

## SINGAPORE LEGISLATION ON OIL POLLUTION

by CHAN LENG SUN\*

This paper outlines the main Singapore legislation on pollution of the sea. It is an updated version of a paper presented at the 5<sup>th</sup> International Conference on Maritime Law in Piraeus in 2004. There are two major statutes: the *Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act*<sup>1</sup> (“the Liability and Compensation Act”) and the *Prevention of Pollution of the Sea Act*<sup>2</sup> (“the Prevention Act”). At the time of writing (May 2005), discussions among industry leaders on whether Singapore should also ratify the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* (“the Bunker Convention”)<sup>3</sup> are underway.

### I. MERCHANT SHIPPING (CIVIL LIABILITY AND COMPENSATION FOR OIL POLLUTION) ACT

The Liability and Compensation Act gives effect to the *International Convention on Civil Liability for Oil Pollution Damage, 1992* (“1992 Civil Liability Convention”) and the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992* (“1992 Fund Convention”). These Conventions are really the 1992 Protocols that amended the 1969 Civil Liability and 1971 Fund Conventions introduced after the *Torrey Canyon* disaster in 1967.

On 18 March 1967, the oil tanker *Torrey Canyon* struck a reef off the southwest coast of the United Kingdom (UK) while carrying 117,000 tonnes of crude oil bound for Milford Haven. About 80,000 tonnes of crude oil were spilled, causing serious pollution to hundreds of miles of UK and French coastlines. This disaster was the impetus for the international community to harmonise their laws on liability and compensation for oil pollution. The result was the original regime under the 1969 Civil Liability and 1971 Fund Conventions. The original regime was replaced when the 1992 Conventions came into force with higher limits of compensation and wider application.<sup>4</sup>

Though it is meant to give effect to the Conventions, the Liability and Compensation Act does not copy the wording of the Conventions. Instead, it follows closely (but not entirely) the wording of the UK *Merchant Shipping Act*<sup>5</sup> (“the UK Act”) which paraphrases many provisions of the Conventions. This approach has greater potential for unwitting deviation from the substance of the conventions, compared to simply giving the conventions

\* LL.B (Mal) LL.M (Cantab), Advocate & Solicitor, High Court of Malaya, Advocate & Solicitor, Supreme Court of Singapore, Solicitor, England & Wales.

<sup>1</sup> Cap. 180, 1999 Rev. Ed. Sing.

<sup>2</sup> Cap. 243, 1999 Rev. Ed. Sing.

<sup>3</sup> The *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* (“the Bunker Convention”) applies to pollution damage, including preventive measures, caused by bunker oil from *any* ship, occurring within the territory of the Economic Exclusive Zone (E.E.Z.) (200 miles) of a contracting State. “Bunker oil” means “any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.” As the Bunker Convention has not even made it into a Bill before Parliament yet, its provisions will not be the subject of this article.

<sup>4</sup> A Protocol providing for even higher limits under an optional Supplementary Compensation Fund was adopted by the International Maritime Organisation (IMO) in 2003. Singapore has not ratified this Protocol.

<sup>5</sup> *Merchant Shipping Act* (UK), 1995.

the force of law (as Singapore has done with, for example, the *United Nations Commission on International Trade Law* (UNCITRAL) Model Law, the Hague-Visby Rules and the 1976 *Convention on Limitation of Liability for Maritime Claims*).<sup>6</sup> Nonetheless, a statute that gives effect to an international Convention will be interpreted broadly and liberally to conform to the intent of the Convention.<sup>7</sup>

### A. Liability

Part II of the Liability and Compensation Act deals with liability. Unlike the UK Act, the Liability and Compensation Act applies only to oil (whether carried as cargo or used as bunker) discharged or escaped from a tanker, namely “any ship constructed or adapted for carrying oil in bulk as cargo”. The Liability and Compensation Act does not have the equivalent of section 154 of the UK Act which extends liability to a ship other than a tanker.

