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LIST OF ABBREVIATIONS

CMI	Comité Maritime International
Director	Director of Shipping
EEZ	Exclusive Economic Zone
GDP	Gross Domestic Product
ILC	International Law Commission
IMO	International Maritime Organisation
LLMC Convention	Convention on Limitation of Liability for Maritime Claims, 1976
LOSC	United Nations Convention on the Law of the Sea, 1982
MUR	Mauritian Rupee
P&I	Protection and Indemnity
UK	United Kingdom
UNESCO	United Nations Educational, Scientific and Cultural Organization
WRC	Nairobi International Convention on the Removal of Wrecks, 2007

EXPLANATORY NOTE

This Explanatory Note and the Wreck Removal Act have been prepared in view of incorporating the Nairobi International Convention on the Removal of Wrecks 2007 into the national laws of the Republic of Mauritius.

SECTION 1: NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS 2007

1.1 Historical Background

The roots of the Nairobi International Convention on the Removal of Wrecks 2007 (WRC) can be traced back to 1967 *Torrey Canyon* incident when it was felt that there was an absence of legal basis for the removal of wrecks outside the limits of the territorial sea. Few years later, in 1972, at the request of the Comité Maritime International (CMI) and Liberia, the issue of wreck removal appeared on the agenda of the twelfth session of the Legal Committee.¹ Despite a review of national laws conducted by the latter in the 1974-1975, it was only eighteen years later that a paper by Belgium, Germany, Greece, the Netherlands and the United Kingdom (UK) was submitted to the sixty-ninth session of the Legal Committee in 1993 in which it was argued that it was high time to work on a wreck removal convention,² as it is in its present form.

It is to be recalled that the first concrete draft of the WRC submitted jointly by Germany, the Netherlands and the UK in 1994 was for wreck removal operations in international waters only.³ In 1996, the CMI got extensively involved in the development of the WRC. Further to the replies of national Maritime Law

¹ Opening address by Efthimios E. Mitropoulos, former Secretary-General of the International Maritime Organization, Nairobi, 14 May 2007 available at http://www.imo.org/blast/mainframe.asp?topic_id=1518&doc_id=8016.> 21 November 2014.

² Martinez Gutiérrez, Norman A.; *Limitation of Liability in International Maritime Conventions – The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, U.K., 2011, p. 168.

³ Griggs, Patrick; *Draft Convention*, CMI Yearbook 2005-2006, p. 376.

Associations to the questionnaires of the International Working Group,⁴ a report was submitted to the seventy-fourth session of the Legal Committee of the International Maritime Organisation (IMO) in October 1996 which concluded “the national regimes for wreck removal within territorial waters may have so many similarities that it would be possible to include these areas within the scope of the Wreck Removal Convention”.⁵ As such, it reported that, besides the Exclusive Economic Zone (EEZ), the draft convention may extend to the removal of wrecks in the territory of State Parties, which finally manifested itself in Article 3 (2) of the WRC.

After years of negotiations, the WRC was finally adopted by a Diplomatic Conference in Nairobi in May 2007. On 14 April 2014, the WRC attained the requisite number of ratifications, i.e. 10, with Denmark being the 10th country to ratify the Convention. Thus, the WRC entered into force in State Parties on 14 April 2015.

1.2 Overview of the Nairobi International Convention on the Removal of Wrecks 2007

The WRC aims at imposing an international regime under which the coastal States will have a legal basis to take actions for the removal of wrecks beyond their territorial seas. The WRC also aims at clarifying rights, duties and responsibilities relating to the removal of wrecks beyond the territorial sea. Besides providing coastal States with the right to remove the wrecks from their EEZ, the WRC also provides for the strict liability of the ship owners for the costs of reporting, marking and removing a wreck, and further imposes the compulsory insurance or other financial security for the registered owners

Considering the fact that WRC deals with the liability of the registered owners and impose on them the obligations in accordance with its provisions, it can be said that the adoption of the Convention forms part of the framework of the IMO’s liability and compensation conventions and complements the international legal regime of

⁴ CMI had set up a small International Working Group, chaired by Mr. Bent Nielsen, which had the task to study the draft WRC.

⁵Griggs, Patrick; *op. cit.*, pp. 376-377.

compensation,⁶ together with other conventions such as the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC 1992) , the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention) and so on.

The first legal basis for government intervention for wreck removal is firstly the 1969 Intervention Convention⁷ which entitles State parties the “right to take such measures on the high seas to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interest from pollution or threats of pollution”.⁸ Furthermore, it can be observed that the WRC is consistent with the powers of coastal States as set out in Article 221 of the United Nations Convention on the Law of the Sea 1982 (LOSC), which lays down measures to avoid pollution arising from maritime casualties and which is also said to provide a lower threshold.⁹ Additionally, Article 56 (1) of the LOSC gives the coastal State the right to exercise jurisdiction on the EEZ for the protection and preservation of the marine environment. Section 15 of the Maritime Zones Act 2005, as amended, of Mauritius incorporates Article 56 of the LOSC and more specifically as per section 15 (1) (b), Mauritius has jurisdiction with respect to the protection and preservation of the marine environment in its EEZ.

⁶ Howlett, Linda; “Nairobi International Convention on the Removal of Wrecks, 2007”, a paper delivered at the 39th Conference of the CMI (Athens, Greece), 12-17 October 2008, CMI Yearbook 2007-2008, pp. 344-345.

⁷ 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties adopted on 29 November 1969 and entered into force on 06 May 1975.

⁸ <<http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx> > 5 December 2015.

⁹ LEG 85/3/1, pp.1-2.

1.2.1 What is a Wreck?

Article 1(4) of the WRC gives a wide definition to “wreck”:

“Wreck”, following 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.

The definition of “wreck” under Section 131 (1) of the Merchant Shipping Act 2007, which is a replica of the definition provided by Section 255 of the UK Merchant Shipping Act 1995, is as follows:

“Wreck” includes jetsam, flotsam, lagan and derelict¹⁰ found in or on the shores of the sea or any tidal water.

(2) Fishing vessels or fishing gear lost or abandoned at sea and –

- (a) Found or taken possession of within Mauritius waters; or
- (b) Found or taken possession of beyond those waters and brought within those waters,

shall be treated as wreck for the purpose of this Part.

