

# International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Convention)<sup>\*, †</sup>

(Consolidated text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, and the Protocol of 2010 to the Convention)

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## Chapter I – General Provisions

### Definitions<sup>‡</sup>

#### Article 1

For the purposes of this Convention:

- 1 *Ship* means any seagoing vessel and seaborne craft, of any type whatsoever.
- 2 *Person* means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
- 3 *Owner* means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.
- 4 *Receiver* means either:
  - (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that 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; or

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\* Article 18 (Interpretation and application) of the Protocol of 2010 provides as follows:

"1 The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2 Articles 1 to 44 and Annexes I and II of the Convention, as amended by this Protocol and the annex thereto, together with articles 20 to 29 of this Protocol (the final clauses), shall *mutatis mutandis* constitute and be called the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* (2010 HNS Convention). Articles 20 to 29 of this Protocol shall be renumbered sequentially with the preceding articles of the Convention. References within the final clauses to other articles of the final clauses shall be renumbered accordingly."

† Article 2 of the Protocol of 2010 provides as follows: "The Parties to this Protocol shall give effect to the provisions of this Protocol and the provisions of the Convention, as amended by this Protocol."

‡ Article 1 of the Protocol of 2010 contains definitions which apply only to the Protocol and are not amendments to the 1996 Convention.

- (b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

5 *Hazardous and noxious substances* (HNS) means:

- (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
  - (i) oils, carried in bulk, as defined in regulation 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
  - (ii) noxious liquid substances, carried in bulk, as defined in regulation 1.10 of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;
  - (iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
  - (iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
  - (v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
  - (vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);
  - (vii) solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and
- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

*5bis Bulk HNS* means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).

*5ter Packaged HNS* means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

6 *Damage* means:

- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;
- (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
- (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, *caused by those substances* means caused by the hazardous or noxious nature of the substances.

7 *Preventive measures* means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.

8 *Incident* means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9 *Carriage by sea* means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.

10 *Contributing cargo* means any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11 The *HNS Fund* means the International Hazardous and Noxious Substances Fund established under article 13.

12 *Unit of account* means the Special Drawing Right as defined by the International Monetary Fund.

13 *State of the ship's registry* means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

14 *Terminal* means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

15 *Director* means the Director of the HNS Fund.

16 *Organization* means the International Maritime Organization.

17 *Secretary-General* means the Secretary-General of the Organization.

## **Annexes**

### **Article 2**

The Annexes to this Convention shall constitute an integral part of this Convention.

## **Scope of application**

### **Article 3**

This Convention shall apply exclusively:

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State

determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

- (c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and
- (d) to preventive measures, wherever taken, to prevent or minimize such damage as referred to in (a), (b) and (c) above.

#### **Article 4**

1 This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.

2 This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.

3 This Convention shall not apply:

- (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and
- (b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in the International Maritime Solid Bulk Cargoes Code, as amended.

4 Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5 A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6 With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

#### **Article 5**

1 A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:

- (a) which do not exceed 200 gross tonnage; and
- (b) which carry hazardous and noxious substances only in packaged form; and
- (c) while they are engaged on voyages between ports or facilities of that State.

2 Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3 Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4 A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5 The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

- (a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:
  - (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
  - (ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i);
- (b) the damage includes measures taken to prevent or minimize such damage.

## **Duties of State Parties**

### **Article 6**

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

## Chapter II – Liability

### Liability of the owner

#### Article 7

1 Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2 No liability shall attach to the owner if the owner proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
- (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either
  - (i) has caused the damage, wholly or partly; or
  - (ii) has led the owner not to obtain insurance in accordance with article 12;provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3 If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4 No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5 Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures; and
- (f) the servants or agents of persons mentioned in (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6 Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

## **Incidents involving two or more ships**

### **Article 8**

1 Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

2 However, owners shall be entitled to the limits of liability applicable to each of them under article 9.

3 Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

## **Limitation of liability**

### **Article 9**

1 The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) Where the damage has been caused by bulk HNS:

(i) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

(b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:

(i) 11.5 million units of account for a ship not exceeding 2,000 units of tonnage; and

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,725 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 414 units of account;

provided, however, that this aggregate amount shall not in any event exceed 115 million units of account.

2 The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3 The owner shall, for the purpose of benefitting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a



bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4 Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5 If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6 The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7 Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.

8 Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.

9 (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to 65.5 mg of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10 For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11 The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.



## **Article 10**

1 Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

- (a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and
- (b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2 The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

## **Death and injury**

### **Article 11**

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

## **Compulsory insurance of the owner**

### **Article 12**

1 The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.

2 A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3 The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.

4 The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

5 An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6 The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7 Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8 Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9 Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10 A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

## **Chapter III – Compensation by the International Hazardous and Noxious Substances Fund (HNS Fund)**

### **Establishment of the HNS Fund**

#### **Article 13**

1 The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:

- (a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and
- (b) to give effect to the related tasks set out in article 15.

2 The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

### **Compensation**

#### **Article 14**

1 For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:

- (a) because no liability for the damage arises under chapter II;
- (b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;
- (c) because the damage exceeds the owner's liability under the terms of chapter II.

2 Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

3 The HNS Fund shall incur no obligation under the preceding paragraphs if:

- (a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
- (b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4 If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person.

The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

- 5 (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.
- (b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.
- (c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.
- (d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6 Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7 The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.

## **Related tasks of the HNS Fund**

### **Article 15**

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

- (a) to consider claims made against the HNS Fund;
- (b) to prepare an estimate in the form of a budget for each calendar year of:

#### *Expenditure:*

- (i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and
- (ii) payments to be made by the HNS Fund in the relevant year;

#### *Income:*

- (iii) surplus funds from operations in preceding years, including any interest;
- (iv) initial contributions to be paid in the course of the year;
- (v) annual contributions if required to balance the budget; and
- (vi) any other income;
- (c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or

mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and

- (d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

## **General provisions on contributions**

### **Article 16**

- 1 The HNS Fund shall have a general account, which shall be divided into sectors.
- 2 The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:
  - (a) oil as defined in article 1, paragraph 5(a)(i) (*oil account*);
  - (b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (*LNG account*); and
  - (c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (*LPG account*).
- 3 There shall be initial contributions and, as required, annual contributions to the HNS Fund.
- 4 Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.
- 5 For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(b), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.
- 6 “Associated person” means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

## **General provisions on annual contributions**

### **Article 17**

- 1 Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.
- 2 Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5, shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received during the preceding calendar year or such other year as the Assembly may decide.
- 3 The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and paragraph 1*bis*, and article 21, paragraph 5, the amount of that person’s annual contribution to each account, on the basis of a fixed sum

for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4 The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5 The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

## **Annual contributions to the general account**

### **Article 18**

1 Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1 and paragraph 1*bis*, which fall within the following sectors:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) substances referred to in paragraph 2; and
- (c) other substances.

2 Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 and paragraph 1*bis*, had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

## **Annual contributions to separate accounts**

### **Article 19**

1 Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

- (a) in the case of the oil account,
  - (i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and
  - (ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;



- (b) in the case of the LPG 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 total quantities exceeding 20,000 tonnes of LPG.
- 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) above does not make the contributions or any part thereof, 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.
  - (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 law.
- 2 Subject to paragraph 3, the separate accounts referred to in paragraph 1 and paragraph *1bis* above shall become effective at the same time as the general account.
- 3 The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:
- (a) 350 million tonnes of contributing cargo in respect of the oil account;
  - (b) 20 million tonnes of contributing cargo in respect of the LNG account; and
  - (c) 15 million tonnes of contributing cargo in respect of the LPG account.
- 4 The Assembly may suspend the operation of a separate account if:
- (a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or
  - (b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed 10% of the most recent levy to that account in accordance with paragraph 1.
- 5 The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.
- 6 Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.



