



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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PRESIDENT'S OFFICE

No. 1893.

22 November 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 94 of 1996: Wreck and Salvage Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1893.

22 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 94 van 1996: Wet op Wrakke en Berging, 1996.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

ACT

To provide for the salvage of certain vessels and for the application in the Republic of the International Convention of Salvage, 1989; and to provide for the repeal or amendment of certain provisions of the Merchant Shipping Act, 1951, and the amendment of the Admiralty Jurisdiction Regulation Act, 1983; and to provide for matters connected therewith.

*(English text signed by the President.)
(Assented to 12 November 1996.)*

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions**1. In this Act, unless the context indicates otherwise—**

- (i) “Convention” means the International Convention on Salvage, 1989, contained in the Schedule; 5
- (ii) “master”, in relation to a ship, means any person, other than a pilot, having charge or command of such ship;
- (iii) “Minister” means the Minister of Transport;
- (iv) “owner of a ship” means any person to whom a ship or a share in a ship belongs; 10
- (v) “port” means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to load or discharge goods or persons;
- (vi) “prescribe” means prescribe by regulation under section 21; 15
- (vii) “Republic” includes the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948);
- (viii) “salvage officer” means a salvage officer appointed in terms of section 8;
- (ix) “seaman” means any person, except a master or a pilot, employed or engaged in any capacity on a ship; 20
- (x) “ship” means any vessel used or capable of being used on any waters, and includes any hovercraft, power boat, yacht, fishing boat, submarine vessel, barge, crane barge, crane, dock, oil or other rig, mooring installation or similar installation, whether floating or fixed to the sea-bed and whether self-propelled or not; 25

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeningen aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeningen aan.
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WET

Om voorsiening te maak vir die bering van sekere vaartuie en vir die toepassing in die Republiek van die Internasionale Konvensie betreffende Berging, 1989; en om voorsiening te maak vir die herroeping of wysiging van sekere bepalinge van die Handelskeepvaartwet, 1951, en die wysiging van die Wet op die Reëling van Admiraliteitsjurisdiksie, 1983; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 12 November 1996.)

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) “bergingsbeampte” 'n bergingsbeampte aangestel ingevolge artikel 8;
 - (ii) “eienaar van 'n skip” 'n persoon aan wie 'n skip of 'n aandeel in 'n skip behoort;
 - (iii) “gesagvoerder”, ten opsigte van 'n skip, iemand behalwe 'n loods, wat toesig het of gesag voer oor sodanige skip;
 - (iv) “hawe” 'n plek, hetsy as 'n openbare hawe geproklameer al dan nie, en hetsy natuurlik of kunsmatig, waarvan skepe mag gebruik maak vir skuiling of om goedere of persone op of af te laai;
 - (v) “Konvensie” die Internasionale Konvensie betreffende Berging, 1989, in die Bylae vervat;
 - (vi) “Minister” die Minister van Vervoer;
 - (vii) “Republiek” ook die Prince Edward-eilande bedoel in artikel 1 van die Wet op die Prince Edward-eilande, 1948 (Wet No. 43 van 1948);
 - (viii) “seeman” 'n persoon, uitgesonderd 'n gesagvoerder of 'n loods, wat in diens is of besig is in enige hoedanigheid op 'n skip;
 - (ix) “skip” enige vaartuig wat gebruik word of wat gebruik kan word op watter water ook al en ook 'n skeertuig, kragboot, seiljag, vissersboot, ondersese vaartuig, trekskuit, hysboot, hyskraan, dok, olie- of ander boortoring, aanlêplek of 'n soortgelyke installasie, hetsy drywend of vas aan die see bodem, en hetsy selfaangedrewe al dan nie;
 - (x) “Suid-Afrikaanse skip” 'n skip wat in die Republiek geregistreer is ingevolge die Handelskeepvaartwet, 1951 (Wet No. 57 van 1951), of wat geag word aldus geregistreer te wees;

- (xi) "South African ship" means a ship registered in the Republic in terms of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), or deemed to be so registered;
- (xii) "wreck" includes any flotsam, jetsam, lagan or derelict, any portion of a ship or aircraft lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of any such ship or aircraft and any portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress.

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Application and interpretation of Convention

2. (1) The Convention shall, subject to the provisions of this Act, have the force of law 10 and apply in the Republic.

(2) The provisions of Attachment 1 to the Convention shall have effect in connection with the application and interpretation of the Convention.

(3) This Act shall not affect any rights or liabilities arising out of any salvage operations or other acts started before the commencement of this Act. 15

(4) Any reference in the Convention to a State Party shall be construed as, or as including, a reference to the Republic.

(5) Notwithstanding anything to the contrary in any other law or the common law contained, a court of law or any tribunal may, in the interpretation of the Convention, consider the preparatory texts to the Convention, decisions of foreign courts and any publication. 20

(6) Notwithstanding anything to the contrary in article 3 or any other article of the Convention, a subject of salvage shall include any fixed or floating platform or any mobile offshore drilling unit whether or not it is engaged in the exploration, exploitation or production of sea-bed mineral resources. 25

(7) "Damage to the environment" as defined in article 1 of the Convention shall for purposes of this Act, notwithstanding anything to the contrary contained in this Act, not be restricted to coastal or inland waters or to areas adjacent thereto, but shall apply to any place where such damage may occur.

(8) Notwithstanding the provisions of article 14(3) of the Convention, for the purposes of this Act, the expression "fair rate" means a rate of remuneration which is fair having regard to the scope of the work and to the prevailing market rate, if any, for work of a similar nature. 30

(9) In the case of any conflict between the Afrikaans and English texts of this Act and the Convention the English text shall be decisive. 35

(10) Any claimant under this Act shall be entitled to enforce a maritime lien.

Court trying salvage claim may be assisted by assessors

3. The court in which proceedings for a claim relating to salvage have been instituted may, in its discretion, appoint one or more assessors acting only in an advisory capacity, and those assessors shall be impartial persons who are conversant with maritime affairs. 40

Application to aircraft

4. The provisions of this Act relating to wreck and to salvage of life or property and to the duty to render assistance to ships in distress shall apply to aircraft as they apply to ships, and the owner of an aircraft shall be entitled to the award of a sum for salvage services rendered by the aircraft and be liable to pay a sum of salvage in respect of services rendered in saving life from the aircraft or in saving the aircraft or any wreck from the aircraft in any case where the owner of the aircraft would have been so entitled or liable had it been a ship. 45

Obligation to assist ships in distress

5. (1) The master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, shall proceed with all speed to the 50

- (xi) "voorskryf" by regulasie kragtens artikel 21 voorskryf;
- (xii) "wrak" ook enige dryfgoed, uitwerp, lagan of verlate goed, of enige deel van
5 'n skip of lugvaartuig wat verlore gegaan het, verlaat is, gestrand het of in nood is, enige deel van die vrag, voorrade of uitrusting van enige sodanige skip of lugvaartuig en enige deel van die persoonlike eiendom wat aan boord van enige sodanige skip of lugvaartuig was toe dit verlore gegaan het, verlaat is, gestrand het of in nood was.

Toepassing en uitleg van Konvensie

2. (1) Die Konvensie is, behoudens die bepalings van hierdie Wet, van krag en van 10 toepassing in die Republiek.

(2) Die bepalings van Aanhangsel I by die Konvensie sal van krag wees in verband met die toepassing en uitleg van die Konvensie.

(3) Hierdie Wet raak nie enige regte of verpligte wat voortspruit uit enige bergingsoperasies of ander handelinge wat voor die inwerkingtreding van hierdie Wet 15 'n aanvang geneem het nie.

(4) Enige verwysing in die Konvensie na 'n Stateparty word uitgelê as, of ook as, 'n verwysing na die Republiek.

(5) Ondanks enige andersluidende bepaling vervat in enige ander wet of die gemene reg kan 'n gereghof of 'n tribunaal by die uitleg van die Konvensie die voorbereidende 20 teks tot die Konvensie, beslissings van buitelandse howe en enige publikasie in ag neem.

(6) Ondanks enige andersluidende bepalings in artikel 3 of enige ander artikel van die Konvensie, sluit 'n onderwerp vir beringing 'n vaste of drywende platform of 'n aflandige mobiele booreenheid in hetsy dit besig is of nie om na minerale hulpbronne 25 in die seebodem te soek, of dit te ontgin, of daaruit te produseer.

(7) "Skade aan die omgewing" soos omskryf in artikel 1 van die Konvensie sal, ondanks enige andersluidende bepaling van die Konvensie, by die toepassing van hierdie Wet nie beperk word slegs tot kus- of binnelandse waters of gebiede aangrensend daaraan nie, maar van toepassing wees op enige plek waar sodanige skade 30 ook al mag voorkom.

(8) Ondanks die bepalings van artikel 14(3) van die Konvensie, en by die toepassing van hierdie Wet, beteken die uitdrukking "billike tarief" 'n tarief van besoldiging wat billik is met inagneming van die omvang van die werk en die heersende markprys, indien enige, vir werk van 'n soortgelyke aard.

35 (9) In die geval van enige teenstrydigheid tussen die Afrikaanse en Engelse tekste van hierdie Wet en die Konvensie sal die Engelse teks deurslaggewend wees.

(10) 'n Eiser kragtens hierdie Wet is geregtig om 'n maritieme retensiereg af te dwing.

