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**MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION:  
DEVELOPMENT OF A POSSIBLE DRAFT PROTOCOL TO THE CONVENTION**

**Contributions to the LNG Account**

**Submitted by Australia, Belgium, Canada, Denmark, France, Germany, Japan,  
Malaysia, the Netherlands, Norway, Sweden and the United Kingdom**

**SUMMARY**

<i>Executive summary:</i>	This document proposes a possible solution to the issue of ensuring contributions to the LNG account by amending certain provisions of the 1996 HNS Convention
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.1.1
<i>Planned output:</i>	-
<i>Action to be taken:</i>	Paragraph 20
<i>Related document:</i>	LEG 94/4

**Introduction**

1 Efforts to facilitate the entry into force of the 1996 HNS Convention have been pursued in the Legal Committee and the International Oil Pollution Compensation Funds (IOPC Funds) for many years. Unfortunately these efforts have served only to demonstrate that, in the opinion of many States who will be affected by the duties and obligations established by the HNS Convention, some of its provisions present a disincentive to ratification. In June 2007, the IOPC Funds established a correspondence group to examine the problems, one of which was associated with contributions to the LNG account, and to recommend solutions to the IOPC Funds' Assembly in October 2007. However, no consensus could be found that satisfied Member States within the confines of the existing HNS Convention. In response to this impasse, the IOPC Funds' Assembly agreed to establish a Focus Group to develop a draft Protocol to amend the current HNS Convention. The Focus Group met in March 2008 and concluded its work at its meeting in June 2008.

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2 At its ninety-third session held in October 2007, the Legal Committee noted “the need for the earliest possible entry into force of the HNS Convention” and the Committee “expressed its readiness to consider any proposals based on the outcomes of the deliberations of the [IOPC Funds] focus group” (see document LEG 93/13, paragraphs 6.7 and 6.14).

### **Problems with the Convention text**

3 The current text of Article 19 subparagraph 1(b) of the HNS Convention places the liability for paying annual contributions onto the titleholder of the LNG cargo immediately prior to its discharge. This means that titleholders in non-State Parties cannot be brought under the jurisdiction of States Parties to the Convention. In addition, during the discussions in the IOPC Funds, some States expressed concerns about ambiguity of the provisions regarding the LNG account. Namely, which State Parties shall communicate to the Director of the HNS Fund the name and address of any person liable to pay contributions and data on the relevant quantities of contributing cargo received, and how this should be undertaken. Thus, the current text of Article 19 subparagraph 1(b) has caused serious misgivings and was cited as one of the primary reasons that many States have been unable to ratify the Convention.

4 Other problems associated with the present text include:

- .1 inconsistency with other contributing cargo regimes in the HNS Convention; and
- .2 inequitable distribution of financial responsibility between developed and developing countries.

5 It has been suggested that the receiver of LNG cargo should replace the titleholder as the person liable to report on and pay contributions to the LNG account so that the LNG account is aligned with the other accounts under the HNS Convention.

### **Policy proposal**

6 The sponsors agree that the requirement to report and make contributions on receipts of LNG should fall on the physical receiver. The sponsors also agree that the Convention should allow the parties to an LNG contract the flexibility to determine, by way of an agreement, the person liable for contributing to the LNG account.

7 The sponsors therefore propose that the State Party would communicate to the HNS Fund the names and addresses of the LNG receivers in the State, as well as data on the relevant quantities of LNG received. In addition, the State Party would also inform the HNS Fund of any information in respect of any agreement concerning arrangements between the receiver and titleholder, so that the titleholder that is party to an agreement with a receiver should be invoiced by the Fund for the purpose of making contributions to the LNG account.

8 Notwithstanding the existence of an agreement under which a titleholder assumes liability to pay contributions to the LNG account, the receiver will continue to be the sole person responsible for reporting to the State Party the data of all LNG cargo received. The receiver will also advise the State Party in which the LNG cargo was received, of the details of the titleholder that has agreed to pay contributions and these particulars will be forwarded to the Fund by the State Party for invoicing purposes. The State of the titleholder will have no obligations arising out of the agreement whether or not it is a Party to the HNS Convention.

9 If the titleholder in the agreement defaults on payments to the LNG account, the HNS Fund will be able to invoice the original receiver of that LNG cargo for the payment of the relevant contributions. Payment of the relevant contributions by the receiver will not prejudice the receiver's rights to recourse or reimbursement from the titleholder.

