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

Note by the Director

### Introduction

**1** In accordance with Article 5.3 of the Fund Convention, the IOPC Fund may be exonerated, wholly or partially, from its obligation to pay indemnification to the shipowner or his guarantor if the IOPC 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 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 IOPC 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) and MSC.13(57) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983 and 11 April 1989, 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;
- (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 December 1992 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), amendments adopted in November 1993 to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72), and amendments adopted in May 1994 to SOLAS 74.

#### December 1992 Amendments to SOLAS 74

8 In December 1992, the Maritime Safety Committee (MSC) of IMO adopted amendments to SOLAS 74 (Resolution MSC.27(61)) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74. Under this procedure, an amendment adopted by the Committee is communicated by the Secretary-General of IMO to the Governments of Contracting States. The 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 that is deemed to have been accepted will in principle enter into force in respect of all Parties except those having filed objections.

9 The prescribed period for notification of objections expired on 1 April 1994. Since no objections were received by the Secretary-General of IMO by that date, the Amendments will enter into force on 1 October 1994.

10 These Amendments include stricter safety requirements for new oil tankers in respect of access to spaces in the cargo area.

11 At its 16th session, the Assembly considered that the Amendments covered by Resolution MSC.27(61) were of an important character for the purpose of the prevention of oil pollution. However, at the time of that session it was not possible to determine whether these Amendments would enter into force. The Assembly decided, therefore, that it was premature to take a decision at that session on whether to include the December 1992 Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention (document FUND/A.16/32, paragraph 31.3).

12 Since it has now been established that the December 1992 Amendments to SOLAS 74 will enter into force on 1 October 1994, it is proposed that the reference to the instruments listed in Article 5.3(a)(ii) should be amended to read as follows (amendments underlined):

- (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) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989 and 11 December 1992, 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;

13 The date of the replacement may not be earlier than six months from the date of the decision of the Assembly, in accordance with Article 5.4 of the Fund Convention. It is proposed that if the Assembly were to decide on a replacement, it should take effect on 1 May 1995.

#### November 1993 Amendments to COLREG 72

14 In November 1993, the Assembly of IMO adopted amendments to COLREG 72 (Resolution A.736(18)) in accordance with the tacit amendment procedure under Article VI of COLREG 72. This tacit amendment procedure is similar to the one described in respect of SOLAS 74. The amendments will enter into force on a date to be determined by the Assembly at the time of its adoption unless, by a prior date determined by the Assembly at the same time, more than one third of the Contracting Parties notify IMO of their objection to the amendments.

15 The prescribed period for notification of objections expired on 4 May 1994. Only one Contracting Party had made a reservation by that date. The Amendments will enter into force on 4 November 1995.

16 These Amendments concern regulations dealing with high speed craft and signals for trawlers.

17 In the opinion of the Director, the Amendments covered by this Resolution do not concern the safety of oil tankers, nor are they otherwise of relevance for the purpose of Article 5.3 of the Fund

Convention. These Amendments should therefore not be included in this list of instruments contained in Article 5.3(a) of the Fund Convention.

#### May 1994 Amendments to SOLAS 74

18 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)) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74.

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

20 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 an enhanced programme of surveys for tankers which are more than five years old.

21 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.

22 The Director takes the view that the Amendments referred to in paragraphs 20 and 21 above are of an important character for the purpose of the prevention of oil pollution.

23 It is not possible at this stage to determine whether the Amendments covered by these Resolutions will enter into force. The Director therefore considers it premature for the Assembly to take a decision at its 17th session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention.

**Action to be Taken by the Assembly**

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

- (a) the December 1992 Amendments to SOLAS 74 (paragraphs 8-13 above);
  - (b) the November 1993 Amendments to COLREG 72 (paragraphs 14-17 above); and
  - (c) the May 1994 Amendments to SOLAS 74 (paragraphs 18-23 above).
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