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

Note by the Director

Summary:	Various amendments to the instruments listed in Article 5.3(a) of the 1971 Fund Convention are examined.
Action to be taken:	Decide whether to include these amendments in the list of instruments in this Article.

1 Introduction

1.1 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.

1.2 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).

1.3 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.

1.4 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.

1.5 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).

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), MEPC.52(32) and MEPC.75(40) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984, 4 July 1991, 6 March 1992, 6 March 1992 and 25 September 1997, 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), MSC.27(61), MSC.31(63), MSC.46(65), MSC.47(66) and MSC.57(67) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989, 11 December 1992, 23 May 1994, 16 May 1995, 4 June 1996 and 5 December 1996, 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.

1.7 The Assembly may wish to examine whether further modifications to the list should be made, resulting from amendments adopted in November 1988, May 1998 and May 1999 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), amendments adopted in November 1988 and November 1995 to the International Convention on Load Lines, 1966, and amendments adopted in July 1999 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

2 Amendments to SOLAS 74

2.1 The 1988 Protocol

2.1.1 In November 1988 an International Conference on the Harmonized System of Survey and Certification adopted a Protocol to SOLAS 74 (IMO document HSSC/CONF/11). The 1988 SOLAS Protocol introduces, *inter alia*, a harmonised system of survey and certification under the 1974 SOLAS Convention (document FUND/A.13/13, paragraph 22(a)). The Protocol requires explicit acceptance by a certain number of States for its entry into force.

2.1.2 The 1988 Protocol was brought to the attention of the Assembly at its 12th session (document FUND/A.12/13, paragraph 14). The Assembly decided that it was premature to take any decision in respect of the Protocol at that session (document FUND/A.12/19, paragraph 16).

2.1.3 The conditions for the entry into force of the 1988 Protocol were met on 2 February 1999, and it will enter into force on 3 February 2000.

2.1.4 The 1988 Protocol contains certain provisions which, in the Director's view, are of an important character for the prevention of oil pollution. For this reason, the Director proposes that it is included in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention.

2.1.5 It is proposed that, if the Assembly were to share the Director's view regarding the Protocol, the reference to the instrument listed in Article 5.3(a)(ii) should be amended to read as follows (amendment underlined):

- (ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 and the Protocol of 1988 relating thereto, and as amended by Resolutions MSC.1(XLV), MSC.6(48), MSC.13(57), MSC.27(61), MSC.31(63), MSC.46(65), MSC.47(66) and MSC.57(67) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989, 11 December 1992, 23 May 1994, 16 May 1995, 4 June 1996 and 5 December 1996, 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.

2.1.6 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 1971 Fund Convention. It is proposed that, if the Assembly were to decide on a replacement, it should take effect from 1 May 2000.

2.2 May 1998 Amendments

2.2.1 In May 1998 the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.69(69)) in accordance with the tacit amendments procedure specified in Article VIII(b). Under this procedure, an amendment adopted by 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.

2.2.2 The prescribed period for notification of objections to the Amendments covered by Resolution MSC.69(69) expires on 1 January 2002. The Amendments will enter into force on 1 July 2002 unless a sufficient number of objections have been filed prior to 1 January 2002.

2.2.3 The Amendments covered by MSC.69(69) include the designation of testing methods of water tight bulkheads and ship's position-updating.

2.2.4 At its 59th session the 1971 Fund Executive Committee, acting on behalf of the 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 Executive Committee took the view that it was premature to take a decision at that session 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.21/24, paragraph 7.4).

2.2.5 It is still not possible 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 22nd session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention.

2.3 May 1999 Amendments

2.3.1 In May 1999 the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.87(71)) 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 July 2000. The Amendments will enter into force on 1 January 2001 unless a sufficient number of objections have been filed prior to 1 July 2000.

2.3.2 The Amendments covered by MSC.87(71) introduce special requirements for the carriage of packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes.

2.3.3 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).