Hof wat eis om bergloon verhoor, kan hulp van assesseure inroep

40 **3.** Die hof waarin 'n geding betreffende bergloon ingestel is, kan na goeddunke een of meer assesseure aanstel, wat bloot in 'n adviserende hoedanigheid optree, en daardie assesseure moet onpartydige persone wees wat goed op die hoogte van maritieme aangeleenthede is.

Toepassing op lugvaartuie

45 **4.** Die bepalings van hierdie Wet betreffende wrakke en die bering van mense of eiendom en die plig om hulp aan skepe in nood te verleen, geld vir lugvaartuie net soos dit vir skepe geld, en die eienaar van 'n lugvaartuig is geregtig op die toekenning van 'n bedrag vir bergingsdienste wat deur die lugvaartuig gelewer is, en aanspreeklik vir die betaling van 'n bedrag aan bergloon ten aansien van dienste gelewer met die 50 redding van mense vanaf die lugvaartuig of met die redding van die lugvaartuig of wrak afkomstig van die lugvaartuig in elke geval waar die eienaar van die lugvaartuig aldus daarop geregtig of daarvoor aanspreeklik sou gewees het as dit 'n skip was.

Plig om aan skepe wat in nood verkeer, hulp te verleen

5. (1) Wanneer die gesagvoerder van 'n Suid-Afrikaanse skip uit enige bron 'n

assistance of the persons in distress, informing them if possible that he or she is doing so, unless he or she is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he or she is released under the provisions of subsection (3) or (4) from the obligation imposed by this subsection.

(2) Where the master of any ship in distress has requisitioned any South African ship that has answered his or her call for assistance, it shall be the duty of the master of the South African ship to comply with the requisition by continuing to proceed with all speed to the assistance of the person in distress unless he or she is released under the provisions of subsection (4) from the obligation imposed by this subsection. 5

(3) A master shall be released from the obligation imposed by subsection (1) as soon as he or she is informed of the requisition of one or more ships other than his or her own and that the requisition is being complied with by the ship or ships requisitioned. 10

(4) A master shall be released from the obligation imposed by subsection (1), and if his or her ship has been requisitioned, from the obligation imposed by subsection (2), if he or she is informed by the person in distress, or by the master of any ship that has reached the person in distress, that assistance is no longer required. 15

(5) If the master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to go to the assistance of the person in distress, he or she shall forthwith cause a statement to be entered in the official logbook, of his or her reasons for not going to the assistance of that person. 20

(6) Compliance by the master of a ship with the provisions of this section shall not affect his or her right, or the right of any other person, to salvage.

(7) In the application of this section every reference to a ship in distress shall be interpreted so as to include a reference to an aircraft or a survival craft from a vessel or an aircraft in distress. 25

Duty to render assistance to persons in danger at sea

6. (1) The master of a ship shall, so far as he or she can do so without serious danger to his or her ship or to any person on the ship, render assistance to every person who is found at sea in danger of being lost, even if that person is a citizen of a country at war with the Republic or with the country in which the ship is registered. 30

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered. 35

Duty of masters of ships in collision to render assistance

7. (1) In every case of collision between two or more ships, it shall be the duty of the master of each ship, if and in so far as he or she can do so without danger to any person on the ship—

- (a) to render to the other ship and every person thereon such assistance as may be practicable and necessary to save them from any danger caused by the collision and to stay by the other ship until he or she has ascertained that there is no need for further assistance; and
- (b) to give to the master of the other ship, the name of his or her ship and of its port of registry and the name of the port from which it has come and to which it is bound. 45

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered.

noodsein of inligting dat 'n skip in nood verkeer, op die ope see ontvang, moet hy of sy die persone wat in nood verkeer in aller yl te hulp snel en hulle, indien moontlik, in kennis stel dat hy of sy besig is om dit te doen, tensy hy of sy nie daartoe in staat is nie of in die besondere omstandighede van die geval dit onredelik of onnodig ag om 5 dit te doen, of tensy hy of sy ingevolge die bepalings van subartikel (3) of (4) van die verpligting wat hierdie subartikel hom of haar oplê, onthef word.

(2) Wanneer die gesagvoerder van 'n skip wat in nood verkeer, 'n Suid-Afrikaanse skip wat op sy of haar oproep om hulp geantwoord het, opgevorder het, is dit die plig van die gesagvoerder van die Suid-Afrikaanse skip om aan die opvordering gehoor te 10 gee deur sy of haar vaart in aller yl voort te sit om die persoon wat in nood verkeer, te hulp te kom, tensy hy of sy ingevolge die bepalings van subartikel (4) van die verpligting wat hierdie subartikel hom of haar oplê, onthef word.

(3) 'n Gesagvoerder word onthef van die verpligting wat subartikel (1) hom of haar oplê sodra hy of sy in kennis gestel word dat een of meer skepe, behalwe sy of haar eie 15 skip, opgevorder is, en dat aan die opvordering gevolg gegee word deur die opgevorderde skip of skepe.

(4) 'n Gesagvoerder word onthef van die verpligting wat subartikel (1) hom of haar oplê, en, indien sy of haar skip opgevorder is, van die verpligting wat subartikel (2) hom of haar oplê indien hy of sy in kennis gestel word deur die persoon wat in nood 20 verkeer, of deur die gesagvoerder van 'n skip wat die persoon bereik het wat in nood verkeer, dat hulp nie meer nodig is nie.

(5) Indien die gesagvoerder van 'n Suid-Afrikaanse skip, by die ontvangs op die ope see uit enige bron van 'n noodsein of van inligting dat 'n skip in nood verkeer, nie daartoe in staat is nie of in die besondere omstandighede van die geval dit onredelik of 25 onnodig ag om die persoon wat in nood verkeer, te hulp te kom, moet hy of sy onverwyd in die amptelike skeepsjoernaal 'n verklaring aanteken van die redes waarom hy of sy daardie persoon nie te hulp gekom het nie.

(6) Voldoening deur die gesagvoerder van 'n skip aan die bepalings van hierdie artikel raak nie sy of haar reg of die regte van enige ander persoon op bergloon nie. 30 (7) By die toepassing van hierdie artikel word 'n verwysing na 'n skip wat in nood verkeer so uitgelê dat dit 'n verwysing na 'n lugvaartuig of 'n reddingsmiddel van 'n vaartuig of 'n lugvaartuig wat in nood verkeer, insluit.

Plig om hulp te verleen aan persone in gevaar ter see

6. (1) Die gesagvoerder van 'n skip verleen hulp aan elke persoon wat ter see 35 aangetref word en in lewensgevaar verkeer, selfs al is daardie persoon 'n burger van 'n land wat teen die Republiek of teen die land waar die skip geregistreer is, oorlog voer, vir sover die gesagvoerder dit kan doen sonder om sy of haar skip of enige persoon op die skip aan ernstige gevaar bloot te stel.

(2) Voldoening deur die gesagvoerder van 'n skip aan die bepalings van subartikel 40 (1) raak nie sy of haar reg, of die reg van enige ander persoon, op bergloon nie.

(3) Hierdie artikel is van toepassing op alle skepe waar hulle ook al geregistreer mag wees.

Plig van gesagvoerders van skepe wat gebots het om hulp te verleen

7. (1) In elke geval van 'n botsing tussen twee of meer skepe is dit die plig van die 45 gesagvoerder van elke skip, indien en vir sover hy of sy dit kan doen sonder om enige persoon op die skip in gevaar te stel—

(a) om die hulp aan die ander skip en elke persoon daarop te bied wat doenlik en nodig is om hulle te red van enige gevaar veroorsaak deur die botsing, en 50 om by die ander skip te vertoeft totdat hy of sy vasgestel het dat daar geen behoefte meer aan hulp is nie; en
 (b) om aan die gesagvoerder van die ander skip, die naam van sy of haar skip en van die hawe waar die skip geregistreer is, te verstrek, asook die naam van die hawe van waar die skip kom en waarheen dit op pad is.

(2) Voldoening deur die gesagvoerder van 'n skip aan die bepalings van subartikel 55 (1) raak nie sy of haar reg, of die reg van enige ander persoon, op bergloon nie.
 (3) Hierdie artikel is van toepassing op alle skepe waar hulle ook al geregistreer mag wees.

Salvage officers

8. (1) The Minister may appoint suitably qualified persons to be salvage officers at ports or other places in the Republic in respect of any defined area.

(2) Such officers shall be appointed for the period and under the conditions as the Minister may deem fit.

(3) The powers, duties and functions of salvage officers appointed under this section shall be as prescribed.

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Payment of allowances to salvage officers

9. Any person appointed under this Act as a salvage officer and who is not in the employ of the Government shall be paid such remuneration and allowances towards subsistence and transport as the Minister with the concurrence of the Minister of Finance may determine.

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Exercise of powers in absence of salvage officer

10. (1) If a salvage officer or his or her authorised representative is not present—

- (a) a suitable qualified officer in the South African Police Service; or
- (b) in the absence of an officer referred to in paragraph (a), a suitably qualified commissioned officer in the South African National Defence Force,

may do anything he or she is authorised to do by the salvage officer.

(2) Any person acting for a salvage officer in terms of subsection (1) shall in respect of any wreck be considered to be the agent of the salvage officer and shall comply with the provisions of section 112(2) of the Custom and Excise Act, 1964 (Act No. 91 of 1964), but shall not be deprived, by reason of his or her so acting, of any right to salvage to which he or she would otherwise be entitled.

