insurance; and
- (b) the Minister has certified that it has wreck removal insurance.

(3) A foreign ship may not enter or leave a port in Bermuda, unless—

- (a) the ship has wreck removal insurance; and
- (b) there is a certificate confirming that it has wreck removal insurance.

(4) For a ship registered in a foreign Wrecks Convention State, the certificate must be one that has been issued by or under the authority of the government of that State.

(5) For a foreign ship registered in any other State, the certificate must be one that has been issued—

- (a) by the Minister; or
- (b) by or under the authority of the government of a Wrecks Convention State.

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(6) For the purposes of subsection (1), the gross tonnage of a ship is to be calculated in the manner prescribed in the Merchant Shipping (Tonnage) Regulations 2008.

(7) In this Part—

“wreck removal insurance” means a contract of insurance or other security satisfying the requirements of Article 12 of the Wrecks Convention and “insurer” means the person providing the insurance or other security; and

“wreck removal insurance certificate” means a certificate required by subsection (2)(b) or (3)(b).

Failure to insure

216K (1) The master and operator of a ship, each commit an offence if—

- (a) the ship enters or leaves a port in contravention of section 216J; or
- (b) anyone attempts to navigate the ship into or out of a port in contravention of that section.

(2) A person found guilty of the offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding \$100,000; or
- (b) on conviction on indictment, to an unlimited fine.

Detention of ships

216L A ship may be detained if anyone attempts to navigate it out of a port in contravention of section 216J.

Production of certificates

216M (1) This section applies to a ship which is required to have a wreck removal insurance certificate before entering or leaving a port.

(2) The master of the ship must ensure that the certificate is carried on board.

(3) The master of the ship must, on request, produce the certificate to—

- (a) a customs officer;
- (b) an officer of the Minister; or
- (c) if the ship is a Bermuda ship, a proper officer.

(4) Failure to comply with subsection (2) or (3) is an offence.

(5) A person found guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$10,000.

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Issue of certificates

216N (1) This section applies where the registered owner applies to the Minister for a wreck removal insurance certificate in respect of—

- (a) a Bermuda ship; or
- (b) a foreign ship registered in a State other than a Wrecks Convention State.

(2) In relation to a Bermuda ship, the Minister must issue the certificate if satisfied—

- (a) that the ship has wreck removal insurance in place for the period to which the certificate will relate; and
- (b) that the obligations of the person providing the wreck removal insurance will be met.

(3) In relation to a foreign ship registered in a State other than a Wrecks Convention State, the Minister may issue the certificate if satisfied about the matters in subsection (2)(a) and (b).

(4) The Minister must send a copy of a certificate issued in respect of a Bermuda ship, to the Registrar of Shipping.

(5) The Registrar must make such certificates available for public inspection.

Cancellation of certificates

216O (1) The Minister may make Regulations about the cancellation and delivery up of wreck removal insurance certificates issued under section 216N.

(2) A person who fails to deliver up a certificate in accordance with Regulations made under subsection (1) commits an offence.

(3) A person found guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding \$10,000.

Third parties' rights against insurers

216P (1) This section applies where—

- (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in Bermuda's Convention area;
- (b) at the time of the accident, the ship had wreck removal insurance; and
- (c) there is a wreck removal insurance certificate in relation to the insurance.

(2) A person who is entitled to recover costs from the ship's registered owner under section 216G may recover them from the insurer.

(3) It is a defence for the insurer to prove that the accident was caused by the wilful misconduct of the ship's registered owner.

(4) The insurer may also rely on any defences available to the registered owner (including section 216H).

(5) The insurer may limit liability in respect of claims made under this section to the same extent as the registered owner may limit liability by virtue of section 181 (or would be able to limit liability by virtue of that section if it were not for paragraph 3 of Part II of Schedule 7).

(6) But an insurer may limit liability whether or not the accident is caused by an act or omission mentioned in Article 4 of the Convention set out in Part I of Schedule 6.

(7) The Third Parties (Rights Against Insurers Act 1963 does not apply in relation to any wreck removal insurance to which a wreck removal insurance certificate relates.