## Initial contributions

### Article 20

1 In respect of each State Party, initial contributions shall be made of an amount which shall, for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5, be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received in that State during the calendar year preceding that in which this Convention enters into force for that State.

2 The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.

3 Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

## Reports

### Article 21

1 Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.

2 For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.

3 For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.

4 If in a State Party there is no person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, that State Party shall, for the purposes of this Convention, inform the Director of the HNS Fund thereof.

5 In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:

- (a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or
- (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers, or, in the case of LNG, the titleholder 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. These persons shall be identified in accordance with the national law of the State concerned.

## **Non-reporting**

### **Article 21bis**

- 1 Where a State Party does not fulfil its obligations under article 21, paragraph 2, and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, upon recommendation of the Director, decide whether such compensation shall be payable by a State.
- 2 No compensation for any incident shall be paid by the HNS Fund for damage in the territory, including the territorial sea, of a State Party in accordance with article 3(a), the exclusive economic zone or other area of a State Party in accordance with article 3(b), or damage in accordance with article 3(c) in respect of a given incident or for preventive measures, wherever taken, in accordance with article 3(d), until the obligations under article 21, paragraphs 2 and 4 have been complied with in respect of that State Party for all years prior to the occurrence of an incident for which compensation is sought. The Assembly shall determine in the internal regulations of the HNS Fund the circumstances under which a State Party shall be considered as not having fulfilled these obligations.
- 3 Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently if the obligations under article 21, paragraphs 2 and 4 have not been fulfilled within one year after the Director has notified the State Party of its failure to fulfil these obligations.
- 4 Any payments of contributions due to the HNS Fund shall be set off against compensation due to the debtor or the debtor's agents.
- 5 Paragraphs 2 to 4 shall not apply to claims in respect of death or personal injury.

## **Non-payment of contributions**

### **Article 22**

- 1 The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.
- 2 Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

## **Optional liability of States Parties for the payment of contributions**

### **Article 23**

- 1 Without prejudice to article 21, paragraph 5, a State Party may, at the time when it signs without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter, declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, in respect of hazardous and noxious substances received in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.
- 2 Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.

3 A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4 A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.

5 Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

## **Organization and administration**

### **Article 24**

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

### **Assembly**

### **Article 25**

The Assembly shall consist of all States Parties to this Convention.

### **Article 26**

The functions of the Assembly shall be:

- (a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;
- (b) to determine its own rules of procedure, subject to the provisions of this Convention;
- (c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;
- (d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
- (e) to adopt the annual budget prepared in accordance with article 15(b);
- (f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;
- (g) to appoint auditors and approve the accounts of the HNS Fund;
- (h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;
- (i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution

of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

- (j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;
- (k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;
- (l) to supervise the proper execution of this Convention and of its own decisions;
- (m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and
- (n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

## **Article 27**

- 1 Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
- 2 Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

## **Article 28**

A majority of the members of the Assembly shall constitute a quorum for its meetings.

## **Secretariat**

### **Article 29**

- 1 The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.
- 2 The Director shall be the legal representative of the HNS Fund.

### **Article 30**

- 1 The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.
- 2 The Director shall in particular:
  - (a) appoint the personnel required for the administration of the HNS Fund;
  - (b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
  - (c) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;

- (d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
- (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- (g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and
- (h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

### **Article 31**

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

## **Finances**

### **Article 32**

- 1 Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.
- 2 Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

## **Voting**

### **Article 33**

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;
- (c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and
- (d) for the purpose of this article the phrase “members present” means “members present at the meeting at the time of the vote”, and the phrase “members present and voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

## **Article 34**

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
- (b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;
- (c) the appointment of the Director under article 26(d);
- (d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and
- (e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

## **Tax exemptions and currency regulations**

### **Article 35**

1 The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.

2 When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.

3 No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4 The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.

5 Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6 Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

## **Confidentiality of information**

### **Article 36**

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

## **Chapter IV – Claims and Actions**

### **Limitation of actions**

#### **Article 37**

1 Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.

2 Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.

3 In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.

4 Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

### **Jurisdiction in respect of action against the owner**

#### **Article 38**

1 Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.

2 Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:

- (a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or
- (b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or
- (c) the State Party where a fund has been constituted in accordance with article 9, paragraph 3.

3 Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.

4 Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

5 After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.



## **Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund**

### **Article 39**

1 Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

2 In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3 Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4 Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5 Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6 Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7 Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

## **Recognition and enforcement**

### **Article 40**

1 Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2 A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be reopened.

3 Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

## **Subrogation and recourse**

### **Article 41**

1 The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.

2 Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3 Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

## **Supersession clause**

### **Article 42**

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

## **Chapter V – Transitional Provisions**

### **First session of the Assembly**

#### **Article 43**

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

### **Final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.**

#### **Article 44<sup>\*</sup>**

The final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010 shall be the final clauses of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

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<sup>\*</sup> It may be noted that article 19 of the Protocol of 2010 inserts this article as number *44bis*; however, since article 16 of the Protocol of 2010 deletes article 43 of the Convention and rennumbers article 44 as article 43, the Secretariat has renumbered this article as 44, instead of *44bis*.

## Chapter VI – Final Clauses

[Articles 20 to 29 of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996\*]

### Signature, ratification, acceptance, approval and accession

#### [P20] Article 45

1 This Protocol shall be open for signature at the Headquarters of the Organization from 1 November 2010 to 31 October 2011 and shall thereafter remain open for accession.

2 Subject to the provisions in paragraphs 4 and 5, States may express their consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 An expression of consent to be bound by this Protocol shall be accompanied by the submission to the Secretary-General of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

5 An expression of consent which is not accompanied by the data referred to in paragraph 4 shall not be accepted by the Secretary-General.

6 Each State which has expressed its consent to be bound by this Protocol shall annually thereafter on or before 31 May until this Protocol enters into force for that State, submit to the Secretary-General data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

7 A State which has expressed its consent to be bound by this Protocol and which has not submitted the data on contributing cargo required under paragraph 6 for any relevant years shall, before the entry into force of the Protocol for that State, be temporarily suspended from being a Contracting State until it has submitted the required data.

8 A State which has expressed its consent to be bound by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 shall be deemed to have withdrawn this consent on the date on which it has signed this Protocol or deposited an instrument of ratification, acceptance, approval or accession in accordance with paragraph 2.

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\* The Secretariat has renumbered the Final Clauses in accordance with the instruction in article 18, paragraph 2, of the 2010 HNS Protocol (text reproduced in footnote 1). For ease of reference the corresponding numbers of the articles in the Protocol are shown in square brackets: e.g. [P20].

## **Entry into force**

### **[P21] Article 46**

1 This Protocol shall enter into force eighteen months after the date on which the following conditions are fulfilled:

- (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and
- (b) the Secretary-General has received information in accordance with article 45 [P20], paragraphs 4 and 6, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

2 For a State which expresses its consent to be bound by this Protocol after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Protocol enters into force in accordance with paragraph 1, whichever is the later.

## **Revision and amendment**

### **[P22] Article 47**

1 A conference for the purpose of revising or amending the Convention, as amended by this Protocol, may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Protocol, for revising or amending the Convention, as amended by this Protocol, at the request of six States Parties or one-third of the States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention, as amended by this Protocol, shall be deemed to apply to the Convention as amended.