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(3) Any salvage officer or any person acting for a salvage officer shall not interfere with the lawful performance of a salvage service by a salvor.

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Investigation concerning ships wrecked, stranded or in distress

11. If a ship is wrecked, stranded or in distress, a salvage officer or person authorised by him or her, may conduct an investigation into any or all of the following matters:

- (a) The name and description of the ship;
- (b) the names of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the port from and to which the ship was bound;
- (e) the cause of the wrecking, stranding or distress of the ship;
- (f) the services rendered; and
- (g) such other relevant matters or circumstances as he or she deems fit.

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Powers to pass over adjoining lands

12. (1) Whenever a ship is wrecked, stranded or in distress all persons may, for the purpose of rendering assistance to the ship or of saving the lives of any shipwrecked persons or of saving any wreck, unless there is some public road or camping site equally convenient, pass and repass either with or without vehicles or animals over any lands and camp on such lands, without being subject to interruption by the owner or occupier, if they do so with as little damage as possible, and may also, on the same condition, deposit on such lands any goods required for the construction of a camp and their stay thereat, and any wreck recovered from the ship.

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(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights granted by this section shall be a charge on the ship or wreck in respect of or by which the damage is caused.

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(3) The amount payable in respect of the damage referred to in subsection (2) shall, in the event of a dispute, be determined in the same manner as salvage is determined in

Bergingsbeampes

8. (1) Die Minister kan, ten opsigte van 'n omskrewe gebied, gesikte persone as bergingsbeampes by hawens of ander plekke in die Republiek aanstel.

(2) Sodanige beampes word aangestel vir die tydperk en kragtens die voorwaardes wat die Minister goedvind.

(3) Die bevoegdhede, pligte en werksaamhede van bergingsbeampes kragtens hierdie artikel aangestel, is soos voorgeskryf.

Betaling van toelaes aan bergingsbeampes

9. Iemand wat kragtens hierdie Wet as bergingsbeampte aangestel is, en wat nie in die diens van die Regering is nie, word die vergoeding en toelaes vir verblyf en vervoer betaal wat die Minister met die instemming van die Minister van Finansies bepaal.

Uitoefening van bevoegdhede in bergingsbeampte se afwesigheid

10. (1) Indien 'n bergingsbeampte of sy of haar gevoldmatigde verteenwoordiger nie aanwesig is nie, kan—

(a) 'n gesikte gekwalifiseerde beampete in diens van die Suid-Afrikaanse Polisiediens; of

(b) in die afwesigheid van 'n beampete in paragraaf (a) bedoel, 'n gesikte lid van offisierrsang in die Suid-Afrikaanse Nasionale Weermag,

eniglets doen wat die bergingsbeampte hom of haar magtig om te doen.

(2) Iemand wat ingevolge subartikel (1) namens 'n bergingsbeampte optree, word ten aansien van enige wrak geag die agent van die bergingsbeampte te wees en moet die bepalings van artikel 112(2) van die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), nakom, maar word nie as gevolg van sy of haar optrede van enige reg op bergloon ontneem waarop hy of sy andersins geregtig sou gewees het nie.

(3) 'n Bergingsbeampte of 'n persoon wat namens 'n bergingsbeampte optree, mag nie met die regmatige lewering van 'n bergingsdiens deur 'n berger inmeng nie.

Ondersoek in verband met skepe wat skipbreuk gely of gestrand het of in nood verkeer

11. Indien 'n skip skipbreuk gely of gestrand het of in nood verkeer, kan 'n bergingsbeampte, of 'n persoon deur hom of haar daartoe gemagtig, ondersoek na enige van of al die volgende aangeleenthede instel:

(a) Die naam en beskrywing van die skip;

(b) die name van die gesagvoerder en van die eienaars;

(c) die name van die eienaars van die vrag;

(d) die hawe van waar of waarheen die skip onderweg was;

(e) die oorsaak van die skipbreuk, stranding of noodtoestand van die skip;

(f) die dienste gelewer; en

(g) die ander toepaslike sake of omstandighede wat hy of sy goeddink.

Bevoegdheid om oor aangrensende grond te gaan

12. (1) Wanneer 'n skip skipbreuk ly, strand of in nood verkeer, kan alle persone met die doel om hulp aan die skip te verleen of om die lewens van skipbreukelinge te red of om enige wrak te red, tensy daar een of ander ewe gerieflike openbare pad of kampeerplek bestaan, heen en weer, met of sonder voertuie of diere, oor enige grond gaan en op sodanige grond kampeer, en het die eienaar of okkuperer nie die reg om hulle te verhinder as hulle dit met so min skade moontlik doen nie, en kan hulle ook met dieselfde voorbehoud op sodanige grond enige goedere plaas wat vir die oprigting van 'n kamp en hul verblyf aldaar nodig is, asook enige wrak wat van die skip herwin is.

(2) Enige skade gely deur 'n eienaar of okkuperer as gevolg van die uitoefening van die regte verleent by hierdie artikel word ten laste gelê van die skip of wrak ten aansien waarvan of waardeur die skade veroorsaak is.

(3) Die bedrag betaalbaar ten aansien van die skade bedoel in subartikel (2) word in die geval van 'n dispoot op dieselfde wyse bepaal as wat bergloon ingevolge die Wet

terms of this Act, and shall, in default of payment, be recoverable in the same manner as salvage is recoverable under this Act.

Power of salvage officer to suppress plunder and disorder

13. No person shall, when a ship is wrecked, stranded or in distress, plunder, create disorder or obstruct the preservation of the ship or shipwrecked persons or the wreck, and the salvage officer or his or her authorised representative may cause any person contravening the provisions of this section to be detained. 5

Interfering with wrecked ship or aircraft

14. (1) No unauthorised person shall board any ship or aircraft wrecked, stranded or in distress without the leave of the person in charge of such ship or aircraft, and any person boarding such ship or aircraft without permission may be repelled by reasonable force. 10

(2) No person shall—

- (a) impede or hinder the saving of any ship stranded or in danger of being stranded, or otherwise in distress, or of any life from any such ship, or of any wreck; 15
- (b) secrete any wreck, or deface or obliterate any marks thereon; or
- (c) wrongfully carry away or remove any wreck.

Salvage payable for saving life

15. (1) Salvage shall be payable to the salvor by the owner of the ship or the owner of any wreck, whether or not such ship or wreck has been saved, when services are rendered in saving life from any ship. 20

(2) Notwithstanding anything to the contrary contained in the Convention, the payment of salvage in respect of the preservation of life shall have priority over all other claims for salvage. 25

(3) When the ship or wreck is lost or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may, in his or her discretion, award to the salvor, out of moneys made available by Parliament for the purpose, such sum as he or she thinks fit, in whole or part satisfaction of any amount of salvage so left unpaid. 30

Salvage payable by Commissioner for Customs and Excise

16. When any ship is wrecked, stranded, abandoned or in distress or any wreck is found and services are rendered in saving such ship or wreck, salvage shall, subject to the provisions of section 15(2), be paid to the person who rendered the services by the Commissioner for Customs and Excise if the ship or wreck is disposed of by him or her in terms of section 112(3) of the Customs and Excise Act, 1964. 35

Detention of wreck until salvage is paid

17. (1) If the salvage officer is satisfied that salvage is due to any person under this Act, he or she shall detain the ship or wreck saved or assisted or from which life was saved until payment is made for the salvage due, or until process for the arrest or detention of such ship or wreck by a competent court is served. 40

(2) The salvage officer may release any ship or wreck detained by him or her under subsection (1) if security to his or her satisfaction is given for the payment of the salvage due.

Powers of Minister in respect of certain wrecks and ships

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18. (1) (a) When a ship is wrecked, stranded or in distress, the Minister may direct the

bepaal word, en sal by wanbetaling op dieselfde wyse as bergloon kragtens hierdie Wet verhaalbaar wees.

Bevoegdheid van bergingsbeampte om plundering en wanorde te onderdruk

13. Wanneer 'n skip skipbreuk gely of gestrand het of in nood verkeer, mag niemand 5 hom of haar skuldig maak aan plundering, die skepping van wanorde of die belemmering van die redding van die skip of van skipbreukelinge of van die wrak nie, en die bergingsbeampte of sy of haar gevollmachtigde verteenwoordiger kan enigiemand wat die bepalings van hierdie artikel oortree, laat aanhou.

Bemoeiing met verongelukte skip of lugvaartuig

- 10 14. (1) Niemand wat nie daartoe gemagtig is gaan aan boord van enige skip of lugvaartuig wat skipbreuk gely of gestrand het of verongeluk het of in nood verkeer sonder die verlof van die persoon in bevel van sodanige skip of lugvaartuig nie en iemand wat sonder verlof aan boord van sodanige skip of lugvaartuig gaan, kan met redelike geweld weerstaan word.
- 15 (2) Niemand—
 (a) belemmer of hinder die redding van enige skip wat gestrand het of gevaar loop om te strand of andersins in nood verkeer, of van mense vanaf so 'n skip, of van enige wrak nie;
 (b) verberg enige wrak, of verwyder of wis enige merke daarop uit nie; of
 20 (c) verwyder wederregtelik enige wrak of dra dit weg nie.