Electronic certificates

216Q (1) This section applies if the Minister has given or proposes to give notice under paragraph 13 of Article 12 of the Wrecks Convention (electronic insurance certificates, etc.).

(2) The Minister may by Order make such amendments of this Part as the Minister thinks necessary or expedient for giving effect to the notice.

(3) An Order made under subsection (2) shall be subject to the affirmative resolution procedure.

(4) An Order made under subsection (2) may include incidental, supplemental or transitional provisions.

Supplemental

Interpretation etc.

216R (1) Expressions used in this Part shall be construed in accordance with Article 1 of the Wrecks Convention.

(2) In this Part—

“accident” means a collision of ships, a stranding, another incident of navigation or another event (whether on board a ship or not) which results in material damage to a ship or its cargo or is an imminent threat of material damage to a ship or its cargo;

“insurer” shall be construed in accordance with section 216J;

“wreck removal insurance” has the meaning given by section 216J;

“wreck removal insurance certificate” has the meaning given by section 216J;

“wreck removal notice” means a notice under section 216D;

“Wrecks Convention” has the meaning given by section 216A;

“Wrecks Convention State” has the meaning given by section 216A.

(3) References in this Part to entering or leaving a port in a State include references to arriving at or leaving an offshore facility in the territorial sea of that State (except in section 216L).

(4) References in this Part to ships registered in a State include unregistered ships entitled to fly the flag of that State.

(5) In determining for the purposes of this Part whether a wreck poses a hazard, the Minister must take into account the matters set out in Article 6 of the Wrecks Convention (determination of hazard).

(6) The Minister shall from time to time by Order describe Bermuda’s Convention area.

Government ships

216S (1) This Part does not apply in relation to warships or ships for the time being used by a State for non-commercial purposes only.

(2) But it does apply to such ships if specified in a notice under paragraph 3 of Article 4 of the Wrecks Convention.

(3) Section 216K does not apply to a ship (an “exempt ship”) that is owned by a Wrecks Convention State.

(4) An exempt ship must have a certificate issued by the government of the State concerned and stating—

(a) that the ship is owned by that State; and

(b) that any liability under section 216G will be met up to the limits prescribed by paragraph 1 of Article 12 of the Wrecks Convention (compulsory insurance).

(5) Section 216M(2) to (5) applies to such a certificate.

(6) Where a ship is owned by a State and operated by a company which is registered in that State as operator of the ship, references in this Part to the registered owner are references to that company.

(7) In proceedings against a Wrecks Convention State for the recovery of costs under section 216G, the State shall be treated as having submitted to the jurisdiction of the court in which the proceedings are brought; but this does not authorise execution, or the execution of diligence, against the property of a State.

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Saving

216T Nothing in this Part affects any claim, or the enforcement of any claim a person incurring any liability under this Part may have against any other person in respect of that liability.

Power to amend

216U (1) The Minister may by Order amend this Part to reflect any amendment of the Wrecks Convention.

(2) An Order made under subsection (1) shall be subject to the affirmative resolution procedure.”.

Amends section 254

16 Section 254 of the principal Act is amended by inserting the following subsection next after subsection (4)—

“(5) The Minister may make regulations generally for carrying out the provisions of this Act.”.

Inserts Schedule 4ZA

17 The principal Act is amended by inserting the contents of Schedule 1 to this Act as Schedule 4ZA, next after Schedule 4.

Inserts Schedule 7A

18 The principal Act is amended by inserting the contents of Schedule 2 to this Act as Schedule 7A, next after Schedule 7.

SCHEDULE 1

(Section 17)

“SCHEDULE 4ZA

(Sections 173A and 173B)

SUPPLEMENTARY FUND PROTOCOL

Article 4—paragraphs 1, 2 and 3

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.

2. (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2(a) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

Article 13—paragraph 1

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

Article 15—paragraphs 1, 2 and 3

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.”