## **Amendment of limits**

### **[P23] Article 48**

1 Without prejudice to the provisions of article 47 [P22], the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol.

2 Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3 Any amendment proposed and circulated in accordance with paragraph 2 shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

4 All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.

6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents, in particular the amount of damage resulting therefrom, changes in the monetary values, and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5, of the Convention, as amended by this Protocol.

- 7 (a) No amendment of the limits under this article may be considered less than five years from the date this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
- (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol increased by 6% per year calculated on a compound basis from the date on which this Protocol was opened for signature.
- (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol multiplied by three.

8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 49 [P24], paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11 When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

## **Denunciation**

### **[P24] Article 49**

1 This Protocol may be denounced by any State Party at any time after the expiry of one year following the date on which this Protocol comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Protocol relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5, of the Convention, as amended by this Protocol, in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

## **Extraordinary sessions of the Assembly**

### **[P25] Article 50**

1 Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.

2 The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.

3 If the Assembly, at an extraordinary session convened in accordance with paragraph 1 or 2, decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

## **Cessation**

### **[P26] Article 51**

1 This Protocol shall cease to be in force:

- (a) on the date when the number of States Parties falls below six; or
- (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, of the Convention, as amended by this Protocol, if the data show that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding subparagraph (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve-month period that the Protocol shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 [P27] and shall, for that purpose only, remain bound by this Protocol.

## **Winding up of the HNS Fund**

### **[P27] Article 52**

1 If this Protocol ceases to be in force, the HNS Fund shall nevertheless:

- (a) meet its obligations in respect of any incident occurring before this Protocol ceased to be in force; and
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.



2 The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.

3 For the purposes of this article the HNS Fund shall remain a legal person.

## **Depositary**

### **[P28] Article 53**

1 This Protocol and any amendment adopted under article 48 [P23] shall be deposited with the Secretary-General.

2 The Secretary-General shall:

- (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
  - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 45 [P20], paragraph 4;
  - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 45 [P20], paragraph 6, until the date of entry into force of this Protocol;
  - (iii) the date of entry into force of this Protocol;
  - (iv) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48 [P23], paragraph 2;
  - (v) any amendment which has been adopted in accordance with article 48 [P23], paragraph 5;
  - (vi) any amendment deemed to have been accepted under article 48 [P23], paragraph 8, together with the date on which that amendment shall enter into force in accordance with article 48 [P23], paragraph 9;
  - (vii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect; and
  - (viii) any communication called for by any article in this Protocol; and
- (b) transmit certified true copies of this Protocol to all States that have signed this Protocol or acceded thereto.

3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## **Languages**

### **[P29] Article 54**

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT London this thirtieth day of April two thousand and ten.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

## Annex I

### Certificate of Insurance or Other Financial Security in Respect of Liability for Damage Caused by Hazardous and Noxious Substances (HNS)

Issued in accordance with the provisions of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.

Type of security. ....

Duration of security. ....

Name and address of the insurer(s) and/or guarantor(s)

Name. ....

Address. ....

This certificate is valid until. ....

Issued or certified by the Government of. ....

.....  
(Full designation of the State)

At. .... On. ....  
(Place) (Date)

.....  
(Signature and Title of issuing or  
certifying official)

#### Explanatory Notes:

- 1 If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
- 2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
- 3 If security is furnished in several forms, these should be enumerated.
- 4 The entry "Duration of the Security" must stipulate the date on which such security takes effect.
- 5 The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

## Annex II

### Regulations for the Calculation of Annual Contributions to the General Account

#### Regulation 1

- 1 The fixed sum referred to in article 17, paragraph 3 shall be determined for each sector in accordance with these regulations.
- 2 When it is necessary to calculate contributions for more than one sector of the general account, a separate fixed sum per unit of contributing cargo shall be calculated for each of the following sectors as may be required:
  - (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
  - (b) oil, if the operation of the oil account is postponed or suspended;
  - (c) LNG, if the operation of the LNG account is postponed or suspended;
  - (d) LPG, if the operation of the LPG account is postponed or suspended;
  - (e) other substances.

#### Regulation 2

- 1 For each sector, the fixed sum per unit of contributing cargo shall be the product of the levy per HNS point and the sector factor for that sector.
- 2 The levy per HNS point shall be the total annual contributions to be levied to the general account divided by the total HNS points for all sectors.
- 3 The total HNS points for each sector shall be the product of the total volume, measured in metric tonnes, of contributing cargo for that sector and the corresponding sector factor.
- 4 A sector factor shall be calculated as the weighted arithmetic average of the claims/volume ratio for that sector for the relevant year and the previous nine years, according to this regulation.
- 5 Except as provided in paragraph 6, the claims/volume ratio for each of these years shall be calculated as follows:
  - (a) established claims, measured in units of account converted from the claim currency using the rate applicable on the date of the incident in question, for damage caused by substances in respect of which contributions to the HNS Fund are due for the relevant year; divided by
  - (b) the volume of contributing cargo corresponding to the relevant year.
- 6 In cases where the information required in paragraphs 5(a) and (b) is not available, the following values shall be used for the claims/volume ratio for each of the missing years:
 

(a) solid bulk materials referred to in article 1, paragraph 5(a)(vii)	0
(b) oil, if the operation of the oil account is postponed	0
(c) LNG, if the operation of the LNG account is postponed	0
(d) LPG, if the operation of the LPG account is postponed	0
(e) other substances	0.0001
- 7 The arithmetic average of the ten years shall be weighted on a decreasing linear scale, so that the ratio of the relevant year shall have a weight of 10, the year prior to the relevant year shall have a weight of 9, the next preceding year shall have a weight of 8, and so on, until the tenth year has a weight of 1.
- 8 If the operation of a separate account has been suspended, the relevant sector factor shall be calculated in accordance with those provisions of this regulation which the Assembly shall consider appropriate.

# An Overview of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances By Sea, 2010 (The 2010 HNS Convention)

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## Explanatory note

1 The original Overview of the HNS Convention, 1996 was approved by the Legal Committee of IMO at its eighty-fourth session, held in April 2002. In 2010, an International Conference adopted a Protocol to the 1996 Convention, which was designed to address the practical problems that had been perceived to prevent many States from ratifying the Convention. This Overview is a revision of the original document, taking into account changes introduced by the 2010 Protocol.

2 Together, these treaties constitute the 2010 HNS Convention. This Overview offers straightforward but fundamental information on the key issues that fall within the scope of the 2010 HNS Convention. It should also provide a useful basis from which to answer any queries from interested parties while explaining the broad effects of the Convention as well as its purpose. The Overview is merely explanatory and therefore does not contain any recommendation to be considered a source of any legal obligation regarding the implementation of the 2010 HNS Convention.

3 The Overview is consistent with resolution A.932(22) adopted by the IMO Assembly at its twenty-second session, which, *inter alia*, urged States to place a high priority on working towards the Convention's implementation and resolving any practical difficulties in setting up the new regime, with the aim of ratification, acceptance and approval of, or accession to, the 2010 HNS Convention. It also responds to resolution 4 of the 2010 International Conference, which calls for revision of the original Overview to take account of the 2010 Protocol.