3 Amendments to the International Convention on Load Lines, 1966

3.1 The 1988 Protocol

3.1.1 In November 1988 an International Conference on the Harmonized System of Survey and Certification adopted a Protocol relating to the International Convention on Load Lines 1966 (IMO document HSSC/CONF/12). The 1988 Load Line Protocol, like the 1988 SOLAS Protocol, introduces, *inter alia*, a harmonised system of survey and certification (document FUND/A.13/13, paragraph 22(b)). The Protocol requires explicit acceptance by a certain number of States for its entry into force.

3.1.2 The 1988 Protocol was brought to the attention of the Assembly at its 12th session (document FUND/A.12/13, paragraph 14). The Assembly decided that it was premature to take any decision in respect of the Protocol at that session (document FUND/A.12/19, paragraph 16).

3.1.3 The conditions for the entry into force of the 1988 Protocol were met on 2 February 1999, and it will enter into force on 3 February 2000.

3.1.4 The 1988 Protocol contains certain provisions which, in the Director's view, are of an important character for the prevention of oil pollution. For this reason, the Director proposes that it is included in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention.

3.1.5 It is proposed that, if the Assembly were to share the Director's view regarding the Protocol, the reference to the instrument listed in Article 5.3(a)(iii) should be amended to read as follows (amendment underlined):

- (iii) the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto.; and

3.1.5 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 1971 Fund Convention. It is proposed that, if the Assembly were to decide on a replacement, it should take effect from 1 May 2000.

3.2 November 1995 Amendments

3.2.1 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 States) for their entry into force.

3.3 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.

3.4 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).

3.5 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 22nd session on whether to include these Amendments in the above-mentioned list.

4 July 1999 Amendments to MARPOL 73/78

4.1 In July 1999 the Marine Environment Protection Committee of IMO adopted amendments to Annexes I and II of MARPOL 73/78 (Resolution MEPC.78(43)), in accordance with the tacit amendment procedure specified in Article 16(2) of the MARPOL Convention. This tacit amendment procedure is similar to the one described in respect of SOLAS 74 (see paragraph 2.2.1). The prescribed period for notification of objections expires on 1 July 2000. The amendments will enter into force on 1 January 2001 unless a sufficient number of objections have been filed prior to 1 July 2000.

Amendments to Annex I

4.2 The amendments to Annex I covered by Resolution MEPC.78(43) include amendments to Regulation 13G which make existing oil tankers, between 20 000 and 30 000 tons deadweight carrying persistent product oil subject to the same construction requirements as crude oil tankers (ie double hull construction). Corresponding amendments are made to the forms of the International Oil Pollution Prevention (IOPP) Certificate.

4.3 The Director considers that the amendments to Annex I of MARPOL 73/78 covered by Resolution MEPC.78(43) are of an important character for the purpose of the prevention of oil pollution.

4.4 However, it is not possible at this stage to determine whether the amendments to Annex I 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 22nd session on whether to include these amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention.

Amendments to Annex II

4.5 The amendments to Annex II of MARPOL 73/78 covered by Resolution MEPC.78(43) introduce requirements for ships certified to carry noxious liquid substances in bulk to carry on board a shipboard marine pollution emergency plan for such substances. In the Director's view these amendments are not of relevance to 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).

5 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 1988 Protocol to SOLAS 74 (paragraph 2.1 above);
 - (b) the May 1998 amendments to SOLAS 74 (paragraph 2.2 above);
 - (c) the May 1999 amendments to SOLAS 74 (paragraph 2.3 above);
 - (d) the 1988 Protocol to International Convention on Load Lines, 1966 (paragraph 3.1 above);
 - (e) the November 1995 Amendments to the International Convention on Load Lines, 1966 (paragraph 3.2 above);
 - (f) the July 1999 amendments to Annex I of MARPOL 73/78 (paragraphs 4.2 - 4.4 above); and
 - (g) the July 1999 amendments to Annex II of MARPOL 73/78 (paragraph 4.5 above);
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