This definition can be further traced back to section 510 of the Merchant Shipping Act 1894. However, one key expression “tidal waters”, the definition of which cannot be found in the Merchant Shipping Act 2007 of Mauritius, has been defined

¹⁰ “Jetsam describes goods cast overboard to lighten a vessel in danger of sinking. The vessel may still perish. Flotsam describes goods lost from a ship which has sunk or otherwise perished. Goods are recoverable because they remain afloat. Lagan describes goods cast overboard from a ship which afterwards perishes. The goods are buoyed so they can be recovered. Derelict describes property, whether vessel or cargo, which has been abandoned and deserted at sea by those who were in charge of it without any hope of recovering it.” as explained on the Official website of the British Government at < <https://www.gov.uk/wreck-and-salvage-law> > 8 January 2015.

in the UK one as follows: “tidal water” means “any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour”. Clearly, the aforesaid expression is an outdated one, bearing in mind that the LOSC does not make mention of “tidal waters” at all. It further appears that the wreck referred to in the Mauritian Merchant Shipping Act 2007 covers only wreck found within the territorial sea.¹¹ Therefore, for the purpose of bringing clarifications, another definition of “wreck” in the Merchant Shipping Act 2007 will be provided under the section of “Consequential Amendments” of the draft bill, whereby express reference will be made to the territorial waters and archipelagic waters as defined in the Maritime Zones Act 2005 and “tidal waters” will be deleted. However, the definition of wreck to be used in the draft bill will be the one provided by the WRC.

1.2.2 Element of Hazard

For the WRC to be applicable, the wreck should constitute a hazard, which has been defined as “any condition or threat that poses a danger or impediment to navigation or 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.”¹² Furthermore, the WRC at Article 6 provides a comprehensive list of criteria to be considered by Affected States to determine whether a wreck amounts to a hazard.

1.2.3 Scope of Application

The WRC applies to wrecks located in the Convention area, which according to Article 1(1) 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".

¹¹ Ibid.

¹² Article 1(5) of the WRC.

It is essential to note that Section 14 of the Maritime Zones Act 2005 establishes a 200 nautical miles' EEZ measured from the baselines. Therefore, the scope of application of the WRC will be the EEZ established by Mauritius, of 1.96 million square kilometres.

Nevertheless, one crucial element of the WRC is the possibility to extend the provisions of the Convention to the State Party's territory which include its territorial waters and also its archipelagic waters.¹³ Provisions for such extension will be made in the draft bill. The 'opt-in' clause will contribute in consolidating the existing provisions, which relate mostly to the administrative issues, with the WRC. Having a single legislation will allow the Mauritian authorities to adhere to one set of rules for the removal of wrecks both in the territory of Mauritius and its EEZ, therefore eliminating the duplication of guidelines and facilitating the setting up of one framework to govern the removal of wrecks. Also, the benefits of this opt-in will be felt in cases where the owner of the wreck found in the territory of Mauritius is missing and the Government of Mauritius will have a right of action against the insurer, as it will be elaborated further below.

1.2.4 Reporting

The reporting of wrecks has been dealt with in Article 5 (1) of the WRC, wherein the master and the operator of a ship is under the obligation to report, without any delay and in some detail, any maritime casualty which results in a wreck to the State Party in whose EEZ the wreck is situated, i.e. the Affected State. Given that the master is an agent of the shipowner, it can be deduced that this duty is extended to the latter as well.

1.2.5 Locating Wrecks

According to Article 7 of the WRC, as a matter of urgency, the Affected State should take necessary measures to warn mariners and other concerned States of the nature and location of wrecks. In addition, should the Affected States believe that the

¹³ Article 3(2) of the WRC.

wrecks constitute a hazard, that State should ascertain that appropriate actions are being taken for locating the wrecks.

1.2.6 Marking of Wrecks

Similar to the provision on locating wrecks, the WRC provides at Article 8 that the Affected State should make sure that reasonable measures are taken to mark the wrecks. It has further been provided that such marking should be in compliance with internationally accepted system of buoyage used in the area where the wrecks had been located. Moreover, these markings should be published and circulated; these may be in the form of nautical publications.

1.2.7 Removal of Wrecks

The primary responsibility for the removal of wrecks constituting a hazard is imposed by Article 9(2) on the registered owner of the vessel. The latter may have a contract for the removal of wrecks with any salvor or any other person.¹⁴

1.2.8 The Rights and Duties of the Affected States

- (a) Upon receipt of a report of wrecks, the Affected State should determine if such wrecks constitute a hazard to navigation or the environment. The criteria of Article 6 of the WRC should be taken into consideration for the determination of a hazard. Should the wrecks pose a hazard, the Affected State will have a duty to take appropriate measures to warn mariners of the wrecks, to locate and mark the wrecks.

- (b) The Affected State, after having determined that the wrecks amount to a hazard, is under the obligation to promptly and immediately inform and consult the flag State of the ship as well as its registered owners.¹⁵

¹⁴ Article 9(4) of the WRC.

¹⁵ Article 9 of the WRC.

- (c) Under Article 9(6) of the WRC, the Affected State is required to fix a deadline within which the registered owner should begin with the removal of wrecks. This deadline should be communicated to the registered owner and the Affected Party should further inform them that in case where they do not remove the wrecks within the set deadline, the Affected Party will proceed with same. Prior to such an intervention, the Affected State should formally notify the registered owner in writing, informing the latter of same. In circumstances where an immediate action is needed, besides informing the registered owners, the Affected State should also inform the State of the ship's registry.
- (d) The Affected State may intervene in view of removing wrecks at the owner's expense in cases where the registered owner fails to do so within a reasonable time period as prescribed by the Affected State or in cases where the hazard becomes particularly severe.

1.2.9 Shipowner's Liability

As mentioned earlier, the duty to locate, mark and ascertain that appropriate actions are taken to facilitate wreck removal is on the Affected State. Nevertheless, the registered owner is the one on whom the obligation to remove the wrecks rests, as pointed out above.¹⁶

Furthermore, at Article 10, it can be noted that there is a strict liability on the owner with respect to the costs incurred for the location, marking and removal of the wrecks. Nonetheless, as per the same article of the WRC, such liability will not be incurred where the maritime casualty that caused the wrecks:

- resulted from an act of war or similar hostilities; or
- resulted from a natural phenomenon of an exceptional, inevitable and irresistible character; or
- was wholly caused by acts or omissions by third parties done with intent to cause damage; or

¹⁶ Section 1.2.7 of this Explanatory Note.