## Main reasons for the changes introduced into the 1996 Convention by the 2010 Protocol

4 It may be an aid to the understanding of the 2010 HNS Convention to explain briefly the underlying causes inhibiting the entry into force of the HNS Convention, 1996 and the solutions adopted in the 2010 Protocol, namely:

- (i) the heavy burden on States of having to report the vast range of packaged substances received by them. The remedy adopted was to differentiate between bulk and packaged HNS goods by excluding packaged goods from the definition of contributing cargo, and exempting receiving States from the obligation to make contributions to the HNS Fund for them. Nevertheless, damage caused by packaged goods remains covered under the compulsory insurance of the shipowner, and any excess is met from the HNS Fund. In order to maintain the two-tier system, in view of the exclusion from contributions to the Fund, the shipowner's limitation amount for carrying packaged goods was also increased;

- (ii) in the case of Liquefied natural gas (LNG) cargoes, the HNS Convention, 1996 provided that the person responsible for making contributions should be the titleholder, who may, however, not be subject to the jurisdiction of a State Party, and the contributions may not, therefore, always be recoverable. The Protocol now shifts responsibility for payment to the receiver, unless the titleholder has agreed to assume that responsibility; and
- (iii) non-submission of contributing cargo reports, on ratification of the HNS Convention, 1996 and annually thereafter, was also a serious obstacle. The solution was to require States to submit reports on contributing cargo as a condition of becoming Contracting States to the Convention, and thereafter to submit reports annually, in default of which they will be temporarily suspended from being Contracting States. States Parties failing to submit annual reports, after the entry into force of the Convention, will be unable to claim compensation until their reports are brought up to date. The only exception will be claims for deaths and personal injury.

## **Introduction to the 2010 HNS Convention**

5 Compensation for damage caused by the carriage by sea of hazardous and noxious substances (HNS) is regulated by the 2010 HNS Convention.

6 The regime established by the 2010 HNS Convention is largely modelled on the existing regime for oil pollution from tankers set up under the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Fund Convention), which covers pollution damage caused by spills of persistent oil from tankers.

7 The HNS regime is governed by the 2010 HNS Convention, the purpose of which is to provide adequate, prompt and effective compensation for loss or damage to persons, property and the environment arising from the carriage of HNS by sea. The Convention covers both pollution damage and damage caused by other risks, e.g. fire and explosion.

8 Under the 2010 HNS Convention, the shipowner is liable for the loss or damage up to a certain amount, which is covered by insurance (1<sup>st</sup> tier). A compensation fund (the HNS Fund) will provide additional compensation when the victims do not obtain full compensation from the shipowner or its insurer (2<sup>nd</sup> tier). The HNS Fund will be funded by those companies and other entities which receive HNS after sea transport in a Member State in excess of the thresholds laid down in the Convention.

## **Scope of application**

9 The 2010 HNS Convention covers any damage caused by HNS in the territory or territorial sea of a State Party to the Convention. It also covers pollution damage in the exclusive economic zone, or equivalent area, of a State Party and damage (other than pollution damage) caused by HNS carried on board ships registered in, or entitled to fly, the flag of a State Party outside the territory or territorial sea of any State. The costs of preventive measures, i.e. measures to prevent or minimize damage, are also covered wherever taken.

10 The 2010 HNS Convention does not cover damage caused during the transport of HNS to or from a ship. Cover starts from the time when the HNS enter the ship's equipment or pass its rail, on loading, and the cover ends when the HNS cease to be present in any part of the ship's equipment or pass its rail on discharge.

11 The 2010 HNS Convention covers incidents involving the carriage of HNS by sea by any sea-going craft of any type whatsoever, except warships and other ships owned or operated by a State and used, for the time being, only on Government non-commercial service. The Convention allows a State to exclude from the application of the Convention, ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form, and while the ships are engaged on voyages between ports of that State.

12 The 2010 HNS Convention defines the concept of HNS largely by reference to lists of individual substances that have been previously identified in a number of international Conventions and Codes designed to ensure maritime safety and prevention of pollution. The references to the codes and regulations covering these HNS

substances are set out in article 1.5 of the Convention, and, with one exception, they reflect amendments made to them by IMO bodies since the HNS Convention, 1996. The exception relates to solid bulk materials possessing chemical hazards which are subject to the provisions, *inter alia*, of the International Maritime Dangerous Goods Code (IMDG Code) **in effect in 1996**, when carried in packaged form. In this respect, reference is made to IMO Circular letter No. 3144, dated 6 January 2011, listing solid bulk materials possessing chemical hazards mentioned by name in the IMSBC Code and also in the IMDG Code in effect in 1996, and solid bulk materials possessing chemical hazards mentioned by name in the IMSBC Code but *not* in the IMDG Code in effect in 1996.

13 HNS include both bulk cargoes and packaged goods. Bulk cargoes can be solids, liquids including oils, or liquefied gases. The number of substances included is very large: the IMDG Code, for example, lists hundreds of materials which can be dangerous when shipped in packaged form. Some bulk solids such as coal and iron ore are excluded.

## **Damage**

14 Damage includes loss of life or personal injury on board or outside the ship carrying HNS, loss of or damage to property outside the ship, loss or damage caused by contamination of the environment, loss of income in fishing and tourism, and the costs of preventive measures and further loss or damage caused by such measures. The 2010 HNS Convention defines preventive measures as any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage. These include measures such as clean-up or removal of HNS from a wreck if the HNS present a hazard or pollution risk.

15 The 2010 HNS Convention does not cover pollution damage caused by persistent oil, since such damage may be covered under the existing international regime established by the 1992 CLC and Fund Convention. However, non-pollution damage caused by persistent oil, e.g. damage caused by fire or explosion, is covered by the Convention. The Convention does not apply to damage caused by radioactive material.

16 The amount available for compensation from the shipowner and the HNS Fund will be distributed among claimants in proportion to their established claims. However, claims for loss of life and personal injury have priority over other claims. Up to two thirds of the available compensation amount is reserved for such claims.

## **1st tier – Liability of the shipowner**

### **(a) Strict liability of the shipowner**

17 The registered owner of the ship in question is strictly liable to pay compensation following an incident involving HNS. This means that he is liable, even in the absence of fault on his part. The fact that damage has occurred is sufficient to establish the shipowner's liability, provided there is a causal link between the damage and the HNS carried on board the ship.

18 The shipowner is exempt from liability under the 2010 HNS Convention only if he proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or

- (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either:
  - (i) has caused the damage, wholly or partly; or
  - (ii) has led the owner not to obtain insurance;

provided that neither the shipowner, nor his servants or agents knew, or ought reasonably to have known, of the hazardous and noxious nature of the substances shipped.

19 If the shipowner proves that the damage resulted, wholly or partly, either from an act or omission done with intent to cause damage, by the person who suffered the damage, or from the negligence of that person, the shipowner may be exonerated, wholly or partly, from its obligation to pay compensation to such person.

20 The 2010 HNS Convention does not impose liability on the owner of the HNS involved in the incident.

### **(b) Limitation of liability**

21 The shipowner is normally entitled to limit his liability under the 2010 HNS Convention in respect of any one incident to an aggregate amount calculated on the basis of the units of gross tonnage (GT) of the ship, as follows:

- (a) Where the damage has been caused by bulk HNS:
  - (i) 10 million Special Drawing Rights (SDR)\* for a ship not exceeding 2,000 GT; and
  - (ii) for a ship in excess of 2000 GT, 10 million SDR plus;
    - for each unit of tonnage from 2,001 to 50,000 GT, 1500 SDR; and
    - for each unit of tonnage in excess of 50,000 GT, 360 SDR;

provided, however, that this aggregate amount shall not in any event exceed 100 million SDR.
- (b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:
  - (i) 11.5 million SDR for a ship not exceeding 2,000 GT; and
  - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
    - for each unit of tonnage from 2,001 to 50,000 GT, 1,725 SDR; and
    - for each unit of tonnage in excess of 50,000 GT, 414 SDR;

provided, however, that this aggregate amount shall not in any event exceed 115 million SDR.