Section 3(1) spells out the shipowner’s liability for three heads of damage caused by oil discharged or escaped from a tanker:

- (1) damage caused in Singapore<sup>8</sup> by the contamination;
- (2) cost of reasonable measures to reduce the damage; and
- (3) damage caused in Singapore by any such measure.

Section 3(2) makes the shipowner liable for preventive measures as well, by providing that:

Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, the owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or reducing any such damage in the territory of Singapore; and
- (b) for any damage caused outside the ship in the territory of Singapore by any measures so taken,

and in this Act, any such threat is referred to as a relevant threat of contamination.

Effect is also given to the proviso in Article I(6) of the Civil Liability Convention, which reads “provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken”. This proviso was introduced in 1992 to limit compensation to costs of reinstatement and loss of profits. Actual damage to the environment is not covered. Section 5(3) of the Liability and Compensation Act stipulates that liability for impairment of the environment is limited to any resulting loss of profits and the cost of any reasonable measures of reinstatement actually taken or to be taken.

There is no Singapore decision yet as to whether pure economic loss is recoverable under the Liability and Compensation Act. Given that Singapore jurisprudence on the recoverability of pure economic loss springs from English common law, it is likely that England’s

<sup>6</sup> Respectively, *via* the *International Arbitration Act* (Cap. 143A, 2002 Rev. Ed. Sing), the *Carriage of Goods by Sea Act* (Cap. 33, 1998 Rev. Ed. Sing.) and the *Merchant Shipping Act* (Cap. 179, 1996 Rev. Ed. Sing.). While Singapore legislation does depart from some provisions of these Conventions, the deviations are clearly identified in the main text of the statutes. The entire Conventions are attached as Schedules that are given the force of law save for the exceptions specified. This method makes it easier to see where Parliament intends to deviate from the Conventions and leaves less room for surprises due to paraphrasing and restructuring of the Conventions, as are done in the Liability and Compensation Act, following the approach of the UK Act.

<sup>7</sup> *The Trade Fair* [1994] 3 Sing.L.R. 827 (on the subject of the *International Convention on the Arrest of Seagoing Ships* 1952); also the English Court of Appeal in *Sea Empress* [2003] 1 Lloyd’s Rep 327, at 336, on the Civil Liability and Fund Conventions in question.

<sup>8</sup> “Territory of Singapore” includes the territorial sea and the E.E.Z. of Singapore—section 2(3)(a).

*Sea Empress*<sup>9</sup> and Scotland's *Landcatch*<sup>10</sup> will be followed. Both these cases considered the definition of "damage" in the statute, which merely states that "damage" includes loss.<sup>11</sup> *Sea Empress* followed *Landcatch* in holding that "loss" does not include secondary or relational claims. While acknowledging that a liberal and broad construction was required in interpreting the statute to give effect to the Conventions, Mance L.J. in the *Sea Empress* considered that the language of the Conventions supported his reading of the English statute. The courts in these two cases did not consider that common law rules limiting the recovery of economic loss were out of line with international thinking. This was despite the *International Oil Pollution Compensation Funds Claims Manual* which accepts claims for pure economic loss.

On the facts, the claims fell short of the restrictive causative test imposed by the courts on the causal link between economic loss and contamination. In *Landcatch*, the economic losses of a business located 500 miles from Shetland were not recoverable where pollution of the coast off Shetland resulted in the loss in sales of smolt to Shetland salmon farmers. Likewise, in *Sea Empress*, losses suffered by a fish processing company 200 miles from Milford Haven were not recoverable when pollution off Milford Haven restricted its supply of whelks from the area. On the other hand, *Sea Empress* and *Landcatch* did not exclude entirely all pure economic loss claims. The courts admitted the possibility that the loss of income suffered by fishermen who fished in waters that have become contaminated might be recoverable.