### **Rationale**

10 The sponsors consider the receiver of the LNG cargo to be the appropriate person to report on and contribute to the LNG account in the first instance for the following reasons:

- .1 the receiver, being necessarily located in a State Party, is obliged to report any LNG cargo as contributing cargo, irrespective of whether the titleholder is subject to the jurisdiction of a State Party;
- .2 the receiver is easily identified as it is usually established in a fixed location, whereas the titleholder may not be immediately identified, if it is located outside a State Party;
- .3 to make the receiver of LNG cargoes liable in the first instance ensures that the Convention is consistent in concept and thereby enhances the understanding of the contributors to the various separate accounts; and
- .4 this approach ensures the least likelihood of shortfall in the LNG account.

11 In order to minimize disruption to the LNG trade and to introduce flexibility into the system, the receiver would be allowed to assign, by agreement, the liability to contribute to the LNG account to the titleholder.

12 All delays in making contributions would be in accordance with the Internal Regulations of the HNS Fund and the decision by the Assembly, which may set short deadlines for making contributions to the LNG Account. The Assembly might wish to give due consideration to receivers who become liable following a contractual default by a titleholder when setting such deadlines. As is presently the case for initial contributions in Article 20(3) of the HNS Convention and whilst this is clearly an issue for the Assembly to decide, the sponsors would suggest that a limit of three months would be appropriate for making payments.

13 In the event of default by the titleholder, the receiver will make any outstanding contributions to the HNS Fund. In this case, the relationship between the titleholder and the receiver is that the titleholder remains the principal debtor and that the receiver is only acting as a guarantor for the payment. This fallback is essential to ensure that the HNS Fund and the LNG account are well protected from arrears or shortfalls in contributions.

14 Furthermore, the HNS Fund will not need to pursue any action against the titleholder as, in the event of default by the titleholder, the receiver is already known and will be automatically liable to make the contributions. It will be for the receiver to seek remedies against the titleholder under the agreement, with no action necessary by the Fund.

## Proposed Amendments

15 In order to implement the above policy approach, the following amendments are proposed for inclusion in the draft Protocol to the HNS Convention:

15.1 In Article 19:

- .1 Delete paragraph 1(b) and renumber paragraph 1(c) as new paragraph 1(b).
- .2 Insert new paragraph *1bis* immediately after paragraph 1 as follows:

- “*1bis* (a) In the case of the LNG account, subject to article 16, paragraph 5, annual contributions to the LNG account shall be made in respect of each State Party by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of any quantity of LNG.
- (b) However, any contributions shall be made by the person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State (the titleholder) where:
- (i) the titleholder has entered into an agreement with the receiver that the titleholder shall make such contributions; and
  - (ii) the receiver has informed the State Party that such an agreement exists.
- (c) If the titleholder referred to in subparagraph (b) does not make the contributions or any part thereof, the receiver shall make the remaining contributions.
- (d) Nothing in this paragraph shall prejudice any rights of recourse or reimbursement of the receiver that may arise between the receiver and the titleholder under the applicable national law.”

16 In order to effect the above it is also necessary to make the following consequential amendments:

- .1 In Article 16, paragraph 5, the reference to “Article 19 paragraph 1(c)” is replaced with “Article 19 paragraph 1(b)”;
- .2 In Article 17, paragraph 3 and in Article 18, paragraph 1 and paragraph 2, the reference to “Article 19 paragraph 1” is replaced with “Article 19 paragraph 1 and paragraph *1bis*”;

- .3 In Article 17(2), delete the words “or, in respect of cargoes referred to in article 19, paragraph 1(b) discharged”; and
- .4 In Article 19, paragraph 2, the reference to “paragraph 1 above” is replaced with “paragraphs 1 and 1*bis* above”.

17 Further consequential amendments are also necessary in Article 21 as follows:

In subparagraph 5(b), replace the whole text with the following:

- “(b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers, or in the case of LNG, the titleholders, if Article 19 paragraph 1*bis* (b) is applicable, for the amount payable by each of them. If the titleholder does not make the contributions or any part thereof, the HNS Fund shall levy the remaining contributions by invoicing the receiver of the LNG cargo.”

### **Conclusion**

18 The proposed solution provides more flexibility for States than the present text in respect of the LNG account, and allows parties in the LNG trade to make commercial arrangements regarding contributions to the HNS Fund. Furthermore, it does not create additional burdens either on the State Party or the HNS Fund.

19 The proposed compromise solution meets the concerns and principles expressed by various parties in that it:

- .1 is simple and practical to implement without involving unnecessary administrative burden;
- .2 addresses the issue of the shortfall to the LNG account by a more equitable and legally certain mechanism; and
- .3 is consistent with the existing reporting and contributing system for the other accounts under the HNS Convention.

### **Action requested of the Legal Committee**

20 The Legal Committee is requested to approve the proposed draft text set out in paragraphs 15, 16 and 17 above for inclusion in the draft Protocol to the HNS Convention.

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