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REPLACEMENT OF INSTRUMENTS ENUMERATED IN ARTICLE 5.3 OF THE 1971 FUND CONVENTION

Note by the Director

Introduction

1 In accordance with Article 5.3 of the 1971 Fund Convention, the 1971 Fund may be exonerated, wholly or partially, from its obligation to pay indemnification to the shipowner or his guarantor if the Fund proves that, as a result of the actual fault or privity of the owner, the ship in question did not comply with the requirements laid down in the four instruments listed in sub-paragraph (a)(i) - (iv) of that Article and that the incident or the damage was caused wholly or partially by such non-compliance. This provision applies even in cases where the flag State of the vessel concerned is not a Party to the relevant instrument.

2 The instruments originally listed in Article 5.3(a) were:

- (i) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962 (OILPOL 54);
- (ii) the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60);
- (iii) the International Convention on Load Lines, 1966; and
- (iv) the International Regulations for Preventing Collisions at Sea, 1960 (COLREG 60).

3 The purpose of Article 5.3 was to encourage shipowners, by means of indirect financial inducement, to make their ships conform to the requirements of the instruments mentioned in that Article, thereby reducing the risk of oil pollution incidents.

4 Article 5.4 of the 1971 Fund Convention provides a procedure for replacing the instruments specified in Article 5.3(a). These instruments may, under certain conditions, be replaced by new instruments if so decided by the 1971 Fund Assembly. Upon the entry into force of a new Convention designed to replace, in whole or in part, any of the instruments specified in Article 5.3(a), the Assembly may thus decide that the new Convention will replace such an instrument or part thereof for the purpose of Article 5.3. The Assembly will then fix the date from which such a replacement will take effect.

5 At its 8th session, the Assembly decided to interpret Article 5.4 so as to allow the inclusion in the list of instruments contained in Article 5.3(a) of not only new conventions but also amendments adopted by a tacit amendment procedure, provided that such amendments were of an important character for the purpose of the prevention of oil pollution (documents FUND/A.8/12 and FUND/A.8/15, paragraph 15.1).

6 The Assembly has applied Article 5.4 in respect of the instruments listed in Article 5.3(a)(i), (ii) and (iv). The present list of instruments in Article 5.3(a) reads as follows:

- (i) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as amended by Resolutions MEPC.14(20), MEPC.47(31), MEPC.51(32) and MEPC.52(32) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984, 4 July 1991, 6 March 1992 and 6 March 1992 respectively;
- (ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto, and as amended by Resolutions MSC.1(XLV), MSC.6(48), MSC.13(57) and MSC.27(61) and MSC.46(65) and, as regards Regulations V/8-1 and V/15-1, by Resolution MSC.31(63) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989, 11 December 1992, 16 May 1995 and 23 May 1994, respectively, and as amended by Resolution 1 adopted on 9 November 1988 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System and as amended by Resolution 1 adopted on 24 May 1994 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974;
- (iii) the International Convention on Load Lines, 1966; and
- (iv) the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

7 The Assembly may wish to examine whether further modifications to the list should be made, resulting from amendments adopted in May 1994, June 1996, December 1996 and June 1997 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), amendments adopted in July 1996 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and amendments adopted in November 1995 to the International Convention on Load Lines, 1966.

May 1994 Amendments to SOLAS 74

8 In May 1994, the Conference of Contracting Governments to SOLAS 74 and the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Conference Resolution 1 and Resolution MSC.31(63), respectively) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74. Under this procedure, an amendment adopted by such a Conference or the Committee is communicated by the Secretary-General of IMO to the Governments of Contracting States. An amendment is deemed to have been accepted unless more than one third of these Governments, or Governments of such States representing not less than 50% of the gross tonnage of the world's merchant fleet, have

notified the Secretary-General of their objection to the amendment. An amendment which is deemed to have been accepted will in principle enter into force in respect of all Parties except those having filed objections.