Bergloon betaalbaar vir lewensredding

15. (1) Daar is 'n bedrag aan bergloon betaalbaar aan die berger deur die eienaar van die skip of die eienaar van enige wrak, hetsy sodanige skip of wrak gered is al dan nie, wanneer dienste gelewer word met die redding van mense vanaf enige skip.
- 25 (2) Ondanks enige andersluidende bepaling van die Konvensie, geniet die betaling van bergloon ten aansien van lewensredding voorkeur bo alle ander vorderings vir bergloon.
 (3) Wanneer die skip of wrak verlore gaan, of die waarde daarvan ontoereikend is, na betaling van die werklike uitgawes wat aangegaan is om die bedrag aan bergloon 30 betaalbaar ten aansien van lewensredding te betaal, kan die Minister na goeddunke 'n toekenning aan die berger maak uit gelde wat deur die Parlement vir daardie doel beskikbaar gestel is, van sodanige bedrag as wat hy of sy goedvind, ter algehele of gedeeltelike vereffening van enige bedrag aan bergloon wat aldus onbetaal gebly het.

Bergloon betaalbaar deur Kommissaris van Doeane en Aksyns

- 35 16. Wanneer 'n skip skipbreuk gely of gestrand het, verlaat is of in nood verkeer of 'n wrak gevind word en dienste met die redding van sodanige skip of wrak gelewer word, word daar, behoudens die bepaling van artikel 15(2), aan die persoon wat die dienste gelewer het 'n redelike bedrag aan bergloon betaal deur die Kommissaris van Doeane en Aksyns indien daar deur hom of haar kragtens artikel 112(3) van die 40 Doeane- en Aksynswet, 1964, oor die skip of wrak beskik is.

Aanhouding van wrak totdat bergloon betaal is

17. (1) Indien die bergingsbeampte oortuig is dat bergloon kragtens hierdie Wet aan iemand betaalbaar is, hou hy of sy die skip of wrak wat gered of gehelp is, of waarvan mense gered is, aan totdat die verskuldigde bergloon betaal is, of totdat prosesstukke 45 vir die inbeslagname of aanhouding van sodanige skip of wrak deur 'n bevoegde hof gediens is.
 (2) Die bergingsbeampte kan 'n skip of wrak wat kragtens subartikel (1) deur hom of haar aangehou is, vrystel indien sekuriteit tot sy of haar tevredenheid vir die betaling van die verskuldigde bergloon gestel word.

50 Bevoegdhede van Minister ten aansien van sekere wrakte en skepe

18. (1) (a) Wanneer 'n skip skipbreuk gely het, gestrand het of in nood verkeer, kan

master or owner of such ship, or both such master and such owner, either orally or in writing to move such ship to a place specified by the Minister or to perform such acts in respect of such ship as may be specified by the Minister.

(b) If the master or owner of a ship referred to in paragraph (a) fails to perform within the time specified by the Minister any act which he or she has in terms of that paragraph been required to perform, the Minister may cause such act to be performed. 5

(2) The Minister may, notwithstanding the provisions of subsection (1), cause any wreck or any wrecked, stranded or abandoned ship or any part thereof to be raised, removed or destroyed or dealt with in such a manner as he or she may deem fit, if he or she has not been able to contact the master or the owner of the said wreck, ship or part thereof. 10

(3) If the Minister incurs any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2), he or she may recover such expenses from the owner of the wreck or ship in question or, in the case of an abandoned wreck or ship, from the person who was the owner thereof at the time of the abandonment.

(4) If the Minister incurred or will incur any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2) in respect of any wreck or ship, he or she may cause any goods to be removed from such wreck or ship. 15

(5) The Minister may—

(a) sell any wreck or ship in respect of which any power has been exercised in terms of subsection (1)(b) or (2), any part of such wreck or ship and any goods removed therefrom in terms of subsection (4) and apply the proceeds of the sale towards the defrayment of any expenses incurred in connection with the exercise of such power; or 20

(b) cause any such wreck, ship or goods to be detained until security to the satisfaction of the Minister has been given for the payment of such expenses. 25

(6) If any wreck, ship or goods are sold in terms of subsection (5) and the proceeds of the sale exceed the amount of the expenses referred to in that subsection, the surplus shall be paid to the owner of the wreck, ship or goods in question after deducting therefrom the amount of any duty payable in respect of such wreck, ship or goods in terms of the Customs and Excise Act, 1964. 30

(7) The Minister, or any person acting under the authority of the Minister, shall not be liable in respect of anything done in good faith in terms of the provisions of this section.

Agreement to forfeit right to salvage is void

19. (1) A seaman of a South African ship shall not by agreement abandon any right that he or she may have or obtain in the nature of salvage, and any provision in any agreement with him or her inconsistent with the provisions of this section shall be void. 35

(2) The provisions of subsection (1) shall not apply to any provision made by a seaman belonging to a ship engaged in salvage service regarding the remuneration to be paid to him or her for salvage services to be rendered by that ship to any other ship.

Restrictions on assignment of salvage

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20. The following provisions shall apply to salvage due or to become due to a seaman of a South African ship:

- (a) Such salvage shall not be liable to attachment or subject to any form of execution under a judgment or order of any court;
- (b) an assignment or hypothecation thereof shall not bind the person making the same; 45
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and

die Minister die gesagvoerder of die eienaar van sodanige skip, of sodanige gesagvoerder sowel as sodanige eienaar, hetsy mondeling of skriftelik, gelas om sodanige skip te verskuif na 'n plek wat die Minister bepaal, of om sodanige handeling te verrig wat die Minister ten aansien van sodanige skip bepaal.

5 5 (b) Indien die gesagvoerder of eienaar van 'n skip in paragraaf (a) vermeld, versuim om binne die tydperk wat die Minister bepaal 'n handeling te verrig wat hy of sy ingevolge daardie paragraaf aangesê is om te verrig, kan die Minister sodanige handeling laat verrig.

(2) Die Minister kan, ondanks die bepalings van subartikel (1), 'n wrak of 'n skip wat 10 skipbreuk gely of gestrand het of verlaat is of enige gedeelte daarvan laat lig, verwijder of vernietig of op 'n wyse wat hy of sy goedvind daarmee laat handel, indien hy of sy nie in staat was om met die gesagvoerder of eienaar van die vermelde wrak, skip of gedeelte daarvan in aanraking te kom nie.

(3) Indien die Minister uitgawes aangegaan het in verband met die uitoefening van 15 'n bevoegdheid ingevolge subartikel (1)(b) of (2), kan hy of sy sodanige uitgawes verhaal van die eienaar van die betrokke wrak of skip of, in die geval van 'n verlate skip of wrak, van die persoon wat tydens die verlating die eienaar daarvan was.

(4) Indien die Minister uitgawes aangegaan het of sal aangaan in verband met die uitoefening van 'n bevoegdheid ingevolge subartikel (1)(b) of (2) ten opsigte van 'n 20 wrak of skip, kan hy of sy enige goedere van sodanige wrak of skip laat verwijder.

(5) Die Minister kan—

(a) 'n wrak of skip ten aansien waarvan 'n bevoegdheid ingevolge subartikel 25 (1)(b) of (2) uitgeoefen is, of enige gedeelte van sodanige wrak of skip of enige goedere wat ingevolge subartikel (4) daarvan verwijder is, verkoop en die opbrengs van die verkoping aanwend ter bestryding van enige uitgawes wat in verband met die uitoefening van sodanige bevoegdheid aangegaan is; of

(b) enige sodanige wrak, skip of goedere laat aanhou totdat sekuriteit tot 30 tevredenheid van die Minister vir die betaling van sodanige uitgawes gestel is.

(6) Indien enige wrak, skip of goedere ingevolge subartikel (5) verkoop word en die opbrengs van die verkoping die bedrag van die uitgawes vermeld in genoemde subartikel te bowe gaan, word die oorskot aan die eienaar van die betrokke wrak, skip of goedere oorbetaal na aftrekking daarvan van die bedrag van enige reg wat ten 35 aansien van sodanige wrak, skip of goedere ingevolge die Doeane- en Aksysnwet, 1964, betaalbaar is.

(7) Die Minister of iemand wat kragtens die gesag van die Minister optree, is nie aanspreeklik ten aansien van iets wat te goeder trou ingevolge die bepalings van hierdie artikel gedoen is nie.

40 Ooreenkoms om reg op bergloon te verbeur, is nietig

19. (1) 'n Seeman van 'n Suid-Afrikaanse skip doen nie by ooreenkoms afstand van enige reg wat hy of sy mag hê of verkry van die aard van bergloon nie, en enige bepaling in 'n ooreenkoms met hom of haar wat strydig met die bepalings van hierdie artikel is, is nietig.

45 (2) Die bepalings van subartikel (1) is nie van toepassing nie op 'n beslissing wat gemaak is deur 'n seeman behorende tot 'n skip wat vir bergingswerk gebruik word betreffende die vergoeding wat aan hom of haar betaal moet word vir bergingsdienste wat deur daardie skip aan 'n ander skip gelewer word.