In recent times, the Singapore Court of Appeal, albeit in a different context, has reaffirmed that recoverable loss of profit must flow from some damage to property owned or possessed by the claimant, and that pure economic loss will be recoverable in very limited circumstances: *Man B & W Diesel SE Asia Pte v PT Bumi International Tankers*.<sup>12</sup> Although the "entire baggage of rules relating to causation and remoteness in the tort of negligence" should not be applied to the interpretation of an oil pollution claim,<sup>13</sup> a Singapore court is likely to follow the trend in England and Scotland in restricting the circumstances in which pure economic loss is recoverable.<sup>14</sup>

The list of things for which the shipowner is liable under section 3 is exhaustive because section 5(1)(i) provides that a shipowner shall have no liability otherwise than under section 3 for the damage or cost referred to in section 3. A servant or agent of the shipowner or any other employee working for the ship has no liability for oil pollution damage unless it was done with intent or recklessly and in the knowledge that such damage would probably occur (section 5(1)(ii) read with section 5(2)). This protection also applies to charterers, managers or operators, salvors and persons trying to reduce the damage of contamination.

Liability is strict, but not absolute. Thus, like the 1992 Liability Convention, section 4 of the Liability and Compensation Act excludes liability for:—

- (1) Act of war or natural phenomenon;
- (2) Act or omission of third party with intent to do damage; or
- (3) Negligence or wrongful act of a government in relation to maintaining navigational aids.

There is a right to invoke admiralty jurisdiction for pollution damage, e.g., by arrest of the ship. Section 16 of the Liability and Compensation Act extends the application of

<sup>9</sup> *Sea Empress* [2003] 1 Lloyd's Rep 327.

<sup>10</sup> *Landcatch* [1999] 2 Lloyd's Rep 316.

<sup>11</sup> Section 170 of the UK Act; section 2(1) of the Liability and Compensation Act.

<sup>12</sup> [2004] 2 Sing. L.R. 300.

<sup>13</sup> Mance L.J. citing Steel J. in the court below in the *Sea Empress*, at 333.

<sup>14</sup> This is not to say that economic loss would never be recoverable. Claims by fishermen may be viewed sympathetically and are probably consistent with the loss of profits liability contemplated in section 5(3). They were also recognised as permissible claims in *Landcatch* and *Sea Empress*.

section 3(1)(d) of the *High Court (Admiralty Jurisdiction) Act*<sup>15</sup> to a claim in respect of a shipowner's liability under the Liability and Compensation Act. Section 3(1)(d) provides that the High Court shall have admiralty jurisdiction for a claim arising from damage done by a ship. But if the shipowner is entitled to limit and has created the limitation fund, no arrest shall be made or maintained.<sup>16</sup>

In exchange for strict liability, the shipowner is entitled to limit his liability for oil pollution. Prior to May 2005, section 11 of the Liability and Compensation Act denied a shipowner the right to limit unless the ship was registered in a 1969 or 1992 Liability Convention country, or regardless of the aforesaid, unless the ship was not registered in a country where the *International Convention relating to the Limitation of Liability of Owners of Sea-going Ships, 1957* ("the 1957 Convention") was in force.<sup>17</sup> Since 1<sup>st</sup> May 2005, legislation came into force to replace the 1957 tonnage limitation regime with the regime under the *Convention on Limitation of Liability for Maritime Claims, 1976* (the "1976 Convention"). A consequential amendment was made repealing section 11 of the Liability and Compensation Act so that the conditions contained in that section were removed entirely. As will be explained shortly, one may now question the purpose of the remaining references in other parts of the Liability and Compensation Act to the amended section 136 of the *Merchant Shipping Act*<sup>18</sup> that now gives the force of law to the 1976 Convention.

The limit is 4.51 million Special Drawing Rights (S.D.Rs) if the ship does not exceed 5000 tonnes. If the ship exceeds 5000 tonnes, the limit is increased to 4.51 million S.D.Rs for the first 5000 tonnes plus 631 S.D.Rs for each ton thereafter, up to a maximum of 89.77 million S.D.Rs. But if it is proved that the oil pollution was caused with intent or recklessly and with knowledge that damage would probably result, the right to limit is lost.<sup>19</sup>

The test of "recklessly and with knowledge that damage would probably result" is a subjective one. The Singapore Court of Appeal in *Singapore Airlines v. Fujitsu*<sup>20</sup> construed similar wording in the amended *Warsaw Convention* as follows: "The knowledge which must be proved is the actual knowledge of the wrongdoer, be it an individual or a group of individuals in a company. The fact that the amended Convention requires proof of recklessness as well as knowledge that damage would probably result, unmistakably indicates that recklessness per se is not sufficient".