9 The dates on which the prescribed period for notification of objections to the Amendments contained in the respective Resolutions expire and the corresponding dates on which the Amendments have entered or will enter into force, unless a sufficient number of objections have been filed, are as follows:

	Expiry of period for notification of objections	Date on which Amendments have entered or will enter into force unless a sufficient number of objections have been made
(a) Amendments contained in Annex I to Conference Resolution 1 (Chapters X and XI)	1 July 1995	1 January 1996
(b) Amendments contained in Annex 2 to Conference Resolution 1 (Chapter IX)	1 January 1998	1 July 1998
(c) Amendments contained in Resolution MSC.31(63) (Regulation V/8-1 and Regulation V/15-1)	1 July 1995	1 January 1996
(d) Amendments contained in Resolution MSC.31(63) (amendments other than those referred to above)	1 January 1998	1 July 1998

10 The Amendments covered by Conference Resolution 1 introduce three new Chapters, ie Chapters IX, X and XI. Chapter IX, which applies *inter alia* to oil tankers of 500 gross tonnage and over, makes it compulsory for ships to comply with the International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by IMO. Chapter X contains provisions relating to safety measures for high speed craft. Chapter XI, which contains provisions relating to special measures to enhance maritime safety, introduces *inter alia* an enhanced programme of surveys for tankers which are more than five years old.

11 The Amendments covered by Resolution MSC.31(63) include requirements affecting the safety of oil tankers, viz mandatory ship reporting systems, emergency towing arrangements on all tankers of 20 000 dwt and above, fire protection arrangements for fuel oil, lubricating oil and other flammable oils and improved navigation bridge visibility.

12 At its 17th session, the Assembly considered that the Amendments covered by Conference Resolution 1 of the Contracting Governments to SOLAS 74 and by Resolution MSC.31(63) were of important character for the purpose of the prevention of oil pollution (document FUND/A.17/35, paragraph 31.3). At its 18th session, the Assembly decided to include in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, with effect from 1 May 1996, the Amendments covered by Conference Resolution 1 and some of the Amendments covered by Resolution MSC.31(63) (ie those relating to Regulation V/8-1 and Regulation V/15-1) which entered into force on 1 January 1996 (document FUND/A.18/26, paragraph 23.1).

13 It is not possible at this stage to determine whether the remaining Amendments covered by these Resolutions will enter into force. For this reason, the Director considers it premature for the Assembly to take a decision at its 20th session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention.

November 1995 Amendments to the International Convention on Load Lines, 1966

14 In November 1995, the Assembly of IMO, at its 19th session, adopted amendments to the International Convention on Load Lines, 1966 (Resolution A.784(19)) in accordance with Article 29(3)(b) of that Convention. These Amendments require explicit acceptance by a certain number of States (two thirds of the Contracting Governments) for their entry into force.

15 Under the Convention, less strict requirements apply to ships navigating in the seasonal tropical area in the South Pacific off the coast of Australia. The November 1995 Amendments extend this area to include also the Port of Gladstone and its adjacent sea area.

16 At its 19th session, the 1971 Fund Assembly decided that the Amendments covered by this Resolution were of an important character for the purpose of the prevention of oil pollution. However, the Assembly took the view that it was premature to take a decision at that session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, since it was not possible to determine whether these Amendments would enter into force (document 71FUND/A.19/30, paragraph 26.3).

17 It is still not possible to determine whether the 1995 Amendments will enter into force. For this reason, the Director considers it premature for the Assembly to take a decision at its 20th session on whether to include these Amendments in the above-mentioned list.

June 1996 Amendments to SOLAS 74

18 In June 1996, the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.47(66)) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74. The prescribed period for notification of objections expires on 1 January 1998. The Amendments will enter into force on 1 July 1998 unless a sufficient number of objections have been filed.

19 The Amendments covered by MSC.47(66) introduce new regulations concerning structural, mechanical and electrical requirements for ships, corrosion prevention of seawater ballast tanks, additional requirements as regards the stability of passenger ships in damaged conditions, subdivision and damage stability of cargo ships, life-saving appliances and arrangements, cargo information and stowage of bulk cargo.