Beperkings op oormaking van bergloon

50 20. Die volgende bepalings is van toepassing op bergloon wat aan 'n seeman van 'n Suid-Afrikaanse skip verskuldig is of verskuldig sal word:

- (a) Sodaanige bergloon is nie aan beslaglegging onderworpe nie of word nie aan enige soort eksekusie onderwerp kragtens 'n beslissing of bevel van 'n hof nie;
- 55 (b) 'n oormaking of verhipotekering daarvan bind nie die persoon wat dit doen nie;
- (c) 'n volmag of magtiging om dit te ontvang, is nie onherroeplik nie; en

- (d) a payment of salvage to a seaman shall be valid in law, notwithstanding any previous assignment or hypothecation of salvage, or any attachment of or execution upon that salvage.

Regulations

21. (1) The Minister may make regulations to prescribe any matter which in terms of this Act may be prescribed or which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act. 5

(2) Any regulation contemplated in subsection (1) may for any contravention of or failure to comply with its provisions, provide for penalties of a fine or imprisonment for a period not exceeding three months. 10

Offences and penalties

22. Any person who contravenes or fails to comply with the provisions of section 5(1) or (2), 6(1), 7(1), 13 or 14(1) or (2) shall be guilty of an offence, and shall on conviction be liable—

- (a) in the case of an offence mentioned in section 13 or 14(1) or (2) to a fine or imprisonment for a period not exceeding two years; and 15
- (b) in the case of an offence mentioned in section 5(1) or (2), 6(1) or 7(1) to a fine or to imprisonment for a period not exceeding one year.

Declaration of wreck to be a monument

23. This Act shall not derogate from the operation of the National Monuments Act, 20 1969 (Act No. 28 of 1969).

Act to bind State

24. This Act shall bind the State.

Amendment of section 1 of Act 105 of 1983, as amended by section 1 of Act 87 of 1992

25. Section 1 of the Admiralty Jurisdiction Regulation Act, 1983, is hereby amended by the substitution for paragraph (k) of subsection (1) of the definition of “maritime claim” of the following paragraph:

“(k) salvage, including salvage relating to any aircraft and the sharing or apportionment of salvage and any right in respect of property salved or which would, but for the negligence or default of the salvor or a person who attempted to save it, have been saved, and any claim arising out of the Wreck and Salvage Act, 1996;”.

Amendment of section 134 of Act 57 of 1951

26. Section 134 of the Merchant Shipping Act, 1951, is hereby amended— 35

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A seaman of a South African ship shall not by agreement forfeit his or her lien on the ship for his or her wages, or be deprived of any remedy for the recovery of wages to which in the absence of the agreement he or she would be entitled, or abandon his or her right to wages in the case of the loss of the ship [or abandon any right that he **may have or obtain in the nature of salvage**] and every stipulation in any agreement with the crew inconsistent with the provisions of this section shall be void.”; and 40

- (b) by the deletion of subsection (2). 45

(d) 'n betaling van bergloon aan 'n seeman is regtens geldig ondanks 'n voorafgaande oormaking of verhipotekering van bergloon of 'n beslaglegging of eksekusie op daardie bergloon.

Regulasies

- 5 **21.** (1) Die Minister kan regulasies uitvaardig om enige aangeleentheid voor te skryf wat ingevolge hierdie Wet voorgeskryf kan word, of wat nodig of dienstig is om voor te skryf ten einde die oogmerke van hierdie Wet te bereik of te bevorder.
 (2) 'n Regulasie in subartikel (1) beoog, kan vir 'n oortreding van die bepalings daarvan of vir 'n versuim om aan die bepalings daarvan te voldoen, strawwe voorskryf
 10 van 'n boete of gevangenisstraf vir 'n tydperk van hoogstens drie maande.

Misdrywe en strawwe

- 22.** Iemand wat die bepalings van artikel 5(1) of (2), 6(1), 7(1), 13 of 14(1) of (2) oortree of versuim om daaraan te voldoen, is skuldig aan 'n misdryf, en by skuldigbevinding strafbaar—
 15 (a) in die geval van 'n misdryf vermeld in artikel 13 of 14(1) of (2) met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar; en
 (b) in die geval van 'n misdryf vermeld in artikel 5(1) of (2), 6(1) of 7(1) met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens een jaar.

Verklaring van wrak as gedenkwaardigheid

- 20 **23.** Hierdie Wet doen nie afbreuk aan die werking van die Wet op Nasionale Gedenkwaardighede, 1969 (Wet No. 28 van 1969), nie.

Wet bind Staat

- 24.** Hierdie Wet bind die Staat.

Wysiging van artikel 1 van Wet No. 105 van 1983, soos gewysig deur artikel 1 van Wet No. 87 van 1992

- 25.** Artikel 1 van die Wet op die Reëling van Admiraliteitsjurisdiksie, 1983, word hierby gewysig deur paragraaf (k) van subartikel (1) van die omskrywing van "maritieme eis" deur die volgende paragraaf te vervang:
 30 "(k) bergloon, met inbegrip van bergloon in verband met 'n lugvaartuig en die verdeling of toedeling van bergloon en 'n reg ten opsigte van goed wat geberg is of sou gewees het as dit nie was nie vir die nalatigheid of versuim van die berger of iemand wat gepoog het om dit te berg en enige eis voortspruitend uit die Wet op Wrakke en Berging, 1996;".

Wysiging van artikel 134 van Wet No. 57 van 1951

- 35 **26.** Artikel 134 van die Handelskeepvaartwet, 1951, word hierby gewysig—
 (a) deur subartikel (1) deur die volgende subartikel te vervang:
 "(1) 'n Seeman van 'n Suid-Afrikaanse skip verbeur nie by ooreenkoms sy of haar retensiereg op die skip vir sy of haar loon nie, of word nie by ooreenkoms enige regsmiddel vir die verhaal van loon waarop hy of sy by ontstentenis van die ooreenkoms geregtig sou gewees het, ontnem nie, of doen by ooreenkoms afstand van sy of haar reg op loon in geval van die verlies van die skip [of van enige reg wat hy mag hê of verkry van die aard van bergloon] nie en elke bepaling in 'n ooreenkoms met die bemanning watstrydig met die bepalings van hierdie artikel is, is nietig."; en
 (b) deur subartikel (2) te skrap.

Amendment of section 135 of Act No. 57 of 1951, as amended by section 6 of Act No. 18 of 1992

27. Section 135 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The following provisions shall apply to wages [**and salvage**] due to or to become due to a seaman or apprentice-officer of a South African ship: 5
- (a) They shall not be liable to attachment or subjected to any form of execution under a judgment or order of any court;
 - (b) an assignment or hypothecation thereof shall not bind the person making the same; 10
 - (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
 - (d) [**a**] the payment of wages [**or salvage**] to a seaman or apprentice-officer shall be valid in law, notwithstanding any previous assignment or hypothecation of those wages [**or salvage**], or any attachment of or execution upon those wages 15 [**or salvage**].”.

Repeal of sections 234, 258, 293 to 306, 330 and 331 of Act No. 57 of 1951

28. Sections 234, 258, 293 to 306, 330 and 331 of the Merchant Shipping Act, 1951, are hereby repealed.

Amendment of section 344 of Act No. 57 of 1951

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29. Section 344 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The period of extinguitive prescription in respect of legal proceedings to enforce any claim or lien against a ship or [**her**] its owners in respect of any damage to or loss of another ship, [**her**] its cargo or freight, or any goods on board [**her**] such other ship, or damage for loss of life or personal injury suffered by any person on board [**her**] such other ship, caused by the fault of the former ship, whether such ship be wholly or partly at fault, [**or in respect of any salvage services**] shall be two years and shall begin to run on the date when the damage or loss or injury was caused [**or the salvage services were rendered**].”.

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Substitution of section 345 of Act No. 57 of 1951, as amended by section 57 of Act No. 40 of 1963

30. The following section is hereby substituted for section 345 of the Merchant Shipping Act, 1951:

“Payment of allowances to persons appointed to make preliminary inquiries into shipping casualties, to members of courts of marine enquiry, maritime courts or courts of survey and assessors

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345. Any person appointed under section *two hundred and sixty four*, any member of a court of marine enquiry, maritime court or court of survey, any expert to whom an appeal has been referred under section *two hundred and eighty two* or any assessors summoned under subsection (2) of section *two hundred and ninety two* [**or section three hundred and thirty one and any salvage officer**] shall, if he or she is in the employ of the Government of the Republic, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under this Act) for Government employees of his or her class, and if he or she is not in the employ of the Government of the Republic, or if no such allowances have been prescribed for Government employees of his or her class, he or she shall be paid such allowances towards subsistence and transport as may be prescribed by the regulations made under this Act.”.

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Wysiging van artikel 135 van Wet No. 57 van 1951, soos gewysig deur artikel 6 van Wet No. 18 van 1992

27. Artikel 135 van die Handelskeepvaartwet, 1951, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- 5 “(1) Die volgende bepalings is van toepassing op loon [**en bergloon**] wat aan 'n seeman of leerling-offisier van 'n Suid-Afrikaanse skip verskuldig is of sal word:
- (a) [**Hulle**] Dit is nie aan beslaglegging onderhewig of word nie aan enige soort eksekusie onderwerp kragtens 'n beslissing of bevel van 'n hof nie;
 - 10 (b) 'n oormaking of verhipotekering daarvan verbind nie die persoon wat dit doen nie;
 - (c) 'n volmag of magtiging om [**hulle**] dit te ontvang, is nie onherroeplik nie; en
 - (d) [**'n**] die betaling van loon [**of bergloon**] aan 'n seeman of leerling-offisier is regtens geldig ondanks 'n voorafgaande oormaking of verhipotekering van daardie loon [**of bergloon**] of 'n beslaglegging of eksekusie op daardie loon [**of bergloon**].”.