22 The shipowner will be denied the right to limitation of liability if it is proved that the damage resulted from his personal act or omission committed either, with intent to cause damage, or recklessly and with knowledge that damage would probably result.

### **(c) Channelling of liability**

23 As set out above, the registered shipowner is liable for pollution damage under the 2010 HNS Convention. Unless the damage resulted from their personal act or omission committed with intent to cause such damage, or recklessly and with knowledge that such damage would probably result, no claim for compensation may be made against the following persons:

- (a) the servants or agents of the shipowner or members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;

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\* The Special Drawing Rights is a monetary unit established by the International Monetary Fund (IMF); as at 30 December 2010, 1 SDR = £0.997755 or US\$1.54003.



- (c) any charterer (including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures; and
- (f) all servants or agents of persons mentioned in (c), (d) and (e).

#### **(d) Compulsory insurance**

24 The owner of a ship that carries HNS is required to take out insurance, or maintain other acceptable financial security, to cover his liability under the 2010 HNS Convention.

25 The 2010 HNS Convention requires shipowners to provide evidence of insurance cover upon the ship's entry into port of any State which is party to the Convention, by production of a certificate, regardless of whether the State of the ship's registry is party to the Convention. The certificates will be issued by the State of the ship's register or, if that State is not party to the Convention, by a State Party. States Parties are required to accept any certificate issued by any other State Party.

26 Claims for compensation may be brought directly against the insurer or person providing financial security.

#### **2nd tier – HNS Fund**

27 The HNS Fund will pay compensation when the total admissible claims exceed the shipowner's liability, i.e. the Fund pays "top up" compensation when the shipowner, or his insurer, cannot meet in full the loss or damage arising from an incident.

28 The HNS Fund also pays compensation in the following cases:

- the shipowner is exonerated from liability; or
- the shipowner liable for the damage is financially incapable of meeting his obligations.

29 To claim against the HNS Fund, the 2010 HNS Convention requires claimants to prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships. The HNS Fund may, in such cases, be liable to pay compensation, even if the particular ship causing the damage cannot be identified.

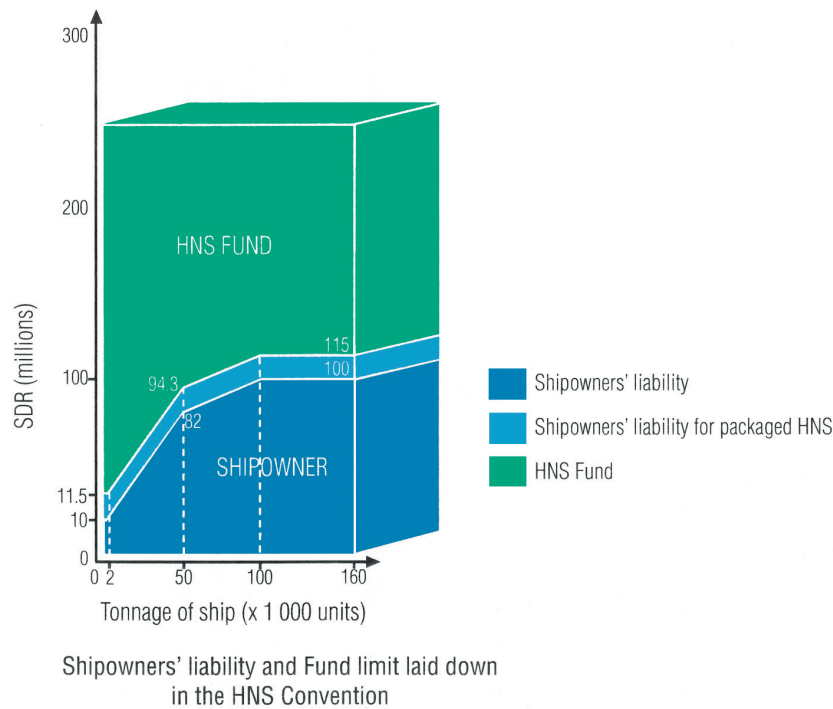
30 The HNS Fund is also not liable to pay compensation if the damage was caused by an act of war, hostilities, etc., or by HNS discharged from a warship or other ship owned or operated by a State and used for the time being, only on Government non-commercial service.

31 If the HNS Fund proves that the damage resulted, wholly or partly, either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated, wholly or partly, from its obligation to pay compensation to such person. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

#### **Limit of compensation by the HNS Fund**

32 The maximum amount payable by the HNS Fund in respect of any single incident is 250 million SDR, including the sum paid by the shipowner or his insurer. The 2010 HNS Convention also provides a simplified procedure to increase the maximum amount of compensation payable under the Convention in the future.

33 If the total amount of the admissible claims does not exceed the maximum amount available for compensation, then all claims will be paid in full. Otherwise the payments will have to be prorated, i.e. all claimants will receive an equal proportion of their admissible claims.



**Figure 1** – Compensation amounts under the 2010 Convention

## Financing of the HNS Fund

### (a) Contributions to the HNS Fund

34 Compensation payments made by the HNS Fund will be financed by contributions levied on persons who have received, in a calendar year, contributing cargoes after sea transport in a Member State, in quantities above the thresholds laid down in the 2010 HNS Convention. For each contributor, the levies will be in proportion to the quantities of HNS received by that person each year.

35 For the purpose of the contribution system, not only imported cargoes, but also cargoes received after sea transport between ports in the same State are taken into account. In this respect, contributing cargo means bulk HNS. However, cargo is not considered to be contributing cargo so long as it is in transit. That is, provided that the cargo is not imported, consumed or transformed, transshipment does not lead to a requirement for the payment of a contribution to the HNS Fund.

36 The contributions to finance the HNS Fund's compensation payments will be made post-event, i.e. levies will only be due after an incident involving the HNS Fund occurs. Levies may be spread over several years in the case of a major incident.

37 The 2010 HNS Convention allows a person who physically receives HNS on behalf of a third party, e.g., a storage company, to designate that third party as the receiver for the purposes of the Convention. Both the person who physically receives the contributing cargo in a port or terminal, and the designated third party must be subject to the jurisdiction of a State Party.

38 For LNG, annual contributions shall be made by the receiver, or by the titleholder, if it has agreed with the receiver to do so, but, if the titleholder defaults in any payments, liability reverts to the receiver.

39 States are allowed to establish their own definition of "receiver" under national law. Such a definition must, however, result in the total quantity of contributing cargo received in the State in question being substantially the same as if the definition in the Convention had been applied. This allows States flexibility to implement the Convention in conjunction with existing national law, without giving any State the possibility of obtaining an unfair commercial advantage.

40 States Parties are required to inform the Director of the HNS Fund of the name and address of receivers of quantities of contributing cargo exceeding the thresholds during the preceding year, together with the quantities of cargo received by each of them. No compensation is payable by the HNS Fund until these reporting obligations have been fulfilled, except for death and personal injury. Contributing cargo is limited to bulk HNS, in contrast to the situation prior to adoption of the 2010 Protocol, when such cargo included packaged HNS goods. Nevertheless, damage caused by packaged goods remains covered under the shipowner's compulsory insurance, with any excess being met from the HNS Fund.

41 States are liable for any financial losses incurred by the HNS Fund as a result of the non-submission of reports. States also have the option of developing national regimes for the collection of contributions in respect of receipts of cargoes carried in domestic traffic (i.e. the trade by sea from one port or terminal to another within the same State).