- was wholly caused by the negligence or other wrongful act of any Government or authority responsible for the maintenance of navigational aids.

Additionally, any liability for such costs that seemingly conflicts with a number of conventions and laws¹⁷ will not be incurred by the shipowners. These conventions include the:

- (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
- (d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended¹⁸

1.2.10 Limitation of Liability

Article 10(2) of the WRC stipulates that nothing in the WRC shall affect the right of the registered owner to limit his liability under any applicable national or international regime, such as the LLMC Convention. This implies that the LLMC Convention's provisions can be used by the shipowner to limit his liability with respect to wreck removal costs, "provided that such claims have not been excluded from the scope of application of the [LLMC] Convention by means of a reservation".¹⁹ Claims with respect to wreck removal have expressly been included as claim subject to limitation under the LLMC Convention.²⁰ Nevertheless, it has

¹⁷ Article 11 of the WRC.

¹⁸ Ibid.

¹⁹ Martinez Gutiérrez, Norman A.; op. cit., p. 174 and p. 198.

²⁰ Article 2(d) of the LLMC Convention.

further been provided, at Article 18 (1), that a State has the right to exclude the application²¹ of Article 2 (1) (d) and (e) of the above named convention.

It is to be noted that the LLMC Convention was acceded to by Mauritius on 17 December 2002 and it entered into force in Mauritius on 1 April 2003. However, the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 had not been acceded to by Mauritius.²² Most importantly, no reservations had been made by Mauritius to Article 2 (1) (d) and (e) of the LLMC Convention. Therefore, shipowners will be able to avail themselves of the limits of liability as provided by Section 197 of the Mauritian Merchant Shipping Act 2007 which incorporates Article 6 (1) of the LLMC Convention.

Bearing in mind the elevated costs of wreck removal operations, it can be said that the limits of liability set by the Merchant Shipping Act 2007 are very low and this may be detrimental to the interest of the Government of Mauritius, where only an insignificant amount would be recovered for wreck removal carried out by the latter.

It seems that there are two approaches that may be suggested to the Government of Mauritius:

- (i) Mauritius can attempt to make a reservation to the LLMC Convention in respect of its Article 2(1)(d). It is to be noted that the aforesaid convention does not specifically provide for reservations to be made by contracting State parties after the ratification or accession of the Convention. Therefore, in the first instance the Government of Mauritius may endeavour to submit a reservation, but it is possible that the IMO's Secretary General may decline to accept such reservation. On the other hand, another possible *modus operandi*, which has recently been adopted by a number of State parties to various conventions, is by denouncing a convention and thereafter, re-acceding to it again along with the

²¹ It has been argued whether Article 18(1) indeed constitutes an effective reservation since its wordings seem to suggest that the article only gives a State the right to exclude the claims. See Martinez Gutiérrez, Norman A.; *op. cit.*, p. 98.

²² The limits of liability under the LLMC Convention were raised by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 and these limits were further increased by the tacit amendment procedure and the IMO Legal Committee's Resolution adopted a correspondent Resolution LEG.5(99) on 19 April 2012, which will enter into force on 08 June 2015.

necessary reservation. Such a practice, however, may face opposition by some contracting State parties.²³

- (ii) The Government of Mauritius can, on the other hand, denounce the LLMC Convention and then accede to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976 in view to have one single regime covering the limitation of liability. Thus, the higher limits of liability as per Resolution LEG.5 (99) will be applicable. It is further submitted that at the moment of accession of the 1996 Protocol, the Government of Mauritius may make a reservation to Article 2(1) (d) and (e).

The impact that a reservation can have is crucial since the shipowner will not be able to limit his liability with respect to the costs incurred for the removal of wrecks. Therefore, in cases where the Government of Mauritius has proceeded with the removal of wrecks, then the latter can recover the cost of wreck removal from the shipowner.

With respect to the legal set-up to implement the LLMC Convention, it has been observed that the Courts Act 1945, the Rules of the Supreme Court and the Code de Procédure Civile do not expressly give powers to the Supreme Court of Mauritius to constitute such funds as may be allowed by the LLMC Convention. Hence, it is submitted that the above enactments should be amended in order to enable the Supreme Court, which has unlimited jurisdiction to hear and determine any civil or criminal proceedings,²⁴ to establish receive, administer and distribute such funds.

Since the above listed proposals have not yet been made to the Government of Mauritius, the draft bill has been prepared considering the present legal framework and the provisions of the Merchant Shipping Act 2007.

²³ Martínez Gutiérrez, Norman A.; *op.cit*, p.98.

²⁴ Section 76(1) of the Constitution of Mauritius.

1.2.11 Compulsory Insurance and Direct Action against the Insurer

The registered owners of ships of 300 gross tonnage and above which fly the flag of a State Party or which is entering or leaving a port in the territory of a State Party are required to possess the necessary insurance cover arrangements.²⁵ In the same vein, Article 9(3) provides that the registered owner should submit an evidence of insurance or financial security for the removal of wrecks to the Affected State where the latter has established that the wrecks amount to a hazardous one. Similarly, a certificate must be issued by a State Party attesting that such insurance is in force and this certificate must be carried on board at all times. The WRC closely follows the strict liability and insurance provisions which currently apply to oil tankers under the CLC 1992 and ships of 1,000 gross tonnage and over under the Bunker Convention.²⁶

Furthermore, Article 12 (10) of the WRC provides for a direct action of third parties against insurers. It may be observed that more or less the same provision can be found at Article VII (8) of the CLC 1992, Article 12 (8) of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010, Article 7 (10) of the Bunker Convention and Article 4 bis (10) of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea relating to the Carriage of Passengers and their Luggage by Sea 2002. This provision makes liability insurance directly available for the ones to whom the insured is liable.²⁷ Thus, the interest of the third party, who has been injured, can be protected, especially considering the fact that after the vessel becomes a wreck, the ship owning company may declare insolvency and the Affected State, which is most likely to remove the wrecks at its own costs, will find itself in a situation where it will not be able to recover the consequential costs incurred.