Herroeping van artikels 234, 258, 293 tot 306, 330 en 331 van Wet No. 57 van 1951

28. Artikels 234, 258, 293 tot 306, 330 en 331 van die Handelskeepvaartwet, 1951, word hierby herroep.

20 Wysiging van artikel 344 van Wet No. 57 van 1951

29. Artikel 344 van die Handelskeepvaartwet, 1951, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- 25 “(1) Die termyn ten opsigte van bevrydende verjaring ten aansien van regsgedinge om enige vordering of retensiereg teen 'n skip of sy eienaars af te dwing ten aansien van enige skade aan of verlies van 'n ander skip, sy vrag of vraggeld of enige goedere aan boord van sodanige ander skip, of skadevergoeding weens lewensverlies of persoonlike besering deur enige persoon aan boord [**daarvan**] van sodanige ander skip gely, wat veroorsaak is deur die toedoen van eersgenoemde skip, [**onverskillig**] ongeag of sodanige skip heeltemal of gedeeltelik die skuld daaraan het, [**of ten aansien van enige bergingsdienste**] is twee jaar en loop vanaf die datum waarop die skade of verlies of besering veroorsaak is [**of die bergingsdienste gelewer is**].”.

Vervanging van artikel 345 van Wet No. 57 van 1951, soos gewysig deur artikel 57 van Wet No. 40 van 1963

- 35 **30.** Artikel 345 van die Handelskeepvaartwet, 1951, word hierby deur die volgende artikel vervang:

“Betaling van toelaes aan persone aangestel om voorlopige ondersoek na skeepsongevalle in te stel, aan lede van marine-ondersoek, seehowe of opnemingshowe en assessore

- 40 **345.** Iemand wat kragtens artikel *tweehonderd vier-en-sestig* aangestel is, enige lid van 'n hof van marine-ondersoek, seehof of opnemingshof, enige deskundige na wie 'n appèl kragtens artikel *tweehonderd twee-en tagtig* verwys is, [**enige**] of 'n assessor wat kragtens subartikel (2) van artikel *tweehonderd twee-en-negentig* [**of artikel driehonderd een-en dertig**] opgeroep is, [**en enige bergingsbeampte ontvang**] as hy of sy in die diens van die Regering van die Republiek is, ontvang sodanige toelaes vir onderhoud en vervoer as wat voorgeskryf is (anders as kragtens hierdie Wet) vir Staatsdienare van sy of haar klas, en as hy of sy nie in die diens van die Regering van die Republiek is nie of as geen sodanige toelaes vir Staatsdienare van sy of haar klas voorgeskryf is nie, ontvang hy of sy sodanige toelaes vir onderhoud en vervoer as wat voorgeskryf is deur die regulasies kragtens hierdie Wet gemaak.”.

Short title and commencement

31. This Act shall be called the Wreck and Salvage Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Kort titel en inwerkintreding

31. Hierdie Wet heet die Wet op Wrakke en Berging, 1996, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

SCHEDULE**PART 1****INTERNATIONAL CONVENTION ON SALVAGE, 1989****THE STATES PARTIES TO THE PRESENT CONVENTION,**

RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

HAVE AGREED as follows:

CHAPTER 1—GENERAL PROVISIONS**ARTICLE 1***Definitions*

For the purpose of this Convention:

- (a) *Salvage operation* means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) *Vessel* means any ship or craft, or any structure capable of navigation.
- (c) *Property* means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) *Damage to the environment* means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) *Payment* means any reward, remuneration or compensation due under this Convention.
- (f) *Organization* means the International Maritime Organization.
- (g) *Secretary-General* means the Secretary-General of the Organization.

ARTICLE 2*Application of the Convention*

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

ARTICLE 3*Platforms and drilling units*

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

BYLAE**DEEL 1****INTERNASIONALE KONVENTSIE BETREFFENDE BERGING, 1989****DIE STATEPARTYE BY DIE HUIDIGE KONVENTSIE HET,**

IN DIE BESEF dat die bepaling by ooreenkoms van eenvormige internasionale reëls betreffende bergingsoperasies wenslik is,

BEWUS daarvan dat weselike ontwikkelinge, in die besonder die groter besorgdheid oor die beskerming van die omgewing, die behoefte aangetoon het om die internasionale reëls te hersien wat tans vervat is in die Konvensie vir die Eenvormigmaking van Sekere Regsreëls oor Hulpverlening en Berging ter See, gemaak te Brussels op 23 September 1910,

BEWUS van die groot bydrae wat doeltreffende en tydige bergingsoperasies kan lewer tot die veiligheid van vaartuie en ander eiendom in gevaar, en tot die beskerming van die omgewing,

OORTUIG van die behoefte daaraan om te verseker dat toereikende aansporing tot die beskikking moet wees van persone wat bergingsoperasies onderneem ten aansien van vaartuie en ander eiendom in gevaar,

SOOS VOLG OOREENGEKOM:

HOOFSTUK 1—ALGEMENE BEPALINGS**ARTIKEL 1***Woordomskrywing*

Vir die doeleindes van hierdie Konvensie beteken:

- (a) "Bergingsoperasie" enige handeling of aktiwiteit onderneem om 'n vaartuig of enige ander eiendom in gevaar in bevaarbare waters waar ook al te help.
- (b) "Vaartuig" 'n skip of tuig, of enige struktuur wat genavigeer kan word.
- (c) "Eiendom" enige eiendom wat nie permanent en doelbewus aan die kuslyn geheg is nie, asook vrag in gevaar.
- (d) "Skade aan die omgewing" weselike fisiese skade aan menslike gesondheid of aan mariene lewe of hulpbronne in kus- of binnelandse waters of gebiede wat daaraan grens, wat deur besoedeling, besmetting, brand, ontploffing of soortgelyke groot voorvalle veroorsaak word.
- (e) "Betaling" 'n beloning, besoldiging of vergoeding betaalbaar kragtens hierdie Konvensie.
- (f) "Organisasie" die Internasionale Maritieme Organisasie.
- (g) "Sekretaris-generaal" die Sekretaris-generaal van die Organisasie.

ARTIKEL 2*Toepassing van die Konvensie*

Hierdie Konvensie is van toepassing wanneer ook al geregtelike of arbitrale verrigtinge met betrekking tot aangeleenthede behandel in hierdie Konvensie in 'n Stateparty ingestel word.

ARTIKEL 3*Platforms en booreenhede*

Hierdie Konvensie is nie van toepassing nie op vaste of drywende platforms of op mobiele aflandige boorenhede wat op daardie plek besig is om na minerale hulpbronne in die seebodem te soek, of dit te ontgini, of daaruit te produseer.

ARTICLE 4*State-owned vessels*

- (1) Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.
- (2) Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph (1), it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

ARTICLE 5*Salvage operations controlled by public authorities*

- (1) This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.
- (2) Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.
- (3) The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

ARTICLE 6*Salvage contracts*

- (1) This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.
- (2) The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.
- (3) Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

ARTICLE 7*Annulment and modification of contracts*

A contract or any terms thereof may be annulled or modified if:

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

CHAPTER II**PERFORMANCE OF SALVAGE OPERATIONS****ARTICLE 8***Duties of the salvor and of the owner and master*

- (1) The salvor shall owe a duty to the owner of the vessel or other property in danger—

ARTIKEL 4*Vaartuie in staatsbesit*

- (1) Sonder om afbreuk te doen aan artikel 5 is hierdie Konvensie nie van toepassing nie op oorlogskepe of ander nie-kommersiële vaartuie wat deur 'n Staat besit of bedryf word en wat ten tyde van bergingsoperasies geregtig is op soewereine immuniteit kragtens die algemeen erkende beginsels van die volkereg, tensy daardie Staat anders beslis.
- (2) Waar 'n Stateparty besluit om die Konvensie toe te pas op sy oorlogskepe of ander vaartuie genoem in paragraaf (1) moet hy die Sekretaris-generaal daarvan in kennis stel met vermelding van die bepalings en voorwaardes van sodanige toepassing.

ARTIKEL 5*Bergingsoperasies beheer deur openbare gesagsliggame*

- (1) Hierdie Konvensie doen nie afbreuk aan enige bepaling van die landsreg of enige internasionale konvensie van toepassing op bergingsoperasies deur of onder die beheer van openbare gesagsliggame nie.
- (2) Nogtans is bergers wat sodanige bergingsoperasies uitvoer daarop geregtig om hulle te beroep op die regte en regsmiddele waarvoor daar in hierdie Konvensie ten opsigte van bergingsoperasies voorsiening gemaak word.
- (3) Die mate waarin 'n openbare gesagsliggaam wat verplig is om bergingsoperasies uit te voer hom kan beroep op die regte en regsmiddele waarvoor daar in hierdie Konvensie voorsiening gemaak word, word bepaal deur die reg van die Staat waarin sodanige gesagsliggaam geleë is.