42 When consenting to be bound by the 2010 HNS Protocol, and thereby the 2010 HNS Convention, and annually thereafter until the Protocol enters into force for a given State, Contracting States are obliged to submit information to IMO on contributing cargoes received. This will enable the Secretary-General of IMO to determine the date of the entry into force of the 2010 HNS Convention. A State that defaults in these reporting obligations shall be temporarily suspended from being a Contracting State, until it has submitted the required data. A State failing to submit annual reports after the entry into force of the Convention, will be unable to claim compensation until it has submitted the required data, except for claims for death and personal injury.

43 States which decide to become Parties to the 2010 HNS Protocol should ensure that they deposit instruments only in respect of the Protocol, without any references to the HNS Convention, 1996.

#### **(b) HNS Fund accounts**

44 The HNS Fund, when fully operational, will have four accounts:

- Oil
- Liquefied Natural Gas (LNG)
- Liquefied Petroleum Gas (LPG)
- A general account with two sectors:
  - Bulk solids
  - Other HNS.

45 Each account will meet the cost of compensation payments arising from damage caused by substances contributing to that account, i.e. there will be no cross-subsidization.

46 Each separate account will only come into operation when the total quantity of contributing cargo received in Member States during the preceding year, or any such year as the HNS Assembly decides, exceeds the following levels:

- 350 million tonnes for the oil account
- 20 million tonnes for the LNG account
- 15 million tonnes for the LPG account.

47 However, during the early existence of the HNS Fund, there may not be sufficient contribution basis in the form of the quantities of HNS received in Member States to set up all the four separate accounts. Initially, the separate accounts may be **postponed** and the HNS Fund may, therefore, have only two accounts:

- one separate account for oil
- one general account including four sectors:
  - LNG
  - LPG
  - Bulk solids
  - Other HNS.

48 In addition, the separate accounts could be **suspended** if the total unpaid contributions to that account exceed 10% of the most recent levy to that account. As a result, any contributions due to a separate account that has been suspended, will be paid into the general account and any relevant claims will be met from this account. Any decision to suspend or re-instate the operation of an account requires a two-thirds majority of the Assembly.

49 Receivers of HNS might have to contribute to one or more of the accounts. The levies applying to individual receivers will be calculated according to the quantities of contributing cargo received and, in the case of the general account, according to the Regulations in Annex II of the Convention. Liability to contribute to the HNS Fund will arise for a given receiver only when his annual receipts of HNS exceed the following thresholds:

	Establishment of account	Contributions to account/sector
<b>General Account</b>	40 million tonnes*	
• Bulk solids		20,000 tonnes
• Other HNS	No minimum quantity	20,000 tonnes
<b>Separate accounts</b> (or Sectors within the general account)		
<b>Oil Account</b>	350 million tonnes	
• Persistent oil		150,000 tonnes
• Non-persistent oil		20,000 tonnes
<b>LNG Account</b>	20 million tonnes	No minimum quantity
<b>LPG Account</b>	15 million tonnes	20,000 tonnes

\* Condition for entry into force.

## Competence of courts

50 Claimants can normally only take legal action in a court in the State Party in whose territory or waters the damage occurred. In this context “waters” means the territorial sea\* or the Exclusive Economic Zone (EEZ)<sup>†</sup>, or an equivalent area, of a State Party. This also applies to legal actions against any provider of insurance or financial security for the owner’s liability, i.e. the shipowner’s insurer.

51 Different rules apply if damage other than pollution damage to the environment occurs exclusively beyond the territorial seas of States Parties.

52 Actions against the HNS Fund should be brought before the same court as actions taken against the shipowner. However, if the shipowner is exempted from liability, or for another reason no shipowner is liable, legal action against the HNS Fund must be brought in a court which would have been competent had the shipowner been liable. Where an incident has occurred and the ship involved has not been identified, legal action may be brought against the HNS Fund only in States Parties where damage occurred.

## Administration

53 The HNS Fund will have an Assembly, a Secretariat and a Director, mirroring the organization of the International Oil Pollution Compensation Funds (IOPC Funds).

54 The Assembly will consist of all States Parties to the 2010 HNS Convention. The Assembly will have a number of functions, including approving settlements of claims against the HNS Fund, and deciding on amounts to be levied as contributions.

\* The breadth of the territorial sea is established in Article 3 of the United Nations Convention on the Law of the Sea (UNCLOS) as “up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.” The normal baseline is the low water line along the coast (Article 5 of UNCLOS).

<sup>†</sup> The Exclusive Economic Zone is an area beyond the territorial sea defined in Article 57 of UNCLOS as not beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

### **Entry into force of the 2010 HNS Convention**

55 The 2010 HNS Convention will enter into force eighteen months after ratification of the 2010 HNS Protocol by at least twelve States, subject to the following conditions:

- (i) four States must each have a registered ship's tonnage of at least 2 million GT; and
- (ii) contributors in the States that have ratified the Convention must, between them, have received during the preceding calendar year a minimum of 40 million tonnes of cargo consisting of bulk solids and other HNS liable for contributions to the general account.



# Guidelines on reporting of HNS contributing cargo

As adopted during the HNS Workshop held at IMO Headquarters, London, on 12 and 13 November 2012 and endorsed by the IMO Legal Committee at its 100th session on 19 April 2013

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## 1 Introduction

These guidelines are solely intended to assist States interested in acceding to or ratifying the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (2010 HNS Protocol). They are, however, in no way binding on those States.

Intended as general guidelines, this document primarily aims at facilitating States' submission of contributing cargo data to the Secretary-General of the International Maritime Organization (IMO) for the purposes of article 20, paragraphs 4 and 6 of the 2010 HNS Protocol prior to its entry into force.

In many States, an international treaty that has been ratified or acceded to by the Government automatically becomes part of their national law. In this case, the only concern is the extent to which the treaty provisions can be regarded as "self-executing" to enable authorities and national courts to apply them directly.

As for those States where this is not the case, the provisions of a treaty should be given effect through revision of national statutes, unless they are already in conformity with the treaty's provisions.

The 2010 HNS Protocol requires, under article 20, paragraph 4, that an expression of consent to be bound by this Protocol must be accompanied by the submission of data on the total quantity of contributing cargo received during the preceding calendar year.

This poses a challenge, since the procedure for reporting contributing cargo data requires a number of decisions from the first HNS Fund Assembly to ensure uniform application. Since the Assembly cannot be convened until the treaty enters into force, there is a need to put reporting regulations in place prior to ratification.

The present guidelines have been developed to facilitate ratifying States' adoption of similar legislation on reporting prior to the 2010 HNS Convention's entry into force. It has taken into account the work done by the HNS Correspondence Group since 2001, as well as the information provided by Governments and industry stakeholders since the adoption of the 2010 HNS Protocol.

It is important to emphasize that the present guidelines are primarily meant to provide assistance for the period leading up to the Convention's entry into force. Therefore, the proposals laid out below may be subject to modifications thereafter.

The main features of the guidelines are set out at Annexes 2 and 3.



## 2 Convention requirements

### 2.1 General provisions on contributions

After the Convention's entry into force, compensation payments will be financed by contributions levied on persons who have received, in a calendar year, contributing cargoes, after sea transport in a State Party, in quantities above the thresholds laid down in the 2010 HNS Convention. For each contributor the levies will be in proportion to the quantities of HNS received each year.