²⁵ Article 12 (1) of the WRC.

²⁶ < <http://www.swedishclub.com/main.php?mid=17298&pid=17166&tid=17140> > 6 January 2015.

²⁷ < <https://www.law.kuleuven.be/jura/art/39n2/fossion.htm> > 6 January 2015.

Nonetheless, it is worth nothing that in the event where the registered owner is unable to limit his liability, the insurer may still limit his liability to an amount equalling the amount of the insurance or financial security which is to be maintained as required by Article 12 of the WRC.²⁸

SECTION 2: REASONS WHY MAURITIUS SHOULD ACCEDE TO THE NAIROBI INTERNATIONAL ON THE REMOVAL OF WRECKS 2007

According to the UNESCO's estimate, the number of ship wrecks scattered all over the ocean floors of the world is over 3 million.²⁹ Often referred to as looming time bombs, ship wrecks are not only a source of obstruction to safe navigation, which in turn put the lives of crew members and ships in danger but are also a potential hazard to the marine environment. Below are the reasons why Mauritius should accede to the WRC and incorporate it into its national legislation in view of giving force to the provisions of the Convention:

- (i) The coastline of Mauritius is approximately 322 km long. It is surrounded by 150 km of coral reefs with a lagoon area of approximately 243 km sq. The coastal and marine habitat consist of sandy beaches, rocky shores, near shore wetlands and mangroves, lagoon corals, fringing coral reefs and all their associated marine life. Mauritius has an extremely rich coastal zone consisting of near shore wetlands and mangroves, lagoon coral, fringing coral reef and all their associated marine life.³⁰ By releasing oil or any other toxic substances, ship wrecks may cause the marine ecosystem to be adversely affected. Additionally, the ageing metal structures of ships release noxious contents into the sea due to corrosion which may be detrimental to the marine ecosystem. The WRC, by imposing an obligation on the Master and registered owner to report, will

²⁸ Article 12(10) of the WRC.

²⁹ <<http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/the-underwater-heritage/wrecks/>> 8 January 2015.

³⁰ <http://www.asclme.org/MEDA/MU/Mauritius_MEDA_FINAL-ELECTRONIC.pdf>8 January 2015.

enable the Mauritian authorities to detect the imminent problem and in light of the potential danger, decide whether any immediate action should be taken. By marking and locating, this will facilitate the authorities to proceed with the restoration of the marine environment which has been subject to disturbance caused by the wrecks.

- (ii) Furthermore, due to the substantial costs involved in the removal of wrecks,³¹ many shipowners abandon their vessel. It is often difficult for the flag State to trace back the owners of the ship in cases where the owner of the vessel is a shell company, incorporated only for the purpose of acquiring and managing that single ship. In such cases, in order to protect its economy and marine environment, the government may have to proceed with the removal of the wrecks at its own cost. This implies that the tax-payers of Mauritius will be the ones on whom this burden will be placed. Hence, it can be said that the WRC will play an important role in protecting the tax-payers in Mauritius from any undue burden. In this context, the compulsory liability and direct action against the insurer as explained in section 1.2.11 will enable the Government of Mauritius to recover the relevant costs from the latter and therefore, not imposing any financial burden on the Mauritian economy and its tax-payers.

- (iii) Mauritius has an EEZ comprising 1.96 million square kilometres and is said to be full of living resources, mainly fishing. In recent years, the number of fishing licenses granted to vessels, especially to large tuna purse seiners, has been on a rise. Should this trend be followed, it is very likely the amount of activity in the EEZ of Mauritius will intensify. The higher the number of large fishing vessels, the more risk Mauritius face to have wrecks in the waters of Mauritius. Hence, this is where we see the importance of the WRC which will provide a legal basis for Mauritius, as a coastal State, to regulate the removal of wrecks from its EEZ. By requiring that the wreck removal be carried out within a time limit, the

³¹ For example, the bill for removing the wrecks of MV Costa Concordia and the MV Rena, when combined, had been estimated to be above USD 2 billion. See Ott, Christian: The Rising Cost of Wreck Removal, published on 18 November 2014 at <http://www.skuld.com/topics/environment/wreck-removal-convention-2007/wrc-2007/the-rising-cost-of-wreck-removal/> >10 January 2015.

Government will be able to make sure that the natural habitat of the living resources in the EEZ is restored as soon as possible and therefore, minimising any interference with the activities carried out in the EEZ, such as fishing.

- (iv) With respect to the development of another pillar of the economy, which is the ocean economy, the Government of Mauritius has identified priority areas, among which we can find the seabed exploration for hydrocarbon and minerals, Deep Ocean Water Applications (DOWA), fishing, seafood processing and aquaculture. This industry, which is expected to contribute an average of MUR 12 billion³² in the coming five years to the Mauritian economy, may be in jeopardy by the presence of wrecks of ships in the water of Mauritius. In addition, one of the pillars of the Mauritian economy is the tourism industry with a contribution of above 25% to the GDP of the country.³³ Recently, a niche market which has been developed is that of eco-tourism. Moreover, Mauritius, which has in recent years been a port of call to luxurious cruise liners such as Costa Croisières, Queen Mary 2 and MSC Cruise Lines,³⁴ may find itself in a situation where the number of passenger vessels calling in Mauritius may drastically fall since the safe navigation of the sea routes around Mauritius may be put in doubt and this will indubitably be a major setback for this sector. The WRC, at its Article 9 (6), the Affected State should set a reasonable time frame within which the registered owner should remove all the wrecks. By so doing, any wrecks, which otherwise would have obstructed the activities in the area, are removed within a reasonable time period.

³² Board of Investment, National Investment Promotional Agency of the Government of Mauritius, E-Newsletter, Issue No 62 available at <<http://www.investmauritius.com/newsletter/feb14/Ocean.html>> 15 January 2015.

³³ Makochehanwa Albert; An analysis of tourism contribution to economic growth in SADC Countries, Botswana Journal of Economics 11.15, 2013, p. 43.

³⁴ <<http://www.portguide.mu/diversification.html>> 15 January 2015.