Section 9 restricts recourse against another person who is liable for the pollution damage otherwise than under section 3, if the shipowner's limitation fund for pollution damage has been constituted and that other person was entitled to limit his liability under section 136 of the *Merchant Shipping Act*.

The cross-reference to section 136 of the *Merchant Shipping Act* harks back to the time when the general maritime limitation regime under the 1957 Convention applied in Singapore. Since January 2005, after Singapore acceded to the 1976 Convention, the rationale for the cross-reference to section 136 is not so clear. This is because the amended section 136 gives the force of law to the 1976 Convention, and Article 3(b) provides that the 1976 Convention does not apply to "claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29<sup>th</sup> November 1969 or of any amendment or Protocol thereto which is in force".

Article 3(b) itself can give rise to uncertainty because it can be interpreted to exclude all claims for oil pollution damage *within the meaning* of the Liability Convention, whether or not the liability itself is governed by the Liability Convention regime. To illustrate, there

<sup>15</sup> Cap 123, 2001 Rev. Ed. Sing.

<sup>16</sup> *Ibid.*, section 8.

<sup>17</sup> The section was expressed in more awkward fashion, involving double negatives, so it has been paraphrased to make the conditions, hopefully, clearer.

<sup>18</sup> *Supra* note 6.

<sup>19</sup> *Supra* note 1, Section 6(4).

<sup>20</sup> [2001] 1 Sing. L.R. 241.

is no right to limit under the Liability Convention for oil pollution damage claims brought in a non-Convention country, or against parties other than a shipowner. If Article 3(b) of the 1976 Convention were read literally, there would be no right to limit under the 1976 Convention either because these claims can still be defined as “oil pollution damage” within the meaning of the Liability Convention. These defendants would fall through the crack between the Liability Convention and the 1976 Convention. UK legislation makes it clear that it is only claims in respect of *any liability incurred* under the UK oil pollution legislation that is excluded from the ambit of 1976 Convention.<sup>21</sup> The Singapore legislation does not have a similar clarifying provision but it is possible, following the dictum of Thomas J in *The Aegean Sea*,<sup>22</sup> that Article 3(b) should nonetheless exclude only a claim actually made under the regime of the Liability Convention.

The time bar for claims is 3 years after the claim arose and 6 years after the first occurrence resulting in discharge of oil.<sup>23</sup> The expression follows UK legislation but differs from the actual words used in the 1992 Liability Convention. The test used in Article VIII of the Convention is 3 years from the date “when damage occurred”.<sup>24</sup>

Any ship entering or leaving Singapore must have compulsory insurance satisfying the requirements of Article VII of the 1992 Liability Convention.<sup>25</sup> Contravention can lead to detention of the vessel or the master being fined up to S\$20,000. A victim of oil pollution damage under section 3 may bring proceedings directly against the insurer. Section 15 of the Liability and Compensation Act gives the insurer a defence against liability where the discharge or escape was due to the wilful misconduct of the owner himself, and a right to limit even if the owner was guilty of an act or omission that would deprive the owner of the right to limit under section 6.<sup>26</sup>

### B. Fund

Part III of the Liability and Compensation Act provides for contribution to and claims on the Fund established under the 1992 Fund Convention.

Section 25 requires contribution to be paid by the importer or receiver of oil carried by sea to ports or terminals in Singapore, if the amount imported or received exceeds 150,000 tonnes per year. Contributions are as determined by the Director of the Fund under Article 12 of the 1992 Fund Convention.