The HNS Fund, when fully operational, will have four accounts:

- oil (persistent oil as defined in the 1992 Fund Convention and non-persistent oil)
- liquefied natural gas (LNG);
- liquefied petroleum gas (LPG);
- a general account with two sectors:
  - bulk solids; and
  - other HNS.

Each account will meet the cost of compensation payments arising from damage caused by substances contributing to that account. In other words, there will be no cross-subsidization between the individual accounts.

### 2.2 Reporting contributing cargo

Contributions are paid by persons who receive contributing cargo in States Parties of the HNS Convention in a given calendar year. In order for the HNS Fund to issue invoices to these contributors, receivers of contributing cargo shall submit a report to the designated authority in the State Party if:

- (a) the total amount of substances covered under the General Account received exceeds 20,000 tonnes;
- (b) the total amount of persistent oil received exceeds 150,000 tonnes;
- (c) the total amount of non-persistent oil received exceeds 20,000 tonnes;
- (d) the total amount of LPG received exceeds 20,000 tonnes; or
- (e) any amount of LNG is received.

### 2.3 Definition of contributing cargo

Article 1.10 of the 2010 HNS Convention defines contributing cargo as “any **bulk** HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State”.

Articles 18 and 19 of the Convention establish the thresholds for the different types of bulk HNS to be reported.

The HNS Convention website ([www.hnsconvention.org](http://www.hnsconvention.org)) provides a tool (the HNS Finder) for verifying the list of HNS that are classified as contributing cargo.

## 3 Submission procedure

### 3.1 Reporting process

#### 3.1.1 *Before the Convention enters into force*

At this stage, Contracting States are only required to report the total quantity of contributing cargo for each account and not the individual receivers or the quantities received by each receiver in respect of each account (article 20.4 of the 2010 HNS Protocol). However, Contracting States must have this information available in order to calculate the total quantity of contributing cargo for each account.

The rationale for such reporting requirements prior to entry into force is that the 2010 HNS Protocol has to be ratified or acceded to by at least twelve States in which potential contributors have received in the preceding year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

There has been a general agreement since the Special Consultative meeting of the HNS Correspondence Group in Ottawa in 2003 (document LEG 87/11 refers) that, prior to ratification of the Convention, consideration should be given to the establishment of a reporting scheme in order to facilitate the process of reporting receipts of HNS by contributors and the relevant authority in the future Contracting State.

Specifically, the introduction of a reporting regime in a State prior to ratification of the Convention and its international entry into force should:

- help States to prepare the first submission of data on contributing cargo at the time of ratification;
- help States to identify potential contributors to the HNS Fund;
- help the identification of both the physical receivers of HNS and, where applicable, the principal receivers of such cargo;
- help industry to identify, prior to the operation of the HNS Fund, those substances that will and will not be classified as contributing cargo as well as the potential contributors to the HNS Fund; and
- assist both industry and Governments to ensure that the reporting arrangements operate efficiently and equitably in the State prior to the introduction of the financial requirements on HNS receivers, i.e. the invoicing and levying of receivers when the Convention is in force in order to finance the HNS Fund.

### **3.1.2 *After the Convention has entered into force***

When the HNS Convention enters into force, States Parties will be required to submit more detailed reports, including information on individual contributors and the quantity of contributing cargo each contributor receives for each account and sector, as set out in articles 21.1 and 21.2 of the Convention:

#### *Article 21*

- 1 *Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.*
- 2 *For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year. [...]*

The first calendar year for which States Parties must submit such a detailed report is the year before the Convention enters into force in that State.

## **3.2 Reporting definitions**

### **3.2.1 *Definition of receiver***

The Convention defines the receiver as follows:

#### *Article 1.4*

- (a) *the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that 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; or*

- (b) *the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).*

#### **Issue**

The definition of receiver in the Convention allows for two options, one offering a common definition for all States Parties and the other leaving States Parties to define receiver under their own national law. Although it is indicated that the result in terms of contributing cargo received should be substantially the same regardless of the options, there is a general consensus that the latter approach could be confusing.

#### **Proposed solution**

Although the Convention provides two options for the definition of receiver in article 1.4 above, there is a general consensus that the definition under article 1.4 (a) should be the one to be used by Contracting States, mainly for reasons of practicality and fairness.

This has been agreed at the Special Consultative meeting of the HNS Correspondence Group in Ottawa in 2003 (document LEG 87/11 refers) and re-emphasized on several occasions since the adoption of the 2010 HNS Protocol, including at the 99th session of the IMO Legal Committee (document LEG 99/3 refers).

### **3.2.2 General Principle**

The general principle under the Convention is that the person who physically receives contributing cargo discharged in the ports and terminals of a State Party is the receiver.

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.

Paragraphs 3.2.3 and 3.2.4 contain qualifications to the general principle.

### **3.2.3 Relationship between the receiver and the principal**

Article 1.4 of the Convention, in defining the receiver, indicates that:

- (a) *[...] provided that 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 [...]*

#### **Issue**

This part of the definition qualifies the rule that the physical receiver pays. It requires clarification of the term “agent”, a concept which is not defined in the Convention. Therefore, the question of whether there is an “agent” in a given case should probably be answered according to the national law of the implementing State, but this contradicts the preference for a unique definition of the receiver as in article 1.4(a).

#### **Proposed solution**

Considering the successful system put in place under the 1992 Fund Convention that requires the physical receivers of oil to report their receipts to the designated authority in a State Party, it is suggested that the same approach be applied to HNS reporting, whereby the obligation to report contributing cargo lies only with the physical receivers during the period prior to the entry into force.

As is the case with oil reporting, physical receivers may subsequently put in place cost recovery arrangements with principal receivers where relevant. Since there will be no contributions to be paid during the interim period, it is not relevant at this stage.

The rationale for this recommendation is based on the fact that in the pre-entry into force period, only a small number of States will be Contracting States to the Protocol (12 is a relatively low number of Contracting States for

the entry into force). Therefore, the likelihood of principal receivers being based in States that are not Parties to the Convention is high, and subsequently physical receivers will be required to report HNS receipt data, even though the identities of principal receivers are known.

Moreover, leaving the reporting obligation with the physical receiver, while requesting information on principal receivers (to be disclosed to the designated authority), will increase compliance from States Parties when the submission of reports carries no financial obligation.\*

### 3.2.4 *Relationship between the receiver of LNG and the titleholder*

Article 19.1bis of the Convention relates to contributions to the LNG account and states that:

- (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. [...]*

#### **Issue**

This article qualifies the rule that the physical receiver pays. As for the term “agent”, the concept requires clarification as to the way physical receivers and titleholders will enter into agreements for the payment of contributions. It also requires procedures at State level for the designated authority to receive notifications of such agreements.

#### **Proposed solution**

Following the same logic as for the other accounts, the provisional definition of “receiver” as described in paragraph 3.2.2 above should be applied to the receipt of LNG cargo as well, while also requesting information on titleholders to be disclosed to the designated authority, if applicable.

### 3.2.5 *Transshipment*

The issue of transshipment is covered under the definition of “contributing cargo” in article 1.10 of the Convention which states:

*[...] Cargo in transit which is transferred directly or through a port or terminal, from one ship to another, either wholly or in part in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination. [...]*

In this case, even though a cargo is received after sea transport, the physical receiver has no reporting obligation since the contributing cargo has simply been transferred onto another ship in the course of carriage from its original loading port to its final destination.

#### **Issue**

Since there is no clear reference in the text of the Convention to facilitate the interpretation of the concept of transshipment, i.e. there are no criteria under which conditions of transshipment are considered to have taken place, it is understood that the HNS Assembly will have to clarify the definition of transshipment to ensure uniform application.