- (v) Strategically located in the Indian Ocean on the shipping routes linking Africa, Europe, Asia and Australia, Port Louis, which the unique port of Mauritius, is presently experiencing a steady increase in the number of calls by vessels to the port of Mauritius. The port experienced an increase of 5.1% in 2013³⁵ and 31% in 2012³⁶ in the vessel traffic in its harbour, With an investment of MUR 6 billion (approximately USD 200 million) to upgrade the port and cargo handling facilities in Mauritius,³⁷ the number of vessel movements in and around Mauritius is very likely to increase substantially, thus the probability of having ship wrecks is higher. In addition, ship wrecks in the way of shipping routes will not only jeopardise safe navigation but it will also deter several vessels from calling to the port of Port Louis. The marking of wrecks by the Affected State, as provided by Article 8 of the WRC, will enable users of these shipping routes to identify and avoid hazards. In addition, the obligation on Affected State to warn mariners under Article 7 will also contribute to the safer navigation of vessels in the EEZ and the territory of Mauritius, including its archipelagic waters and territorial sea.
- (vi) The Environmental Protection Act enacted on 28 May 2002 is a fundamental legislation in the protection and management of the environmental assets of Mauritius, including the sea. It contains provisions for the “legal framework and the mechanism to protect the natural environment, to plan for environmental management and to coordinate the inter-relations of environmental issues, and to ensure the proper implementation of governmental policies and enforcement provisions necessary for the protection of human health and the environment of Mauritius”.³⁸ However, despite the drastic effect that

³⁵ Mauritius Ports Authority, Annual Report 2013, Port Trade Key Performances available at http://www.mauport.com/annual_report_files/2013/portTrade.php > 22 January 2015.

³⁶ Mauritius Ports Authority, Annual Report 2012 available at http://www.mauport.com/downloads/annualreport/AR_2012.pdf > 22 January 2015.

³⁷ < <http://www.oceaneconomy.mu/PDF/Brochure.pdf> > 22 January 2015.

³⁸ Preamble of Environment Protection Act 2002 available at <http://environment.govmu.org/English/Documents/EPA%202002%20as%20amended%20in%202008-%20Supreme%20Court%20Version.pdf> > 22 January 2015.

wrecks may have on the environment, this enactment is silent on the protection of the Mauritian waters against ship wrecks. This depicts the insufficiency in the national laws to tackle the issue of wreck removal. This statement can be further explained by the fact that the Merchant Shipping Act 2007 as well does not cover the removal of wrecks in a comprehensive manner. In face of such an insufficiency, by acceding to and incorporating the WRC, Mauritius will have the possibility to impose conditions for the removal of wrecks to ensure that any measures taken for such removal are consistent with protection of the marine environment.³⁹

In light of the reasons set forth, it is posited that the Government of Mauritius should accede to the WRC and proceed with the incorporation of the provisions of the aforesaid Convention by way of enactment and putting in place an effective implementation mechanism.

SECTION 3: IMPLEMENTATION MECHANISM

3.1 Assessment of the Existing Legislation Covering Wreck Removal

The present Merchant Shipping Act of Mauritius was made on the 07 December 2007 and passed by Proclamation No. 10 of 2009. At the time when this statute was being drafted in view to repeal and replace its predecessor, the Merchant Shipping Act 1986, the WRC had just been voted and adopted in May 2007 by the IMO.

After the examination of the definition of “wreck” at section 1.2.1 of this explanatory note, it has been observed that wreck referred only to wrecks within the territorial sea. Furthermore, Sections 132 to 140 of the Merchant Shipping Act 2007 cover mostly what appears to be the administrative aspect of wreck removal. For instance, there is the establishment of the “Receiver of Wrecks” who shall be the Director of Shipping and to whom the duty to exercise general direction and

³⁹ Article 9 of the WRC.

supervision over all matters relating to wreck and salvage has been imposed.⁴⁰ Other administrative aspects include the taking into possession of any wreck, immediate sale of wrecks and other similar provisions.

The source of the content of these sections originates from the UK Merchant Shipping Act 1995, more precisely Part IX (Salvage & Wreck). It is worth mentioning that the Merchant Shipping Act 2007 of Mauritius has been modelled on the UK Merchant Shipping Act. This may be explained by the fact that, having been a British colony, many of Mauritius' laws related to commercial activities, such as the company, public and administration, draw essentially from the English common law. It is important to add that statutes based on the British model have proved to be suitable in the Mauritian context. In the eyes of the legislator, this category of laws is viewed as one providing stability and reliance.

It can be further noted that section 25 (2) of the Merchant Shipping Act 2007 provides that “[e]very ship anchoring in, or trading in or from, Mauritius waters or entering a Port shall, in addition, carry insurance cover against wreck removal expenses in such amount as the Director may approve.” Nevertheless, it can be observed that this provision has never been enforced in Mauritius. In the first place, such requirement had never been brought to the attention of stakeholders, for instance, neither a Notice to Mariners⁴¹ has been issued nor a set of guidelines to elaborate on this. Secondly, the framework for verifying that the concerned ships in fact hold an insurance cover for wreck removal expenses has not even been put in place. This lacuna can be explained by the fact that the other provisions of the Merchant Shipping Act⁴² related to the removal of wreck are insufficient and lack a comprehensive structure. Hence, for the sake of harmonising the WRC with Mauritius' domestic legislation, the above mentioned section of the WRC will be amended by the draft bill.

⁴⁰ Article 132 of the Merchant Shipping Act 2007 of Mauritius.

⁴¹ <<http://fisheries.govmu.org/English/Shipping%20Division/Pages/Marine-Notices.aspx>> 25 January 2015.

⁴² Section 132 to 140 of the Merchant Shipping Act 2007.

It can therefore be concluded that the relevant provisions of the Merchant Shipping Act 2007, being applicable only to the wrecks found in the territorial sea, are inadequate as these do not provide a sound legal basis for the removal of wreck beyond the territorial sea.