Section 27 makes the Fund liable for pollution damage in Singapore if the victim has been unable to obtain full compensation under section 3 because:-

- (1) Liability is excluded under section 4. While regurgitating the events for which liability is displaced under section 4, section 27 omits the words “act of war, hostilities, civil war, insurrection” leaving in place only the “exceptional, inevitable and irresistible natural phenomenon” cause. This discrepancy is intentional. Section 27(6) makes it clear that the Fund is not liable if the pollution damage resulted from act of war, *etc.* or from oil discharged from a warship or other State ship on government non-commercial service. The Fund is not liable either if the claimant cannot

<sup>21</sup> Sch 7 Pt. II, para. 4(2) and section 153 of the UK Act. C. M. De La Rue & C.B. Anderson, *Shipping and the Environment—Law and Practice* (London: Lloyd’s of London Press, 1998) at 640–641.

<sup>22</sup> [1998] 2 Lloyd’s Rep 39 at 54.

<sup>23</sup> *Supra* note 1, Section 12.

<sup>24</sup> This is one example giving rise to the caution at the beginning of this article about potentially unwitting deviation from the substance of the Convention. Please see further discussion on the time bar provisions under the Fund part below.

<sup>25</sup> *Supra* note 1, Section 13.

<sup>26</sup> This is very different from the remedies or defences available to an insurer under the *Third Party (Rights Against Insurers) Act* (Cap. 395, 1994 Rev. Ed. Sing.).

prove that damage resulted from an occurrence involving a ship identified by him, or involving 2 or more ships one of which is identified by him.

- (2) The owner or insurer cannot meet his obligations in full. By definition, this means that the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.
- (3) Damage exceeds the limitation amount under section 6 of the Liability and Compensation Act, or section 136 of the *Merchant Shipping Act*.<sup>27</sup>

Section 28 sets out the limit of the Fund's liability. It corresponds to the 1992 Fund Convention limit, namely 203 million S.D.Rs for each incident, or 300.74 million S.D.Rs during the period when the combined quantity of oil imported or received into 3 Fund Convention countries is not less than 600 million tonnes.

A claim on the Fund is considered an admiralty in-rem claim, giving the Court jurisdiction under section 3(1)(d) of the *High Court (Admiralty Jurisdiction) Act*.<sup>28</sup> The Fund cannot dispute the facts and evidence of a judgment in proceedings brought against the shipowner or insurer on section 3 liability if the Fund has been given notice of the proceedings.

The time bar against the Fund sets in 3 years after the claim arose unless action is commenced or notice is given to the Fund. The claim is barred if action is not commenced within 6 years of the occurrence. As with the liability section, the wording used is borrowed from UK legislation, but differs from Article 6 of the Fund Convention, which states 3 years from "the date when the damage occurred" and 6 years from "the date of the incident which caused the damage". In this context, one may question the wisdom of the legislators in paraphrasing the Conventions rather than incorporating them into domestic law. The date when the claim arose, under Singapore or UK legislation, normally refers to the date when the grounds for a claim against the Fund crystallised. This is not necessarily the same date as the incident which caused the damage—it is usually later. The time bar provided in the domestic legislation, therefore, possibly exposes the Fund to a longer period than what the Fund Convention itself contemplates.

## II. PREVENTION OF POLLUTION OF THE SEA ACT

The Prevention Act was enacted for Singapore's accession to the *International Convention for the Prevention of Pollution from Ships*, 1973, as modified by the 1978 Protocol (the combined instruments are known as "the MARPOL Convention").

The Prevention Act implements the thinking behind the MARPOL Convention, namely to specify measures to prevent deliberate, negligent or accidental discharge of oil or other harmful substances from ships into the marine environment. It replaces the similarly titled Act of 1971 that gave effect to the *International Convention for the Prevention of Pollution of the Sea by Oil*, 1954.<sup>29</sup>

The Prevention Act complements the Liability and Compensation Act but is different in aim and implementation, mirroring the different philosophies behind the Conventions to which the statutes give effect:-

- (1) The Liability and Compensation Act is concerned with the economic consequences of pollution, balancing the right of victims to compensation against the need to give shipowners relief by limitations and exclusions of liability. The Prevention Act aims at preventing pollution of the marine environment, with the imposition of sanctions in the form of fines and imprisonment. There is also provision for cleaning up

<sup>27</sup> The same doubt expressed above regarding the rationale for continuing cross-reference to section 136 of the *Merchant Shipping Act* applies here.

