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

Note by the Director

### Introduction

**1** According to 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 subparagraph (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 of replacement of 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 Resolution MEPC.14(20) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984;
- (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 July 1991 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 March 1992 to MARPOL 73/78 and amendments adopted in April 1992 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74).

#### July 1991 Amendments to MARPOL 73/78

8 In July 1991, the Marine Environment Protection Committee of the International Maritime Organization (IMO) adopted amendments to MARPOL 73/78 (Resolution MEPC.47(31)) in accordance with the tacit amendment procedure specified in Article 16 of the MARPOL Convention. Under this procedure, an amendment adopted by the Committee is communicated by the Secretary-General of IMO to the Parties to the Convention. The amendment is deemed to have been accepted unless more than one third of the Parties, or Parties representing not less than half of the world's tonnage, 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 to the July 1991 Amendments expires on 4 October 1992. The Amendments will come into force on 4 April 1993, unless a sufficient number of objections have been filed.

10 The July 1991 Amendments include, inter alia, the addition of new regulations on shipboard oil pollution emergency plans which are closely linked with the provisions of the International Convention on Oil Pollution Preparedness, Response and Co-operation adopted in November 1990. At its 14th session, the Assembly considered that these Amendments were of an important character for the purpose of the prevention of oil pollution. The Assembly decided, however, that it was premature to take a decision at that session on whether to include the July 1991 Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention (document FUND/A.14/23, paragraph 18.2).

11 So far, no government has notified the Secretary-General of IMO of its objection to the July 1991 Amendments. It is therefore likely that the Amendments will be deemed to have been accepted before the 15th session of the Assembly and that they will come into force on 4 April 1993.

12 In view of the considerations set out above, it is proposed that, if the July 1991 Amendments to MARPOL 73/78 were to be deemed to have been accepted, the reference to the instrument listed in Article 5.3(a)(i) should be amended to read (amendments underlined):

- (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) and MEPC.47(31) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984 and 4 July 1991, respectively;

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 9 April 1993.

#### **March 1992 Amendments to MARPOL 73/78**

14 In March 1992, the Marine Environment Protection Committee adopted, by Resolutions MEPC.51(32) and MEPC.52(32), two sets of amendments to MARPOL 73/78, in accordance with the tacit amendment procedure specified in Article 16 of the MARPOL Convention. The prescribed period for notification of objections expires on 6 January 1993. The Amendments will come into force on 6 July 1993, unless a sufficient number of objections have been filed.

15 The Amendments covered by Resolution 51(32) introduced inter alia stricter requirements for all ships over 400 tons gross tonnage in respect of oil discharge monitoring and control system and oil filtering equipment. The Director considers that these Amendments are of an important character for the purpose of the prevention of oil pollution. It should be noted that these Amendments also introduced stricter criteria for operational discharge.

16 The Amendments introduced by Resolution 52(32) relate to stricter design requirements for new oil tankers, in particular double hull requirements, and to provisions on the upgrading and phasing out of existing tankers. The Director considers that these Amendments also are of an important character for the purpose of the prevention of oil pollution.

17 It is not possible at this stage to determine whether the Amendments covered by the two Resolutions will come into force. The Director therefore considers it premature for the Assembly to take a decision at its 15th session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention.

#### **April 1992 Amendments to SOLAS 74**

18 Two sets of amendments to SOLAS 74 were adopted by the Maritime Safety Committee of IMO on 10 April 1992 (Resolutions MSC.24(60) and MSC.26(60)), in accordance with the tacit amendment procedure specified in Article VIII(b) of the SOLAS Convention. This tacit amendment procedure is similar to the one described in respect of MARPOL 73/78. The prescribed period for making objections to these Amendments expires on 1 April 1994.

19 The Amendments to SOLAS 74 covered by Resolution MSC.24(60) deal with stricter fire protection requirements for existing passenger ships. The Amendments introduced by Resolution MSC.26(20) relate to damage stability of ro-ro passenger ships. In the opinion of the Director, neither of these two sets of Amendments 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 the list of instruments contained in Article 5.3(a) of the Fund Convention.

#### **Action to be Taken by the Assembly**

20 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 July 1991 Amendments to MARPOL 73/78 (paragraphs 8-13 above);
  - (b) the March 1992 Amendments to MARPOL 73/78 (paragraphs 14-17 above); and
  - (c) the April 1992 Amendments to SOLAS 74 (paragraphs 18-19 above).
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