3.2 Method of Incorporation

Being a dualist country, the doctrine of transformation plays an important role, requiring the incorporation of a convention into the domestic legal sphere by way of an enactment. It has been confirmed by a decision of the Supreme Court of Mauritius⁴³ that the domestic courts can only enforce provisions of treaties and international conventions ratified by Mauritius only if these treaties have been duly incorporated into the national legislation. Section 45(1) of the Constitution vests law-making power with unicameral National Assembly. Primary legislation passed by Parliament is referred to as Acts of Parliament. By contrast, there is also subsidiary legislation which refers to those Rules or Regulations enacted by ministers, local councils or public authorities to whom such law-making power has been delegated.

In order to incorporate the WRC into the Mauritian domestic legal system, it is submitted that a primary legislation be proposed to the Parliament, namely the Wreck Removal Bill. This draft enactment will encompass all the obligations of Mauritius under the WRC, the duties of the shipowner, operators and master and provide for compulsory insurance or equivalent financial security. Moreover, in order to harmonise the provisions of the Merchant Shipping Act 2007, the draft bill will also bring some amendments to the latter legislation.

After having been vetted by the Attorney General's Office, the bill will be submitted to the Cabinet for approval and then presented to the Parliament for three readings. Bills are adopted by a simple majority (except those on human rights and democratic

⁴³ Permanent Secretary, Ministry of Women's Rights, Child Development & Family Welfare v Jordan M. M., 2006 Supreme Court Judgement 32.

principles or aimed at altering the Constitution, for which a qualified majority or referendum is required). The next stage after the adoption of the Bill by the National Assembly is the Presidential assent for the Bill to become law. All Acts of Parliament are thereafter published in the Government Gazette.

The drafting of this bill has been done by taking into consideration the UK Wreck Removal Act 2011 and the draft amendments⁴⁴ to the Indian Merchant Shipping Act 1958 incorporating the WRC. Nevertheless, some parts of the above mentioned draft amendments to the Indian Merchant Shipping Act 1958 were omitted from this draft, for instance, according to section 390 (E)(5), the proceeds of the sale of wreck in situations, where the Government has removed the wrecks, will become the property of the Government of India. From a strict view, this section has not been provided by the WRC, therefore there is no obligation to insert it. Furthermore, the Government will be able to recover costs incurred for wreck removal from the shipowners and insurers.

In addition, as provided by the “opt-in” clause at Article 3(2), the WRC will be extended to the territory of Mauritius, which includes its archipelagic waters and territorial sea. Accordingly, the Secretary-General of the IMO should be notified of same at the time of ratification or accession, for instance, the UK and the Denmark have issued declarations at the moment they were expressing consent to be bound by the WRC that they would be extending the application of the Convention to their territorial waters as well.

3.3 Administrative & Functional Aspect

3.3.1 Role of the Shipping Division & the Director of Shipping

The Shipping Division, whose head is the Director, is responsible for ensuring the safety and security of ships, the protection of life and property at sea and the marine

⁴⁴ Notice inviting comments from stakeholders concerned, F.N. MSL-9(27)/2000-Vol. II, 02 May 2014 available at http://dgshipping.gov.in/WriteReadData/News/201405020427328475515notice_msl_bunker_convention_020514.pdf >1 February 2015.

environment.⁴⁵ Being a maritime administration, port State functions are performed by the Shipping Division which is the focal point for IMO and also enforces international maritime conventions. The Shipping Division was, until recently, under the Ministry of Public Infrastructure, National Development Unit, Land Transport & Shipping but is presently under the aegis of the Ministry of Ocean Economy, Marine Resources, Fisheries, Shipping and Outer Islands.

Under the Merchant Shipping Act 2007, the Director had been designated as the Receiver of Wrecks who has the duty “to exercise general direction and supervision over all matters relating to wreck and salvage”.⁴⁶ It is worth noting that Director has under his supervision a number of qualified professionals such as marine surveyors, engineers, superintendent and maritime officers. Most of these officers are professional who have experience in previous cases of wrecks found in the territorial waters of Mauritius.

Given that the Merchant Shipping Act 2007 already confers the administrative duties related to wreck removal to the Director, the draft bill will further add duties as per the WRC on the latter, for instance, the focal point for the reporting of all cases of ship wrecks will be the Director. The draft bill will also give the Director the right to consult with independent experts.

As a procedural matter, the Director will issue the relevant certificates to vessels registered under the Mauritian flag which will attest that the vessel has an appropriate insurance. Similarly, the Director may also issue such certificates to vessels registered in a country which is not a Contracting Party to the WRC only upon satisfaction that there is a valid and appropriate insurance. An application form for the above two categories will have to be prepared and published online along with the list of documents requires, for example, evidence of insurance – which can be in the form of a Blue Card issued by P&I Club, a copy of the ship’s tonnage certificate, in case of foreign-flagged vessel: a copy of its Certificate of Nationality and so on. Details of all these administrative procedures will need to be provided in the Notice to Mariners that the Director will issue.

⁴⁵ < <http://publicinfrastructure.govmu.org/English/Pages/default.aspx> > 1 February 2015.

⁴⁶ Section 132 (1) of the Merchant Shipping Act 2007 of Mauritius.

Similar to the recording of ballast water management into a database, it would be suggested that another database be created for keeping track of all the wrecks located in the Mauritian waters and the status of any wreck removal. This would enable the authorities to issue, on a regular basis, Notice to Mariners whereby the users of the sea lanes around Mauritius be warned of potential hazards to navigation.

SECTION 4: CONCLUSION

As a conclusive note, it can be said that the WRC is a very useful tool that fills a gap in the existing international legal framework by laying out the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond a country's territory. Nevertheless, despite the fact that the WRC entered into force on 14 April 2015, there are only 20 member States that have ratified the Convention, amounting to a total of 32.90% of world tonnage.⁴⁷ Therefore, pending a more wide-spread commitment by other member States, conflicts under international law can be expected regarding its application, especially since the LOSC does not recognise such rights to coastal States in their EEZ.

⁴⁷ IMO, Summary of Status of Convention as at 27 April 2015.
<<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>> 01 May 2015.

WRECK REMOVAL ACT

(No..... of 2015)

To make provision for the removal of hazardous wrecks and matters ancillary thereto, and to provide for the safety of navigation, prevention of pollution, protecting marine environment, ensuring the liability of shipowners and others and to incorporate the Nairobi International Convention on the Removal of Wrecks 2007.

