



LEGAL COMMITTEE
94th session
Agenda item 4

LEG 94/4/2
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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 the International Oil Pollution Compensation Funds (IOPC)

SUMMARY

<i>Executive summary:</i>	This document proposes some amendments to the wording of the draft text contained in document LEG 94/4/1
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.1.1
<i>Planned output:</i>	-
<i>Action to be taken:</i>	Paragraph 7
<i>Related documents:</i>	LEG 93/6/1, LEG 93/13, LEG 94/4 and LEG 94/4/1

Introduction

1 A possible solution to the issue of ensuring contributions to the LNG account by amending certain provisions of the 1996 HNS Convention has been developed by an informal correspondence group led by Malaysia, as set out in document LEG 94/4/1. The IOPC Funds Secretariat has followed the work of the correspondence group with great interest and is satisfied that the solution proposed will prove a workable one from the point of view of the HNS Fund Secretariat.

2 However, having studied the proposal set out in document LEG 94/4/1 carefully, the IOPC Funds Secretariat would like to invite the Legal Committee to consider some amendments to the wording of the draft text proposed in document LEG 94/4/1, as set out in paragraphs 3, 4, 5 and 6 below.

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Definition of “receiver”

3 The attention of the Legal Committee is drawn to the fact that the term “receiver” is defined in Article 1, paragraph 4, of the HNS Convention. Article 1, paragraph 4(a) provides that the receiver is the physical receiver, provided that, under certain circumstances, his principal shall be deemed to be the receiver. The receiver of an LNG cargo could therefore be located in a different State Party to the one in which the LNG is physically received. Since the titleholder can also be located in a different State to the one in which the LNG is received, up to three States could potentially be involved. States might wish to consider whether this is an unnecessary complication which could be resolved by inserting the words “, except as regards cargoes of LNG as defined in Article 16, paragraph 2(b),” in Article 1, paragraph 4(a), as follows:

- (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that, except as regards cargoes of LNG as defined in Article 16, paragraph 2(b), if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund.

Reference to the internal regulations of the HNS Fund

4 In document LEG 94/4/1, it is stated in paragraph 12 that the circumstances under which the receiver would have to make contributions, because the titleholder had not fulfilled some or all of his obligations in this regard, would be set out in the internal regulations of the HNS Fund. In order to avoid any room for misinterpretation, for example by national courts, the IOPC Funds Secretariat is of the view that the text of the Protocol should state explicitly that the Assembly shall determine in its internal regulations when the titleholder shall be considered as not having made the contributions, as well as the arrangements in accordance with which the receiver shall make any remaining contributions. This would ensure that national courts apply and interpret this provision of the Protocol in accordance with the internal regulations and would therefore enhance uniform application. It would also be in line with Articles 21, paragraph 2, and 22, paragraph 1 of the HNS Convention, as well as Article 15, paragraph 2 (last sentence), of the Supplementary Fund Protocol. This could be done by inserting a new third sentence in paragraph 1(b) of Article 19 (as set out in paragraph 5 of this document below), as follows:

“The Assembly shall determine in the internal regulations the circumstances under which the titleholder shall be considered as not having made the contributions and the arrangements in accordance with which the receiver shall make any remaining contributions.”

Reformulation of Article 19, paragraph 1(b), and Article 25, paragraph 5(b)

5 The Legal Committee is invited to consider the following reformulation of Article 19, paragraph 1(b) (which contains the additional text proposed in paragraph 4 of this document). The proposed texts would simplify any references to contributions to the separate accounts, for example in the internal regulations of the HNS Fund, would seem to be more in line with the existing structure of the text of the HNS Convention and would remove the need for consequential amendments to Articles 16, 17 and 19, whilst, in the view of the IOPC Funds Secretariat, implementing the same policy as is set out in LEG 94/4/1:

Article 19, paragraph 1(b), of the Convention is replaced by the following text:

- (b) in the case of the LNG account, 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; provided that if:
 - (i) the person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State (*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;

then the titleholder shall make such contributions. If the titleholder does not make the contributions or any part thereof then the receiver shall make the remaining contributions. The Assembly shall determine in the internal regulations the circumstances under which the titleholder shall be considered as not having made the contributions and the arrangements in accordance with which the receiver shall make any remaining contributions. 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.

6 It is also suggested that Article 21, paragraph 5(b) could be reformulated so that the wording matches that of Article 19, paragraph 1(b):

Article 21, paragraph 5(b), is replaced by the following text:

- “(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 the proviso in Article 19, paragraph 1(b) is applicable, for the amount payable by each of them. If the titleholder does not make the contributions or any part thereof then the receiver shall make the remaining contributions. In that case, Article 19, paragraph 1(b), third and fourth sentences, shall apply.”

Action requested of the Legal Committee

7 The Legal Committee is requested to consider the amendments proposed in paragraphs 3, 4, 5 and 6 above and to make such comments and decide, as it may deem appropriate.