SCHEDULE 2

(Section 18)

“SCHEDULE 7A

(Part 1XA)

WRECK REMOVAL CONVENTION

Preamble:

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

NOTING that many wrecks may be located in States' territory, including the territorial sea,

RECOGNIZING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

HAVE AGREED as follows:

ARTICLE 1

Definition

For the purposes of this Convention:

1 “Convention area” means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2 “Ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3 “Maritime casualty” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4 “Wreck”, following upon a maritime casualty, means:

- (a) a sunken or stranded ship; or

- (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
 - (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
 - (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.
- 5 “Hazard” means any condition or threat that:
- (a) poses a danger or impediment to navigation; or
 - (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.
- 6 “Related interests” means the interests of a coastal State directly affected or threatened by a wreck, such as:
- (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
 - (b) tourist attractions and other economic interests of the area concerned;
 - (c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
 - (d) offshore and underwater infrastructure.
- 7 “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.
- 8 “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company.
- 9 “Operator of the ship” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.
- 10 “Affected State” means the State in whose Convention area the wreck is located.
- 11 “State of the ship's registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.
- 12 “Organization” means the International Maritime Organization.
- 13 “Secretary-General” means the Secretary-General of the Organization.

ARTICLE 2

Objectives and general principles

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1 A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2 Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3 Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.

4 The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

5 States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

ARTICLE 3

Scope of application

1 Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

2 A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.

3 When a State Party has made a notification under paragraph 2, the "Convention area" of the Affected State shall include the territory, including the territorial sea, of that State Party.

4 A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.

5 A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

ARTICLE 4

Exclusions

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1 This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2 This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3 Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4 (a) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its territory, including the territorial sea:

- (i) Article 2, paragraph 4;
- (ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and
- (ii) Article 15.

(b) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read: "Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

ARTICLE 5

Reporting wrecks

1 A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2 Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with article 6, including:

- (a) the precise location of the wreck;
- (b) the type, size and construction of the wreck;
- (c) the nature of the damage to, and the condition of, the wreck;
- (d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- (e) the amount and types of oil, including bunker oil and lubricating oil, on board.

ARTICLE 6

Determination of hazard

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When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area;
- (d) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;
- (e) proximity of shipping routes or established traffic lanes;
- (f) traffic density and frequency;
- (g) type of traffic;
- (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- (i) vulnerability of port facilities;
- (j) prevailing meteorological and hydrographical conditions;
- (k) submarine topography of the area;
- (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (m) acoustic and magnetic profiles of the wreck;
- (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) any other circumstances that might necessitate the removal of the wreck.

ARTICLE 7

Locating wrecks

1 Upon becoming aware of a wreck, the Affected State shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.

2 If the Affected State has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.

ARTICLE 8

Marking of wrecks

1 If the Affected State determines that a wreck constitutes a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.

2 In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.

3 The Affected State shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

ARTICLE 9

Measures to facilitate the removal of wrecks

1 If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:

- (a) inform the State of the ship's registry and the registered owner; and
- (b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

2 The registered owner shall remove a wreck determined to constitute a hazard.

3 When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.3 When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.

4 The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

5 When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

6 The Affected State shall:

- (a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6;
- (b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and
- (c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

7 If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

8 In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

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9 States Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.

10 States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.

11 The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports referred to in article 5, paragraph 2.

ARTICLE 10

Liability of the owner

1 Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

- (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
- (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

2 Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3 No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Convention. This is without prejudice to the rights and obligations of a State Party that has made a notification under article 3, paragraph 2, in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with this Convention.

4 Nothing in this article shall prejudice any right of recourse against third parties.

ARTICLE 11

Exceptions to liability

1 The registered owner shall not be liable under this Convention for the costs mentioned in article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

- (a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
- (b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;
- (c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or

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- (d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided that the relevant convention is applicable and in force.

2 To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

ARTICLE 12

Compulsory insurance or other financial security

1 The registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2 The registered owner shall remove a wreck determined to constitute a hazard.^{2A} certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Convention, and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) gross tonnage of the ship;
- (c) name and principal place of business of the registered owner;
- (d) IMO ship identification number;
- (e) type and duration of security;
- (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

3 (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

- (b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language(s) of the State may be omitted.