<sup>28</sup> *Supra* note 1, Section 29.

<sup>29</sup> Also known as the OILPOL Convention.

costs to be recovered from the polluter (but to prevent overlap, the provision in the Prevention Act does not apply where liability is covered by section 3 of the Liability and Compensation Act).<sup>30</sup>

- (2) The Prevention Act covers pollution by a wide range of causes, such as oil, chemicals, garbage and noxious or harmful substances. This will now extend to air pollution, as Singapore is preparing regulations to give effect to Annex VI (Regulations for the Prevention of Air Pollution from Ships) of the MARPOL Convention, which is expected to enter into force on 19 May 2005. Annex VI is aimed at pollutants such as Chlorofluorocarbons (“CFCs”), Nitrogen Oxides and Sulphur Oxides. Duties and responsibilities are imposed on shipowners, managers, ship repairers, crew and suppliers and manufacturers of ozone-depleting substances.
- (3) The Prevention Act, unlike the Liability and Compensation Act that applies to tankers, operates against all sources of marine pollution, be it land, ship or terminals.

The Regulations enacted under the Prevention Act give the force of law to Annex 1 of the MARPOL Convention, save for regulation 12 which imposes an obligation on the government to ensure that reception facilities are adequate to meet the needs of the ships using them without causing undue delay to ships. Reception facilities are not overlooked, for section 11 of the Prevention Act gives the Authority, meaning the Maritime and Port Authority of Singapore (MPA), power to provide reception facilities. The MPA and the terminal operator have a duty to ensure that adequate reception facilities are provided at the port or the terminal (respectively). The Minister of Transport may ask for information and give directions regarding the reception facilities.

The main feature of the Prevention Act is, of course, prohibitions against the discharge of pollutants. Liability may be said to be strict, but there are exceptions. Furthermore, different classes of pollutants and polluters are dealt with in different degrees of strictness. Discharge of a diluted “oily mixture” is excused if the oil was contained in an effluent for refining of oil, if it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into Singapore waters and if all reasonably practicable steps had been taken to eliminate oil from the effluent.<sup>31</sup> Discharge of oil or pollutants from a ship is excused if it was necessary to save the ship or lives at sea, or if the discharge was due to unintentional damage to the ship and all reasonable precautions were taken to minimise damage.<sup>32</sup> An occupier of land or the person in charge of an apparatus from which oil or oily mixture is discharged can escape liability if he proves that the discharge was not due to any want of reasonable care, and that as soon as practicable after the discharge was discovered all reasonable steps were taken to stop or reduce it.<sup>33</sup> The burden is reversed, in that it is on the accused to disprove lack of care. But this opportunity is denied to other polluters, such as a trespasser on land<sup>34</sup> or the master, owner and agent of a ship that is the source of discharge.<sup>35</sup>

In *Jupiter Shipping v. Public Prosecutor*,<sup>36</sup> the judge sentenced the agents of a ship from which an oil slick of 1,500 m<sup>2</sup> escaped in Singapore waters to a fine of S\$10,000. The range of fines under section 7 of the Prevention Act was then S\$500 to S\$500,000 (now increased to S\$1,000 to S\$1 million). The agents were first offenders and had pleaded guilty. Yong Pung How C.J. observed that, in light of growing awareness of the damaging effects of oil pollution, and in order to combat pollution, courts must regard offences of pollution with the utmost gravity. The agents were carrying out an activity which was potentially

<sup>30</sup> *Supra* note 2, Section 18(4).

<sup>31</sup> Section 4(3).

<sup>32</sup> Sections 6(2) and 7(2).

<sup>33</sup> Section 4(1).

<sup>34</sup> Section 3(a).

<sup>35</sup> Sections 6 and 7.