ARTIKEL 6*Bergingskontrakte*

- (1) Hierdie Konvensie is van toepassing op enige bergingsoperasie, behalwe in die mate waarin 'n kontrak uitdruklik of by implikasie anders bepaal.
- (2) Die gesagvoerder het die bevoegdheid om kontrakte vir bergingsoperasies namens die eienaar van die vaartuig te sluit. Die gesagvoerder of die eienaar van die vaartuig het die bevoegdheid om sodanige kontrakte te sluit namens die eienaar van die eiendom aan boord van die vaartuig.
- (3) Niks in hierdie artikel doen afbreuk aan die toepassing van artikel 7 of die plig om skade aan die omgewing te voorkom of te minimaliseer nie.

ARTIKEL 7*Nietigverklaring en modifikasie van kontrakte*

'n Kontrak of enige bepalings daarvan kan nietig verklaar of aangepas word indien:

- (a) die kontrak onder onbehoorlike beïnvloeding of die invloed van gevaar gesluit is en die voorwaardes daarvan onbillik is; of
- (b) die betaling kragtens die kontrak in 'n buitensporige mate te groot of te klein is vir die dienste werklik gelewer.

HOOFTUK II**UITVOERING VAN BERGINGSOPERASIES****ARTIKEL 8***Pligte van die berger en van die eienaar en gesagvoerder*

- (1) Die berger is dit verskuldig aan die eienaar van die vaartuig of ander eiendom in gevaar—

- (a) to carry out the salvage operations with due care;
 - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
 - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
 - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
- (2) The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
- (a) to co-operate fully with him during the course of the salvage operations;
 - (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
 - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

ARTICLE 9

Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

ARTICLE 10

Duty to render assistance

- (1) Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
- (2) The State Parties shall adopt the measures necessary to enforce the duty set out in paragraph (1).
- (3) The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph (1).

ARTICLE 11

Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

- (a) om die bergingsoperasies met behoorlike sorg uit te voer;
 - (b) om by die uitvoering van die plig in subparagraph (a) genoem behoorlike sorg te dra om skade aan die omgewing te voorkom of te minimaliseer;
 - (c) om wanneer ook al omstandighede dit redelikerwys vereis, ander bergers om hulp te nader; en
 - (d) om die ingryping van ander bergers te aanvaar wanneer redelickerwys deur die eienaar of gesagvoerder van die vaartuig of ander eiendom in gevaar aldus so versoeke; met dien verstande dat die bedrag van die beloning egter nie geraak word indien daar bevind sou word dat sodanige versoeke onredelik was nie.
- (2) Die eienaar en gesagvoerder van die vaartuig of die eienaar van ander eiendom in gevaar is dit aan die berger verskuldig—
- (a) om ten volle met hom saam te werk gedurende die bergingsoperasies;
 - (b) om dusdoende behoorlike sorg te dra om skade aan die omgewing te voorkom of te minimaliseer; en
 - (c) om, wanneer die vaartuig of ander eiendom na 'n veilige plek gebring is, heraflewering te aanvaar wanneer redelickerwys deur die berger aldus versoeke.

ARTIKEL 9

Regte van Kusstate

Niks in hierdie Konvensie doen afbreuk aan die reg van die betrokke Kusstaat om stappe te doen ooreenkomsdig die algemeen erkende beginsels van die volkereg om sy kuslyn of verwante belangte beskerm teen besoedeling of dreigende besoedeling as gevolg van 'n maritieme ongeluk of handelinge met betrekking tot sodanige ongeluk wat redelickerwys verwag kan word om groot skadelike gevolge te hê nie, met inbegrip van die reg van 'n Kusstaat om opdragte te gee betreffende bergingsoperasies.

ARTIKEL 10

Plig om hulp te verleen

- (1) 'n Gesagvoerder is daartoe verbind, vir sover hy dit sonder ernstige gevaar vir sy vaartuig en persone daarop kan doen, om hulp te verleen aan enige persoon wat gevaar loop om ter see verlore te gaan.
- (2) Die Stateparty moet die maatreëls tref wat nodig is om die plig uiteengesit in paragraaf (1) af te dwing.
- (3) Die eienaar van die vaartuig loop geen aanspreeklikheid op vir versuim van die plig van die gesagvoerder kragtens paragraaf (1) nie.

ARTIKEL 11

Samewerking

'n Stateparty moet, wanneer hy ook al aangeleenthede betreffende bergingsoperasies, soos toegang tot die hawens van vaartuie wat in nood verkeer of die verskaffing van fasiliteite aan bergers, reël of daaroor besluit, die nodigheid van samewerking tussen bergers, ander belanghebbende partye en openbare gesagsliggame in ag neem ten einde die doeltreffende en geslaagde uitvoer te verseker van bergingsoperasies met die doel om lewens of eiendom in gevaar te red, asook om in die algemeen skade aan die omgewing te voorkom.

CHAPTER III

RIGHTS OF SALVORS

ARTICLE 12

Conditions for reward

- (1) Salvage operations which have had a useful result give right to a reward.
- (2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
- (3) This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.

ARTICLE 13

Criteria for fixing the reward

- (1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
 - (a) the salved value of the vessel and other property;
 - (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
 - (c) the measure of success obtained by the salvor;
 - (d) the nature and degree of the danger;
 - (e) the skill and efforts of the salvors in salving the vessel, other property and life;
 - (f) the time used and expenses and losses incurred by the salvors;
 - (g) the risk of liability and other risks run by the salvors or their equipment;
 - (h) the promptness of the services rendered;
 - (i) the availability and use of vessels or other equipment intended for salvage operations;
 - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
- (2) Payment of a reward fixed according to paragraph (1) shall be made by all of the vessel and other property interests in proportion to their respective salved values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
- (3) The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved values of the vessel and other property.

ARTICLE 14

Special compensation

- (1) If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
- (2) If, in the circumstances set out in paragraph (1), the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph (1) may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing

HOOFSTUK III

REGTE VAN BERGERS

ARTIKEL 12

Voorwaardes vir beloning

- (1) Bergingsoperasies wat 'n gunstige afloop gehad het, verleen die reg op beloning.
- (2) Tensy anders bepaal, is geen beloning kragtens hierdie Konvensie betaalbaar indien die bergingsoperasies nie 'n gunstige afloop gehad het nie.
- (3) Hierdie hoofstuk is van toepassing al behoort die gebergde vaartuig en die vaartuig wat die bergingsoperasies onderneem aan dieselfde eienaar.

ARTIKEL 13

Kriteria vir die vasstelling van beloning

- (1) Die beloning word vasgestel ten einde bergingsoperasies aan te moedig, met inagneming van die volgende kriteria ongeag die volgorde waarin hulle hier aangebied word:
 - (a) die bergingswaarde van die vaartuig en ander eiendom;
 - (b) die vaardigheid en ywer van die bergers in die voorkoming of minimalisering van skade aan die omgewing;
 - (c) die mate van sukses behaal deur die berger;
 - (d) die aard en graad van die gevvaar;
 - (e) die vaardigheid en ywer van die bergers tydens die bering van die vaartuig, ander eiendom en mense;
 - (f) die tyd bestee en uitgawes aangegaan en verliese gely deur die bergers;
 - (g) die aanspreeklikheidsrisiko en ander risiko's geloop deur die bergers of hul toerusting;
 - (h) die stiptheid van die dienste gelewer;
 - (i) die beskikbaarheid en gebruik van vaartuie of ander toerusting met die oog op bergingsoperasies;
 - (j) die gereedheidstoestand en doeltreffendheid van die berger se toerusting en die waarde daarvan.
- (2) Betaaling van 'n beloning vasgestel ooreenkomsdig paragraaf (1) moet gedoen word deur al die vaartuig- en ander eiendomsbelange in verhouding tot hul onderskeie bergingswaardes. 'n Stateparty se landsreg kan egter bepaal dat 'n beloning deur een van hierdie belang betaal moet word, onderworpe aan 'n regresreg van hierdie belang teenoor die ander belang vir hul onderskeie aandele. Niks in hierdie artikel belet enige reg op verweer nie.
- (3) Die belonings, uitgesonderd enige belang en verhaalbare regskoste wat daarop betaalbaar is, mag nie die bergingswaarde van die vaartuig of ander eiendom te bowe gaan nie.

ARTIKEL 14

Spesiale vergoeding

- (1) Indien die berger bergingsoperasies uitgevoer het ten aansien van 'n vaartuig wat as sodanig of deur sy vrag gedreig het om skade aan te rig aan die omgewing, en nie 'n beloning kragtens artikel 13 bekom het wat minstens gelykstaande is met die spesiale vergoeding assesseerbaar ooreenkomsdig hierdie artikel nie, is hy geregtig op spesiale vergoeding van die eienaar van daardie vaartuig wat gelykstaande is met sy onkoste soos hierin omskryf.
- (2) Indien die berger in die omstandighede uiteengesit in paragraaf (1) deur sy bergingsoperasie skade aan die omgewing voorkom of geminimaliseer het, kan die spesiale vergoeding betaalbaar deur die eienaar aan die berger kragtens paragraaf (1) verhoog word tot hoogstens 30% van die uitgawes aangegaan deur die berger. Die regsprekende liggaam kan, indien hy dit billik en regverdig ag, en met inagneming van die betrokke kriteria uiteengesit in

in mind the relevant criteria set out in article 13, paragraph (1), may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

- (3) Salvor's expenses for the purpose of paragraphs (1) and (2) means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).
- (4) The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
- (5) If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
- (6) Nothing in this article shall effect any right of recourse on the part of the owner of the vessel.