ENACTED by the Parliament of Mauritius as follows:

PART I – INTRODUCTORY

1. Short title and commencement

This Act may be cited as the Wreck Removal Act 2015 and shall come into operation on a day to be fixed by Proclamation.

2. General interpretation

In this Act:

“**Affected State**” means the State in whose Convention area the wreck is located;

“**archipelagic waters**” in respect of Mauritius has the meaning given in the Maritime Zones Act 2005; and in respect of any other State has the meaning given in UNCLOS;

“**Convention**” means the Nairobi International Convention on the Removal of Wrecks 2007;

“**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;

“**Director**” has the same meaning as in section 2 of the Merchant Shipping Act 2007;

“**EEZ**” has the same meaning as in section 2 of the Maritime Zones Act 2005;

“**ISM Code**” means International Safety Management Code;

“**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 of more States;

“Government” means the Government of Mauritius;

“master” has the same meaning as in section 2 of the Merchant Shipping Act 2007;

“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;

“Mauritian Ship” means any ship registered under the Merchant Shipping Act 2007;

“Minister” means the Minister to whom responsibility for the subject of shipping is assigned;

“Organization” or **“IMO”** means the International Maritime Organization;

“operator of the ship” means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility 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 ISM Code, as amended.

“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.

“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 case of a ship owned by a State and operated by a company which in that State is registered as operator of the ship, “registered owner” shall mean such company.

“removal” means any form of prevention, mitigation or elimination of hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly;

“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;

“State of 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.

“Secretary-General” means the Secretary-General of the International Maritime Organisation;

“territorial sea” in respect of Mauritius has the meaning given in the Maritime Zones Act 2005; and in respect of any other State has the meaning given in UNCLOS;

“UNCLOS” means the United Nations Convention on the Law of the Sea, 1982; and

“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 property in danger are not already being taken.

3. Scope of Application

(1) Unless otherwise expressly provided, this Act shall apply to all wrecks located within the EEZ and the territory of Mauritius, including its archipelagic waters and territorial sea.

(2) This Act shall not apply to:

- (a) any 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;
- (b) warship, naval auxiliary or other ships owned or operated by the Government or any State and used, for the time being, only on Government non-commercial service.

(3) Section 7, subsections (1), (5), (7), (8), (9) and (10) of this Act shall not apply to the removal of wrecks found in the territory of Mauritius, including its archipelagic waters and territorial sea.

4. Duty to report wrecks

(1) When any ship has been involved in a maritime casualty resulting in a wreck in the EEZ or the territory of Mauritius, including its archipelagic waters and territorial sea, the master and the operator of the ship shall, without any delay, report such incident to the Director.

(2) When any Mauritian Ship has been involved in a maritime casualty resulting in a wreck in a Convention area of any State, the master and the operator of that ship shall, without any delay, report such incident to the Affected State in such manner as may be required by that State and shall also report such incident to the Director.

(3) The report referred to in subsection (1) shall provide the name and principal place of business of the owner or the operator of the ship and all relevant information necessary for the Director to determine whether the wreck poses a hazard as per section 5 or not, including the following information, namely:

- (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 affected 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.

5. Determination of Hazard

(1) The Director, in consultation with the Ministry of Environment and Sustainable Development, shall determine whether a wreck located in the EEZ or the territory of Mauritius, including its archipelagic waters and territorial sea, poses a hazard. The following criteria shall be taken into account, namely:

- (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) proximity to protected areas including coral reefs;
- (e) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the EEZ where special mandatory measures have been adopted in accordance with Maritime Zones Act 2005;
- (f) proximity of shipping routes or established traffic lanes;
- (g) traffic density and frequency;
- (h) type of traffic;
- (i) 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;

- (j) vulnerability of port facilities;
- (k) prevailing meteorological and hydrographical conditions;
- (l) submarine topography of the area;
- (m) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (n) acoustic and magnetic profiles of the wreck;
- (o) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (p) proximity of tourist spots and heritage locations; and
- (q) any other circumstances that might necessitate the removal of the wreck.

6. Locating and marking of wrecks

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

(2) If the Director has reason to believe that a wreck poses a hazard, he shall ensure that all practicable steps are taken to establish the precise location of the wreck.

(3) The Director may, if he considers necessary for the purposes of locating and marking wrecks, give directions to any of the following to take specified steps in relation to the wreck if it is within their respective jurisdiction:

- (a) Mauritius Ports Authority;
- (b) National Coast Guard.

(4) A direction issued in accordance with subsection (3):

- (a) shall 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 at subsection (3) must comply with it.

(6) When a wreck has been determined to constitute a hazard under section 5, the Director shall ensure that all reasonable steps are taken to mark the wreck.

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

(8) The Director shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

7. Measures to facilitate the removal of wrecks

(1) When it is determined that the wreck constitutes a hazard, the Director shall:

- (a) inform the State of the ship's registry and the registered owner of the ship; 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 such wreck.

(2) The registered owner of the ship shall remove such wreck which has been determined to constitute a hazard.

(3) When a wreck has been determined to constitute a hazard, the registered owner of the ship, or any interested party, shall provide the Director with evidence of insurance or other financial security maintained by the registered owner of the ship, or any interested party, in accordance with the provisions of section 10.

(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 Director 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 subsections (2) and (4) has commenced, the Director 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 Director 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 section 5.
- (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, the Director may remove the wreck at the registered owner's expense; and
- (c) inform the registered owner in writing that the Director 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 subsection (6)(a), or the registered owner cannot be contacted, the Director may, at the expense of such registered owner, 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 Director has informed the State of the ship's registry and the registered owner accordingly, the Director may, at the expense of such owner, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

(9) In case of failure to comply with subsection (2), the registered owner shall be guilty of an offence and shall be liable for a fine of not less than [one hundred thousand]⁴⁸ rupees.

(10) The Director shall provide information referred to in this section to the registered owner of the ship.

8. Liability of owner

(1) The registered owner shall be liable for the costs of locating, marking and removing the wrecks under this Act unless the registered owner proves that the maritime casualty which caused the wrecks:

⁴⁸ The figures used are only indicative. The amount of the fine will be determined by the legislator.

