

Act to amend the Merchant Shipping Act

Act no. 1172 of 19 December 2003

## Act to amend the Merchant Shipping Act

(Establishment of the International Oil Pollution Compensation Supplementary Fund (2003))

We Margrethe the second, by the grace of God Queen of Denmark hereby witness: Folketinget (the Danish Parliament) has adopted and We with Our consent hereby enact the following Act:

### Section 1

The Merchant Shipping Act (*søloven*), cf. Consolidated Act no. 39 of 20 January 1998 as amended by Executive Order no. 206 of 3 April 1998, section 35 of Act no. 900 of 16 December 1998, section 1 of Act no. 901 of 16 December 1998, Act no. 228 of 21 April 1999 and section 1 of Act no. 106 of 13 February 2001, shall be amended as follows:

1. The heading for *Part 10* shall be worded as follows:

»Regarding liability and compensation for oil pollution damage pursuant to the 1992 Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol of 2003«.

2. In *section 191(8)* the following shall be inserted as the *2nd clause*:

»The 1992 Fund shall mean the International Fund for Compensation for Oil Pollution Damage, 1992 established under the 1992 Fund Convention.«

3. In *section 191*, the following shall be inserted as *subsection (9)*:

»(9) The Supplementary Fund Protocol of 2003 shall mean the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. The Supplementary Fund shall mean the International Oil Pollution Compensation Supplementary Fund, 2003 established pursuant to the Supplementary Fund Protocol of 2003.«

4. In *section 201(1)*, after »the 1992 Fund Convention« the following shall be inserted »and the Supplementary Fund Protocol of 2003«, and »its« shall be changed to »their«.

5. In *section 201(2)* »by the fund« shall be changed to »by the 1992 Fund and the Supplementary Fund.«

6. *Section 201(3)* shall be worded as follows:

»(3) If the limit for the aggregate amount of compensation according to article 4, paragraph 4 of the 1992 Fund Convention is increased in accordance with the procedure in article 33 of the Convention, the Minister for Economic and Business Affairs may lay down rules on the new limit for the aggregate amount of compensation.«

7. In *section 201*, the following shall be inserted as *subsection (4)*:

\* Throughout the translation the term "shipowner" is used to denote the Danish term "reder" for which there is no directly equivalent English term. The "reder" is the entity that operates the ship for its own account, typically the owner or demise charterer of the ship. Time and voyage charterers are not considered "reder".

»(4) The limit for the aggregate of amount of compensation according to article 4, paragraph 2 of the Supplementary Fund Protocol of 2003 shall amount to 750 million SDR. If this amount is increased in accordance with the procedure in article 24 or article 25 of the Protocol, the Minister for Economic and Business Affairs may lay down rules on the new limit for the aggregate amount of compensation.«

8. *Section 202(1)* shall be worded as follows:

» Anyone who annually receives in Danish ports or oil terminals more than in total 150,000 tons crude oil, fuel oil or heavy distillates as determined in article 1, paragraph 3 of the 1992 Fund Convention shall pay a contribution to the 1992 Fund and to the Supplementary Fund and shall provide security for these contributions pursuant to regulations to be laid down by the Minister for Economic and Business Affairs. Decisions on whether the quantity received exceeds 150,000 tons oil shall be made in accordance with article 10, paragraph 2 of the 1992 Fund Convention. The oil mentioned shall include oil which is carried to or within Denmark by sea.«

9. In *section 202* the following shall be inserted after subsection (1) as new subsections:

»(2) The obligation to pay contributions to the 1992 Fund shall also include oil which is carried to Denmark in other ways than the ones mentioned in subsection (1), but which has been carried by sea to a non-State Party to the 1992 Fund Convention, and from there has been carried on to Denmark without reloading in terminal installations in another state which is a State Party to the Convention.

(3) The obligation to pay contributions to the Supplementary Fund shall also include oil, which is carried to Denmark in other ways than the ones mentioned in subsection (1), but which has been carried by sea to a non-State Party to the Supplementary Fund Protocol of 2003, and from there has been carried on to Denmark without reloading in terminal installations in another state which is a State Party to the Protocol.«

Subsections (2) and (3) shall hereafter become subsections (4) and (5).

