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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), MEPC.75(40) and MEPC.78(43) 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, 25 September 1997 and 1 July 1999, respectively;
 - (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;
 - (iii) the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto; 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 March 2000, October 2000 and April 2001 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), amendments adopted in May 1998, December 2000 and June 2001 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), and amendments adopted in November 1995 to the International Convention on Load Lines, 1966.

2 Amendments to MARPOL 73/78

2.1 March 2000 amendments

2.1.1 In March 2000 the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) adopted, in accordance with Article 16(2)(d) of MARPOL 73, amendments to the Appendix to Annex III of MARPOL 73/78, which establishes the regulations for the prevention of pollution by harmful substances carried by sea in packaged forms (Resolution MEPC.84(44)).

2.1.2 MEPC determined, in accordance with Article(2)(f)(iii) of MARPOL 73, that the amendments shall be deemed to have been accepted on 1 July 2001, unless prior to that date not less than one-third of the Parties or the Parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have communicated to IMO their objections to the amendments. Pursuant to Article 16(2)(g)(ii), the amendments shall enter into force on 1 January 2002 upon their acceptance in accordance with this procedure.

2.1.3 No objections were received by 1 July 2001. The amendments will therefore enter into force on 1 January 2002.

2.1.4 The amendments covered by Resolution MEPC.84(44) delete tainting from the Guidelines as one of the criteria for the identification of substances in packed form as harmful substances.

2.1.5 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).

2.2 October 2000 amendments

Amendments to Annex V of MARPOL 73/78

2.2.1 In October 2000 MEPC adopted amendments to Annex III of MARPOL 73/78, which contains the regulations for the prevention of pollution by garbage from ships (Resolution MEPC.89(45)). MEPC determined that the amendments shall be deemed to have been accepted on 1 September 2001 unless prior to that date objections have been made as set out in paragraph 2.1.2 above. The amendments shall enter into force on 1 March 2002 upon their acceptance in accordance with this procedure.

2.2.2 No objections were received by 1 September 2001. The amendments will therefore enter into force on 1 March 2001.

2.2.3 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).

Amendments to the IBC Code and the BCH Code

2.2.4 In October 2000 MEPC adopted amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) (Resolution MEPC.90(45)) and to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) (Resolution MEPC.91(45)). MEPC determined that the amendments shall be deemed to have been accepted on 1 January 2002 unless prior to that date objections have been made as set out in paragraph 2.1.2 above. The amendments shall enter into force on 1 July 2002 upon their acceptance in accordance with this procedure. So far no objections have been received.

2.2.5 The amendments covered by Resolutions MEPC.90(45) and MEPC.91(45) relate to cargo hoses requirements, personnel protection and carriage of carbon disulphide. In the Director's view these amendments are not of relevance for the purpose of Article 5.3 of the 1971 Fund Convention. In any event the amendments will not enter into force until after the 1971 Fund Convention will already have ceased to be in force on 24 May 2002. He proposes, therefore, that these amendments should not be included in the list of instruments contained in Article 5.3(a).

2.3 April 2001 amendments

2.3.1 In April 2001 MEPC adopted amendments to Regulation 13 G of Annex I to MARPOL 73/78 and to the Supplement to the IOPP Certificate (MEPC.95(46)). MEPC determined that the amendments shall be deemed to have been accepted on 1 March 2002 unless prior to that date objections have been made as set out in paragraph 2.1.2 above. The amendments shall enter into force on 1 September 2002 upon their acceptance in accordance with this procedure.

2.3.2 Resolution MSC 95(46) introduces a new timetable for accelerating the phase-out of single-hull oil tankers. Under the new timetable, most single-hull oil tankers would be phased out by 2015 at the latest. However, a flag state administration may allow for some newer single hull ships registered in that state which conform to certain technical specifications to continue trading until the anniversary of the date of delivery of the ship in 2017 or the date on which the ship reaches 25 years after the date of its delivery, whichever is the earlier date.

2.3.3 In the Director's view, these amendments are of an important character for the purpose of the prevention of pollution. However, the amendments will in any event not enter into force until 1 September 2002, when the 1971 Fund Convention will already have ceased to be in force. For this reason, he proposes that these amendments should not be included in the list of instruments contained in Article 5.3(a).