<sup>36</sup> [1993] 2 Sing. L.R. 69.

hazardous: they must have been aware of the pollution that would result if something went wrong in the process. In sentencing for strict liability offences, except where the offence is either trivial or extremely serious, the court should apply a fairly standardised fine. Noting that the maximum fine at that time was S\$500,000 and that there were no aggravating factors, the judge decided that a standard penalty of a S\$10,000 fine was reasonable.

Apart from the prohibitive provisions, the positive obligations imposed by the Prevention Act include the provision of adequate reception facilities (mentioned above) and the keeping of oil or cargo record books.<sup>37</sup> A person intending to carry noxious liquid substances in bulk must notify the port authorities of his intention.<sup>38</sup> There is also a duty to report discharges of pollutants.<sup>39</sup>

In 1999, the Prevention Act was amended to give effect to the *International Convention on Oil Pollution Preparedness, Response and Co-operation* (OPRC Convention). Its purpose is to facilitate international cooperation in responding to a major oil pollution incident and to encourage States to prepare for oil pollution emergencies. Recognising that Parliament may not be the best forum to address the often voluminous and technical treaties relating to pollution controls and prevention, section 34 empowers MPA to make regulations to give effect to international agreements which have not yet been implemented by the Prevention Act. In particular, MPA is empowered to make regulations requiring the owners or operators of oil terminals and other facilities to store detergents, dispersants and equipment to deal with oil pollution.

At the same time as the Prevention Act was amended in 1999, the OPRC Regulations 1999 were brought into force to incorporate measures recommended by the OPRC Convention. Oil Pollution Emergency Plans (O.P.E.Ps), already mandatory for ships registered and calling at Singapore, were extended to offshore installations and oil handling facilities. The new *Prevention of Pollution of the Sea* ("HNS Pollution PRC") *Regulations*, 2004 gives effect to the OPRC-HNS Protocol 2000. These cover oil pollution and HNS emergency plans, national oil spills and HNS contingency plans, designated national authorities and operational focal points, response organisations comprising government agencies, oil industry, spill response companies (e.g., *The East Asia Response Pte. Ltd.*), terminal operators and vessels.

Even before accession to the OPRC Convention, MPA had already revised its National Oil Spill Contingency Plan to incorporate the provisions of the OPRC Convention. The objective of this plan is to ensure prompt and effective response to an oil spill by:-

- (1) Identifying priority for protection and clean up in the event of a spill;
- (2) Identifying high spill frequency areas in the plan;
- (3) Establishing a response organization comprising government agencies, oil industry, spill response companies, terminal operators and vessels; and
- (4) Providing a system of mobilizing and deploying adequate manpower and equipment in spill response.<sup>40</sup>

The enforcement powers of the authorities include the right of inspection, to deny entry to a ship and to detain a ship, which is in contravention of the Prevention Act or the regulations made under it.<sup>41</sup> Like claims under the Liability and Compensation Act discussed above, a claim against the owner of a ship may be considered an admiralty in-rem claim

<sup>37</sup> *Supra* note 2, Sections 12 to 14.

<sup>38</sup> *Supra* note 2, Section 9.

<sup>39</sup> *Supra* note 2, Sections 15 and 16.

<sup>40</sup> Zafrul Alam, "Singapore's Recent Accession to the OPRC Convention—How the Republic Discharges its Obligations under the Convention" (Paper presented at the 1999 International Oil Pollution Conference and Exhibition, Singapore).

<sup>41</sup> *Supra* note 2, Sections 22 and 23.



under section 3(1)(d) of the *High Court (Admiralty Jurisdiction) Act*, for “damage done by a ship”.<sup>42</sup>

In line with its obligations under the MARPOL Convention, Singapore is also phasing out single-hulled oil tankers. The latest revisions at the time of writing are to Regulation 13G of Annex I of the MARPOL Convention, which accelerates the final phase-out date from 2015 to 2010. A new Regulation 13H restricts the carriage of heavy grade oil on such tankers. Regulations prepared by MPA to give effect to the amendments will take effect on the same date that these MARPOL amendments enter into force internationally (i.e., 5 April 2005).

<sup>42</sup> *Supra* note 2, Section 23(4).