ARTICLE 15

Apportionment between salvors

- (1) The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
- (2) The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

ARTICLE 16

Salvage of persons

- (1) No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.
- (2) A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

ARTICLE 17

Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

ARTICLE 18

The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

paragraaf (1) van artikel 13, sodanige spesiale vergoeding verder verhoog, maar in geen geval mag die totale verhoging meer as 100% van die uitgawes aangegaan deur die berger wees nie.

- (3) Bergerskoste vir doeleinades van paragrawe (1) en (2) beteken die los uitgawes redelikerwys aangegaan deur die berger in die bergingsoperasie en 'n billike tarief vir toerusting en personeel wat werklik en redelickerwys in die bergingsoperasie gebruik is, met inagneming van die kriteria uiteengesit in paragraaf (1)(h), (i) en (j) van artikel 13.
- (4) Die totale spesiale vergoeding kragtens hierdie artikel word betaal slegs indien en in die mate waarin sodanige vergoeding groter is as enige beloning verhaalbaar deur die berger kragtens artikel 13.
- (5) Indien die berger natalig was en daardeur versuim het om skade aan die omgewing te voorkom of te minimaliseer, kan hy die hele spesiale vergoeding of 'n deel daarvan verbeur wat kragtens hierdie artikel betaalbaar is.
- (6) Niks in hierdie artikel doen afbreuk aan enige regresreg van die eienaar van die vaartuig nie.

ARTIKEL 15

Verdeling tussen bergers

- (1) Die verdeling tussen bergers van 'n beloning kragtens artikel 13 word gedoen op grond van die kriteria vervat in daardie artikel.
- (2) Die verdeling tussen die eienaar, gesagvoerder en ander persone in diens van elke bergingsvaartuig word bepaal volgens die reg van die land onder wie se vlag daardie vaartuig vaar. Indien die bering nie uitgevoer is vanaf 'n vaartuig nie, word die verdeling bepaal volgens die wet wat die kontrak tussen die berger en sy werknemers reël.

ARTIKEL 16

Bering van persone

- (1) Geen besoldiging is betaalbaar deur persone wie se lewens gered is nie, maar nikks in hierdie artikel doen afbreuk aan die bepalings van die landsreg oor hierdie onderwerp nie.
- (2) 'n Berger van menselewe, wat deelgeneem het aan die dienste gelewer ten tyde van die ongeluk wat tot die bering aanleiding gegee het, is geregtig op 'n billike deel van die betaling toegeken aan die berger vir die bering van die vaartuig of ander eiendom of vir die voorkoming of minimalisering van skade aan die omgewing.

ARTIKEL 17

Dienste gelewer kragtens bestaande kontrakte

Geen betaling is verskuldig kragtens die bepalings van hierdie Konvensie nie tensy die dienste gelewer dit te bowe gaan wat redelickerwys beskou kan word as behoorlike uitvoering van 'n kontrak wat gesluit is voor die gevaar ontstaan het.

ARTIKEL 18

Die gevolge van 'n berger se wangedrag

'n Berger kan die hele betaling of deel daarvan wat kragtens hierdie Konvensie betaalbaar is, verbeur in die mate waarin die bergingsoperasie noodsaaklik of moeiliker geword het vanweë sy toedoen of nataligheid of indien die berger aan bedrog of ander oneerlike gedrag skuldig was.

ARTICLE 19*Prohibition of salvage operations*

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

CHAPTER IV**CLAIMS AND ACTIONS****ARTICLE 20***Maritime lien*

- (1) Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
- (2) The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

ARTICLE 21*Duty to provide security*

- (1) Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
- (2) Without prejudice to paragraph (1), the owner of the salved vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
- (3) The salved vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

ARTICLE 22*Interim payment*

- (1) The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
- (2) In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

ARTICLE 23*Limitation of actions*

- (1) Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
- (2) The person against whom a claim is made may at any time during the running

ARTIKEL 19*Verbod op bergingsoperasies*

Dienste gelewer ondanks die uitdruklike en redelike verbod van die eienaar of gesagvoerder van die vaartuig of die eienaar van enige ander eiendom in gevaar wat nie aan boord van die vaartuig is en was nie, lei nie tot betaling kragtens hierdie Konvensie nie.

HOOFSTUK IV**EISE EN AKSIES****ARTIKEL 20***Maritieme retensiereg*

- (1) Niks in hierdie Konvensie doen afbreuk aan die berger se maritieme retensiereg kragtens enige internasionale konvensie of landsreg nie.
- (2) Die berger mag nie sy maritieme retensiereg afdwing wanneer genoegsame sekuriteit vir sy eis, met inbegrip van rente en koste, behoorlik aangebied of verskaf is nie.

ARTIKEL 21*Pligte om sekuriteit te verskaf*

- (1) Op versoek van die berger moet 'n persoon wat vir 'n betaling kragtens hierdie Konvensie aanspreeklik is genoegsame sekuriteit verskaf vir die eis, met inbegrip van rente en bergerskoste.
- (2) Sonder om afbreuk te doen aan paragraaf (1) moet die eienaar van die gebergde vaartuig sy bes doen om te verseker dat die eienaars van die vrag genoegsame sekuriteit verskaf vir die eise teen hulle, met inbegrip van rente en koste, voordat die vrag vrygestel word.
- (3) Die gebergde vaartuig en ander eiendom mag nie sonder die toestemming van die berger van die hawe of plek waar dit aanvanklik na afhandeling van die bergingsoperasies aangekom het, verwyder word totdat genoegsame sekuriteit verskaf is vir die berger se eis teen die betrokke vaartuig of eiendom nie.

ARTIKEL 22*Tussentydse betaling*

- (1) Die tribunaal wat jurisdiksie ten aansien van die berger se eis het, kan by tussentydse beslissing gelas dat die berger die bedrag op rekening betaal word wat billik en regverdig is, en op sodanige voorwaardes, met inbegrip van voorwaardes ten aansien van sekuriteit, waar gepas, as wat volgens die omstandighede van die geval billik en regverdig is.
- (2) In die geval van 'n tussentydse betaling kragtens hierdie artikel word die sekuriteit waarvoor kragtens artikel 21 voorsiening gemaak word dienooreenkomsdig verminder.

ARTIKEL 23*Beperking van aksies*

- (1) Enige aksie met betrekking tot betaling kragtens hierdie Konvensie is onder tyd belet indien geregtelike of arbitrale verrigtinge nie binne 'n tydperk van twee jaar ingestel is nie. Die perkyd neem 'n aanvang op die dag waarop die bergingsoperasies afgehandel word.
- (2) Die persoon teen wie 'n eis ingestel word, kan te eniger tyd tydens die duur

of the limitation period extend that period by a declaration to the claimant. The period may in the like manner be further extended.

- (3) An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

ARTICLE 24

Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

ARTICLE 25

State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognized principles of international law.

ARTICLE 26

Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

ATTACHMENT 1

COMMON UNDERSTANDING CONCERNING ARTICLES 13 AND 14 OF THE INTERNATIONAL CONVENTION ON SALVAGE 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

van die perkyd dié tydperk by wyse van verklaring aan die eiser verleng. Die tydperk kan op soortgelyke wyse verder verleng word.

- (3) 'n Aksie om vrywaring kan deur 'n aanspreeklike persoon ingestel word selfs nadat die perkyd waarvoor in die voorafgaande paragrawe voorsiening gemaak word, verstryk het, indien ingestel in die tydperk toegelaat deur die reg van die Staat waar die verrigtinge ingestel word.

ARTIKEL 24

Rente

Die reg van 'n berger op rente op enige betaling verskuldig kragtens hierdie Konvensie word bepaal ooreenkomsdig die reg van die Staat waarin die regsperekende liggaam geleë is wat aan die saak gebonde is.

ARTIKEL 25

Vragte in staatsbesit

Tensy die Staatseienaar daartoe instem, mag geen bepaling van hierdie Konvensie as grondslag gebruik word vir die beslaglegging op of die inbesagneming van of aanhouding van, deur enige regsproses, of vir enige verrigtinge *in rem* teen, nie-kommersiële vrag in besit van 'n Staat en wat ten tyde van die bergingsoperasies geregtig is op soewereine immuniteit kragtens die algemeen erkende beginsels van die volkereg nie.

ARTIKEL 26

Humanitaire vragte

Geen bepaling van die Konvensie mag gebruik word as grondslag vir die beslaglegging op of inbesagneming of aanhouding van humanitaire vragte geskenk deur 'n Staat nie, indien sodanige Staat daartoe ingestem het om te betaal vir bergingsdienste ten aansien van sodanige humanitaire vragte gelewer.

AANHANGSEL 1

ALGEMENE VERSTANDHOUDING AANGAANDE ARTIKELS 13 EN 14 VAN DIE INTERNASIONALE KONVENTSIE BETREFFENDE BERGING, 1989

Daar word algemeen deur die Konferensie aanvaar dat, by die vasstelling van 'n beloning kragtens artikel 13 en die assessorering van spesiale vergoeding kragtens artikel 14 van die Internasionale Konvensie Betreffende Berging, 1989, die tribunaal onder geen verpligting is om 'n beloning kragtens artikel 13 tot op die maksimum bergingswaarde van die vaartuig en ander eiendom vas te stel voordat die spesiale vergoeding betaalbaar kragtens artikel 14 geassesseer is nie.