20 At its 19th session, the Assembly decided that the June 1996 Amendments to SOLAS 74 were of an important character for the purpose of the prevention of oil pollution. However, the Assembly took the view that it was premature to take a decision at that session on whether to include these amendments in the list of instruments contained in Article 3(c) of the 1971 Fund Convention, since it was not possible to determine whether these Amendments would enter into force (document 71FUND/A.19/30, paragraph 26.3).

21 It is still not possible to determine whether the Amendments covered by Resolution MSC 47(66) will enter into force. For this reason, the Director considers it premature for the Assembly to take a decision at its 20th session on whether to include these Amendments in the above-mentioned list.

July 1996 Amendments to MARPOL 73/78

22 In July 1996, the Marine Environment Protection Committee of IMO adopted amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Resolution MEPC.68(38)), in accordance with the tacit amendment procedure specified in Article 16 of the MARPOL Convention. This tacit amendment procedure is similar to the one described in respect of SOLAS 74. The prescribed period for notification of objections expired on 1 July 1997. Since no objections were submitted, the Amendments will enter into force on 1 January 1998.

23 The Amendments covered by this Resolution impose on the master or other person in charge of a ship an extended duty to report *inter alia* a discharge or possible discharge of oil.

24 In the Director's view the Amendments covered by this Resolution are of importance for the prevention of oil pollution in general. He takes the view, however, that the Amendments are not relevant for the purpose of Article 5.3 of the 1971 Fund Convention, because they refer to the duty of the master or other person having charge of a ship to report a discharge or probable discharge of oil in certain cases. These Amendments should therefore, in his view, not be included in the list of instruments contained in that Article.

December 1996 Amendments to SOLAS 74

25 In December 1996, the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.57(67)) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74. The prescribed period for notification of objections expires on 1 January 1998. The Amendments will enter into force on 1 July 1998 unless a sufficient number of objections have been filed.

26 The Amendments covered by MSC.57(67) include requirements affecting the safety of oil tankers, *inter alia* safe access to tanker bows, emergency towing arrangements on tankers, machinery controls, main source of electrical power and lighting systems, and automatic sprinkler, fire detection and fire alarm systems.

27 The Director considers that the Amendments covered by Resolution MSC. 57(67) concern the safety of navigation for ships, including oil tankers, and are relevant for the purpose of Article 5.3 of the 1971 Fund Convention.

28 It is not possible at this stage to determine whether the Amendments covered by this Resolution will enter into force. For this reason, the Director considers it premature for the Assembly to take a decision at its 20th session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention.

June 1997 Amendments to SOLAS 74

29 In June 1997, the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC. 65(68)) in accordance with the tacit amendment procedure specified in Article VIII (b). The prescribed period for notification of objections expires on 1 January 1999. The Amendments will enter into force on 1 July 1999 unless a sufficient number of objections have been filed.

30 The Amendments covered by MSC. 65(68) introduce regulations to improve the safety of passenger ships by establishing stability standards in case of damage to the ships. The Amendments also require the Contracting Parties to establish vessel traffic services to assist ships to navigate in areas where the volume of traffic or the degree of risk justifies such services.

31 In the Director's view these amendments are not of relevance for the purpose of Article 5.3 of the 1971 Fund Convention. He proposes, therefore, that these Amendments should not be included in the list of instruments contained in Article 5.3(a).

Action to be taken by the Assembly

The Assembly is invited to consider whether to include in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention:

- (a) the May 1994 Amendments to SOLAS 74 referred to under (b) and (d) in the table set out in paragraph 9 (paragraphs 8-13 above);
 - (b) the November 1995 Amendments to the International Convention on Load Lines, 1966 (paragraphs 14-17 above);
 - (c) the June 1996 Amendments to SOLAS 74 (paragraphs 18-21 above);
 - (d) the July 1996 Amendments to MARPOL 73/78 (paragraphs 22-24 above);
 - (e) the December 1996 Amendments to SOLAS 74 (paragraphs 25-28 above); and
 - (f) the June 1997 Amendments to SOLAS 74 (paragraphs 29-31 above).
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