5 The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6 An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 unless certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

7 The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate

8 Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9 Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

10 Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11 A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

13 Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

ARTICLE 13

Time limits

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

ARTICLE 14

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Amendment provisions

- 1 At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.
- 2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

ARTICLE 15

Settlement of disputes

- 1 Where a dispute arises between two or more States Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.
- 2 If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the States party to the dispute are also States Parties to the United Nations Convention on the Law of the Sea, 1982.
- 3 Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to Article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.
- 4 A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.
- 5 A declaration made under paragraphs 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

ARTICLE 16

Relationship to other conventions and international agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

ARTICLE 17

Signature, ratification, acceptance, approval and accession

This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession:

- (a) States may express their consent to be bound by this Convention by:
 - (i) signature without reservation as to ratification, acceptance or approval; or
 - (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (iii) accession.
- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

Entry into force

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

ARTICLE 19

Denunciation

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

ARTICLE 20

Depositary

1 This Convention shall be deposited with the Secretary General.

2 The Secretary-General shall:

- (a) inform all States which have signed or acceded to this Convention of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;

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- (iii) the deposit of any instrument of denunciation of this Convention, together with the date of the deposit and the date on which the denunciation takes effect; and
- (iv) other declarations and notifications received pursuant to this Convention;
- (b) transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.

3 As soon as this Convention enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations, for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 21

Languages

The Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.”

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EXPLANATORY MEMORANDUM

The purpose of this Act is to amend the Merchant Shipping Act 2002 (the “principal Act”) to bring it up to date with current changes in the maritime shipping industry.

Clause 1 is the citation to the Act.

Clause 2 amends section 2 of the principal Act to insert a definition for “national contingency plan”.

Clause 3 amends section 8 of the principal Act to change “national plan” to “national contingency plan”.

Clause 4 amends the principal Act by repealing and substituting a new section 130 on discharge of oil from ships into certain Bermuda waters.

Clause 5 amends section 169 of the principal Act to introduce new terms like “Supplementary Fund”, “Supplementary Fund Protocol country” and “Supplementary Fund Protocol”, and their definitions.

Clause 6 amends section 170 of the principal Act to delete and substitute subsections (3) and (7) to accommodate the Supplementary Fund.

Clause 7 amends section 171 of the principal Act in subsections (1) and (4) to make provision for the Supplementary Fund.

Clause 8 inserts a new section 173A and a new section 173B into the principal Act. The new section 173A makes provision for liability of the Supplementary Fund and the new section 173B makes provision for limitation of the Supplementary Fund’s liability under section 173A.

Clause 9 amends section 174 of the principal Act in subsections (1) and (2) to make provision for the Supplementary Fund. New subsections (4), (5) and (6) have also been inserted to make provision for the Supplementary Fund.

Clause 10 amends section 175 of the principal Act to insert new subsections (4) and (5) to make provision for the Supplementary Fund.

Clause 11 amends section 176 of the principal Act to make provision for the Supplementary Fund in a new subsection (1A) and in subsection (2).

Clause 12 amends section 177 of the principal Act by the insertion of a new subsection (3) to make provision for the Supplementary Fund.

Clause 13 amends section 178(3) of the principal Act to make provision for “Supplementary Fund Protocol country”.

Clause 14 inserts a new section 188A to empower the Minister to make Regulations in respect of compulsory insurance of ships in Bermuda waters.

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Clause 15 inserts a new Part IXA next after section 216 of the Act to make salient provisions of the Nairobi International Convention on the Removal of Wrecks applicable, in Bermuda. Offences and penalties are provided for infractions of various provisions.

Clause 16 amends section 254 of the principal Act to insert a new subsection (5).

Clause 17 amends the principal Act by inserting a new Schedule 4ZA containing certain provisions of Articles 4, 13 and 15 of the Supplementary Fund Protocol.

Clause 18 inserts the Nairobi International Convention on the Removal of Wrecks 2007 in a new Schedule 7A next after Schedule 7 of the Act.