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

(2) Nothing in this Act shall affect the right of the registered owner to limit his liability in accordance with Part IX, sections 193 to 212 of the Merchant Shipping Act 2007, as amended.

(3) Nothing contained in this Act shall prejudice any right of recourse against third parties.

9. Exception to liability

(1) The registered owner shall not be liable under this Act for meeting the costs referred to in section 8(1) if, and to the extent that, liability for such costs is in conflict with:

- (a) the provisions of the International Convention on Civil Liability for Oil Pollution Damage 1969, as amended;
- (b) the Vienna Convention on Civil Liability for Nuclear Damage 1963, as amended;
- (c) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, as amended.

10. Compulsory insurance or other financial security

(1) The registered owner of a ship to which this Act applies having a gross tonnage of 300 and above shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover his liability under this Act in an amount equal to the limits of liability referred to in section 8(2).

(2) In the case of Mauritian ships a certificate attesting that insurance or other financial security is in force in accordance with subsection (1) above shall be

issued to each ship by the Director after he has ascertained compliance with the requirements of that subsection.

(3) The certificate referred to in subsection (2) shall be in the form set out in the Schedule I and shall contain the following particulars:

- (a) name of 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;
- (g) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

(4) The Director shall, subject to the requirements of this section, determine the conditions of issue and validity of the certificate and may authorize either an institution or an organization recognized by it to issue the certificate, and such institution or organization shall inform the Director of the issue of each certificate.

(5) In all cases, the Director shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation and shall notify the Secretary-General of:

- (a) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
- (b) the withdrawal of such authority; and
- (c) the date from which such authority or withdrawal of such authority takes effect,

and any authority so delegated shall not take effect before three months from the date on which notification to that effect was given to the Secretary-General.

(6) 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, and in all cases the institution or organization shall report such withdrawal to the Director.

(7) The certificate which shall be carried on board shall be in the English language and a copy of it shall be kept by the Director together with all documentation relating to the ships registration.

(8) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate including any modification resulting in the insurance or security ceasing to satisfy the requirements of this section, before three months have elapsed from the date on which notice of its termination is given to the Director, unless the certificate has been surrendered to the Director or a new certificate has been issued within that period.

(9) (a) Nothing in this Act shall be construed as preventing the Director from relying on information obtained from other States or the Organization or other international organisations relating to the financial standing of providers of insurance or financial security for the purposes of this Act.

(b) Notwithstanding paragraph (a), the Director shall not be relieved of his responsibility under subsection (2).

(10) The Director shall accept a certificate issued under the authority of a State Party to the Convention and shall treat it as having the same force as certificates issued or certified by the Director, even if it is issued or certified in respect of a ship not registered in that State Party, and in any situation referred to in this subsection may at any time consult with the issuing or certifying State if there is any doubt that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Act.

(11) Subject to this section, the Director shall ensure that insurance or other security to the extent specified in subsection (1) above is in force in respect of any ship having a gross tonnage of 300 and above, wherever registered, entering or leaving a port or offshore facility in Mauritius.

(12) If insurance or other financial security is not maintained in respect of a ship owned by the Government, this section shall not apply to such ship, but the ship shall carry a certificate issued by the Director stating that the ship is owned by the Government and that the ship's liability is covered within the limits prescribed in subsection (1) above, and such certificate shall follow as closely as possible the form prescribed in subsection (3).

(13) If a ship enters or leaves, or attempts to enter or leave a port, or arrives at or leaves, or attempts to arrive at or leave a terminal in contravention of subsection (2) above, the master or owner shall be guilty of an offence and liable to a fine of not less than [one hundred thousand]⁴⁹ rupees.

(14) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4) above, the master shall be guilty of an offence and liable to a fine not exceeding [fifty thousand]⁵⁰ rupees.

11. Actions against insurer or provider of financial security

(1) Any claim for costs arising under this Act may be brought directly against the insurer or other person providing financial security for the registered owner's liability, and in such a case the defendant may invoke the defences (other than bankruptcy or winding up of the registered owner) which the registered owner would have been entitled to invoke, including limitation of liability pursuant to section 8 (2).

(2) If the registered is not entitled to limitation of liability according to section 8 (2), the defendant may nevertheless limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with subsection 10(1).

(3) The defendant may invoke the defence that the maritime casualty resulted from 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.

(4) The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

⁴⁹ The figures used are only indicative. The amount of the fine will be determined by the legislator.

⁵⁰ The figures used are only indicative. The amount of the fine will be determined by the legislator.

12. Time limits

(1) Subject to subsection (2), rights to recover costs under this Act shall be extinguished unless an action is brought within three years from the date when the hazard has been determined in accordance with section 5.

(2) In no case shall an action be brought more than six years from the date of the maritime casualty that resulted in the wreck and where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first such occurrence.

13. Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.

14. Consequential Amendments

The Merchant Shipping Act 2007 is amended as follows:

- (a) section 25(2) is repealed;
- (b) in section 131 (1), the definition of “wreck” is amended:
 - (i) by deleting “includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.”; and
 - (ii) by inserting, after “wreck” :

“, following 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,

found in the EEZ and the territory of Mauritius, including its archipelagic waters and territorial sea.”

(c) section 132 (2) is amended:

- (i) by deleting, after “distress”: “at any place on or near the coast of Mauritius or any tidal water within Mauritius waters.”; and
- (ii) by inserting, after “distress”: “in the EEZ and the territory of Mauritius, including its archipelagic waters and territorial sea.”

14. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

Passed by the National Assembly on

Clerk of the National Assembly

SCHEDULE I



REPUBLIC OF MAURITIUS

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF
LIABILITY FOR THE REMOVAL OF WRECKS**

Issued in accordance with the provisions of Article 12 of the Nairobi
International Convention on the Removal of Wrecks, 2007

Name of Ship	Gross Tonnage	Distinctive number or letters	IMO Ship Identification Number	Port of registry	Name and full address of the principal place of business of the registered owner

This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security

Duration of Security

Name and Address of the Insurer(s) and/or Guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of the Republic of Mauritius.....

**DIRECTOR OF SHIPPING
MINISTRY OF OCEAN ECONOMY, MARINE
RESOURCES, FISHERIES, SHIPPING AND OUTER ISLANDS**