10. In *section 202(2)* which shall hereafter become subsection (4), the following shall be inserted as the *2nd and 3rd clauses*:

»If the undertaking is operated in company form, it shall be the responsibility of the members of the board of management, or those who may rank alongside the board of management, to ensure that the duty to provide information is fulfilled. If the obligation to submit information is not fulfilled by the due date, the Minister for Economic and Business Affairs may, based on an estimate, determine and report the assumed imported quantities.«

11. In *section 204(1)* the following shall be inserted as the *2nd clause*:

»Actions for compensation according to the Supplementary Fund Protocol of 2003 may only be brought before a Danish court in the circumstances mentioned in section 203(1) and (2), and only if actions in respect of the same pollution damage against the *shipowner*\* or his insurer have not been brought in another State Party to the Supplementary Fund Protocol of 2003.«

12. In *section 204* the following shall be inserted after subsection (1) as a new subsection:

»(2) When actions for compensation against the 1992 Fund have been brought before a court in a State Party to the 1992 Fund Convention, but not to the Supplementary Fund Protocol of 2003, actions for compensation according to the Supplementary Fund Protocol of 2003 concerning the same incident may, notwithstanding subsection (1), be brought before a Danish court in the circumstances mentioned in section 203(1) and (2)«

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Subsections (2)-(4) shall hereafter become subsections (3)-(5).

13. In *section 204(2)*, which shall become subsection (3), » International Oil Pollution Compensation Fund (1992)« shall be changed to »the 1992 Fund and the Supplementary Fund«.

14. In *section 204(3)*, *1st clause*, which shall become subsection (4), *1st clause*, » International Oil Pollution Compensation Fund (1992)« shall be changed to »The 1992 Fund as well as the Supplementary Fund«, and in the *2nd clause* »the Fund« shall be changed to »the fund in question«.

15. In *section 204(4)*, *1st clause*, which shall become subsection (5), *1st clause*, » in Denmark «, shall be inserted after »brought« and » International Oil Pollution Compensation Fund (1992)« shall be changed to »the 1992 Fund and the Supplementary Fund, respectively«, and in the *2nd clause* »the Fund« shall be changed in two places to »the fund in question«.

16. In *section 205(2)*, » International Oil Pollution Compensation Fund (1992)« shall be changed to »the 1992 Fund«.

17. In *section 205*, the following shall be inserted as *subsection (3)*:

»(3) Furthermore, the same shall apply correspondingly to decisions delivered against the Supplementary Fund in a State Party to the Supplementary Fund Protocol of 2003, or where the Fund has its seat, by a court which is competent under article 7, paragraphs 1 and 2 of the Supplementary Fund Protocol of 2003.«

18. In *section 502(1) and (2)* » International Oil Pollution Compensation Fund (1992)« shall be changed to »the 1992 Fund or the Supplementary Fund«, and in *subsection (1)*, the *2nd clause* shall be repealed.

19. In *section 502(2)*, *1st clause* »section 204(4)« shall be changed to »section 204(5)«.

20. In *section 502(2)*, the *2nd clause* shall be repealed.

21. In *section 502*, *subsection (3)* shall be repealed.

22. After section 514a the following shall be inserted:

»**514b.** The recipient, who is covered by section 202, shall be liable to a fine or imprisonment of up to one year, unless more severe punishment is incurred under other legislation, provided that no information is provided, or if this information is not provided on the due date in accordance with section 202(4) and the regulations which have been issued pursuant to this provision. In regulations which are issued pursuant to section 202(4) penalties in the form of a fine or imprisonment of up to two years may be imposed for violating the regulations, cf. subsection (2).

(2) The penalty may increase to imprisonment of up to two years, if the violation was committed intentionally or with gross negligence.

(3) If anyone does not fulfil their duty to provide information by the due date according to section 202(4), or according to regulations issued pursuant to this, the Minister for Economic and Business Affairs may as a coercive measure impose daily or weekly fines on the persons in question.«

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**Translation: Only the Danish document has legal validity.**

## **Section 2**

The Minister for Economic and Business Affairs shall set the date when this Act shall enter into force.

## **Section 3**

This Act shall not extend to the Faeroe Islands and Greenland, but may be brought into force by Royal Decree for these parts of the Realm subject to any variations in their operation necessitated by the specific conditions prevailing in the Faeroe Islands and Greenland respectively.

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