3 Amendments to SOLAS 74

3.1 May 1998 Amendments

3.1.1 In May 1998 the Maritime Safety Committee (MSC) of IMO adopted amendments to SOLAS 74 (Resolution MSC.69(69)) in accordance with the procedure specified in Article VIII(b). This procedure is very similar to that under MARPOL 73.

3.1.2 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.

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

3.1.4 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 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/EXC.59/17/A.21/24, paragraph 7.4).

3.1.5 Since these amendments will in any event not come into force until after the 1971 Fund Convention will have ceased to be in force on 24 May 2002, the Director proposes that the amendments should not be included in the list of instruments contained in Article 5.3(a).

3.2 December 2000 amendments

- 3.2.1 In December 2000 MSC adopted, in accordance with Article VIII(b)(iv) of SOLAS 74, amendments to SOLAS 74 (Resolution MSC.99(73)) and to the Protocol of 1988 to SOLAS 74 (Resolution MSC.100(73)). MSC determined, in accordance with Article VIII(b)(vi)(2)(bb) of SOLAS 74, that the amendments shall be deemed to have been accepted on 1 January 2002 unless a sufficient number of objections have been made prior to that date. Pursuant to Article VIII(b)(vii)(2), the amendments shall enter into force on 1 July 2002 upon their acceptance in accordance with this procedure.
- 3.2.2 MSC also adopted the International Code of Safety for High-Speed Craft, 2000 (2000 HSC Code) (Resolution MSC.97(73)) and the International Code for Fire Safety Systems (Resolution MSC.98(73)). MSC also amended various other mandatory codes relating to SOLAS 74.
- 3.2.3 Some of these Resolutions are of relevance for the purpose of Article 5.3 of the 1971 Fund Convention. However, these amendments and codes will any event not enter in force until 1 July 2002, ie after the 1971 Fund Convention will have ceased to be in force on 24 May 2002. The Director proposes therefore these amendments should not be included in the list of instruments contained in Article 5.3(a).

3.3 June 2001 amendments

- 3.3.1 In June 2001 MSC adopted amendments to SOLAS 74 (Resolution MSC.117(74)), the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code) (Resolution MSC.118(74)) and the International Code of Safety for High-Speed Craft (1994 HSC Code) (Resolution MSC.119(74)).
- 3.3.2 MSC determined that the amendments shall be deemed to have been accepted on 1 July 2002 unless a sufficient number of objections have been made by that date. The amendments shall enter into force on 1 January 2003 upon their acceptance in accordance with this procedure.
- 3.3.3 In the Director's view these amendments are not of relevance for the purpose of Article 5.3 of the 1971 Fund Convention. In addition, these amendments will any event not enter in force until 1 January 2003, ie after the 1971 Fund Convention will have ceased to be in force on 24 May 2002. The Director proposes therefore these amendments should not be included in the list of instruments contained in Article 5.3(a).

4 November 1995 amendments to the International Convention on Load Lines, 1966

- 4.1 In November 1995 the Assembly of IMO 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.
- 4.2 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.
- 4.3 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).

- 4.4 It is still not possible to determine whether the 1995 amendments will enter into force. However, the amendments will in any event not enter in force until after the 1971 Fund Convention will have ceased to be in force on 24 May 2002. The Director proposes therefore the 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 March 2000 amendments to MARPOL 73/78 (paragraph 2.1 above);
 - (b) the October 2000 amendments to Annex V of MARPOL 73/78 (paragraphs 2.2.1 and 2.2.2 above);
 - (c) the October 2000 amendments to the IBC Code and to the BHC Code (paragraphs 2.2.3 and 2.2.4.above);
 - (d) the April 2001 amendments to MARPOL 73/78 (paragraph 2.3 above);
 - (e) the May 1998 amendments to SOLAS 74 (paragraph 3.1 above);
 - (f) the December 2000 amendments to SOLAS 74 and to the Protocol of 1988 thereto (paragraph 3.2 above);
 - (g) the June 2001 amendments to SOLAS 74 and to the INF Code and the 1994 HSC Code (paragraph 3.3 above); and
 - (h) the November 1995 amendments to the International Convention on Load Lines, 1966 (paragraph 4 above).
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