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\* Since these guidelines are not mandatory, States may wish to request from the physical receivers information regarding their principal receivers.

### ☑ **Proposed solution**

Until the Convention enters into force, it is suggested that the existing guidelines applied by the 1992 Fund in respect of transshipment and ship-to-ship operations for contributing oil be used by States and their contributors for the reporting of HNS contributing cargo where relevant.

The 1992 Fund guidelines on that matter are reproduced below.

*“Received” does not include ship-to-ship transfer, irrespective of whether such a transfer*

- takes place within a port area or outside the port but within territorial waters, or*
- is done solely by using the ships’ equipment or by means of a pipeline passing over land, or*
- is between two sea-going vessels or from a sea-going vessel to an internal waterway vessel.*

*When the oil, after having been transferred in this way from a sea-going vessel to another vessel, has been carried by the latter to an onshore installation situated in the same State Party or in another State Party, the receipt in that installation shall be considered as receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship, it has to be reported as oil received at that tank in that State.*

*“Carriage by sea” does not include movement within the same port area.*

Once the Convention enters into force, it is expected that the HNS Assembly will provide criteria for the definition of transshipment.

### **3.2.6 Threshold limits for reporting**

Articles 18 and 19 of the Convention establish the thresholds for the different types of bulk HNS to be reported under the general account and the separate accounts (see paragraph 2.2 above).

### 📄 **Issue**

The HNS Convention creates a new regime for the payment of compensation following an HNS incident. This involves contributions from entities which are different (although a number of physical receivers will be the same) from those already participating in the oil pollution compensation regime. As such, States may need time to identify current and future contributors and considering that there is a general consensus for implementing a selfreporting system by the industry with provisions for verification by a national authority (see paragraph 4 below), the identification process may take some time if high thresholds are in place.

### ☑ **Proposed solution**

It is proposed that States should give consideration to setting the threshold limits for contributing cargo, on a national basis, lower than those laid down in the HNS Convention. This will aid States in identifying those receivers whose annual receipts do not currently exceed the thresholds, but may fluctuate enough in the future to exceed the thresholds established in the Convention.

It is proposed that the thresholds for the interim period be:\*

- (a) more than 15,000 tonnes of substances covered under the General Account;
- (b) more than 150,000 tonnes of persistent oil **(no change)**;
- (c) more than 15,000 tonnes of non-persistent oil;
- (d) more than 15,000 tonnes of LPG; or
- (e) any amount of LNG **(no change)**.

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\* Individual States may wish to consider in their national reporting requirements maintaining lower reporting thresholds after the HNS Convention’s entry into force.

**Table 1** *The table below shows the comparison between the thresholds under the Convention and those suggested for the interim period*

	Proposed thresholds before entry into force	Thresholds established by the 2010 HNS Convention
<b>General Account</b>	15,000 tonnes	20,000 tonnes
<b>Oil Account</b>		
• Persistent oil	150,000 tonnes	150,000 tonnes
• Non-persistent oil	15,000 tonnes	20,000 tonnes
<b>LPG Account</b>	15,000 tonnes	20,000 tonnes
<b>LNG Account</b>	Any amount	Any amount

**Note:** Regarding the account for persistent oil, given that the contributors in ratifying States will be essentially the same contributors who already have an established reporting practice with respect to the 1992 Fund, it is considered not necessary to apply lower thresholds in that case.

### 3.2.7 *List of contributors and criteria for identification*

All persons who receive HNS under the conditions stated under paragraph 2.2 above in a given calendar year in a State Party are considered contributors.

#### **Issue**

However, as indicated above in paragraphs 3.2.1-3.2.3, the identification of contributors other than the physical receivers is difficult under the terms of the Convention alone.

#### **Proposed solution**

While it is suggested that physical receivers be liable to provide reports on contributing cargo during the pre-entry into force period, it is also proposed that this period be used to establish a detailed list of potential contributors, taking into account:

- the concept of agent (article 1.4 of the Convention);
- the concept of principal (article 1.4 of the Convention);
- the concept of titleholder for LNG cargo (article 19.1*bis* of the Convention);
- the concept of transshipment (article 1.10 of the Convention); and
- the concept of “associated person” (article 16.6 of the Convention).

States may wish to consider requesting physical receivers to provide designated authorities with a list of persons with whom their commercial transactions could fall under the categories mentioned above. States may also wish to consider appropriate rules for protecting commercially sensitive information from disclosure.

In doing so, the designated authority will be in a position to establish a list of potential contributors that may become liable for reporting and contribution when the Convention enters into force.

Since the pre-entry into force period is likely to last a few years, it will allow States and their designated authorities to monitor the situation and build an effective mechanism for the administration of HNS reporting.



### 3.2.8 *Contributing cargo reporting forms*

To facilitate the reporting process, the Secretariat of the IOPC Funds has prepared a set of forms for contributors and States to be used during the interim period prior to entry into force.

- contributing cargo reporting form (for receivers and States);
- nil declaration form (for States); and
- an explanatory model letter for States to send to receivers.

These forms and the model letter are available online at the HNS Convention website ([www.hnsconvention.org](http://www.hnsconvention.org)) and are also reproduced as appendices 1-4 to these Guidelines. The forms can be filled out electronically, printed and then signed by the relevant authority. The nil declaration should only be submitted if no persons in the State are liable to contribute to the HNS Fund.

## 3.3 Submission of reports to IMO

Under the HNS Convention, designated authorities in a State Party are responsible annually for the submission of data on the total quantities of contributing cargo liable for contributions received in the State during the preceding calendar year.

Once the Convention enters into force, that data, together with the list of persons liable to pay contributions, is to be submitted to the Director of the HNS Fund.

Prior to the entry into force of the Convention, a State that deposits an instrument of ratification or accession to the 2010 HNS Protocol shall accompany its expression of consent with the submission to the Secretary-General of IMO (as the depositary of the Protocol) of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account. Reporting requirements will continue after the Convention's entry into force.

In addition, each State which has expressed its consent to be bound by the Protocol shall, annually thereafter on or before 31 May until this Protocol enters into force, submit to the Secretary-General data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

In return, the Secretary-General of IMO will inform all States which have signed this Protocol or acceded thereto and all Members of the Organization, of:

- each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 20, paragraph 4 of the Protocol;
- data on contributing cargo submitted annually thereafter, in accordance with article 20, paragraph 6 of the Protocol, until the date of entry into force of this Protocol; and
- the date of entry into force of this Protocol.

The Protocol is deemed to enter into force eighteen months after the date on which the following conditions are fulfilled:

- (a) at least 12 States, including four States each with no less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and
- (b) the Secretary-General has received information in accordance with article 20, paragraphs 4 and 6 of the Protocol, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) of the Convention, as amended by the Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.



## 4 Compliance and verification

The purpose of this section is to provide an example for States to consider for the monitoring and compliance verification of reporting requirements established in the HNS Convention. An example is provided in Annex 1. There may be other methods that States may wish to use.

The provisions in articles 18, 19, 20, and 21 of the Convention require States to adopt compliance and verification procedures to fulfil their duty to monitor and manage the reporting system for contributing cargo as reported, first to the Secretary-General of IMO and subsequently to the HNS Fund after the entry into force of the Convention.

In support of these obligations (annual contributions to the general account, general contributions to separate accounts, initial contributions, reports), regulations or guidelines will need to be adopted by States Parties to establish:

- (a) the manner in which they would fulfil their responsibilities in respect of the reporting system for contributing cargo; and
- (b) the measures they would have at their disposal to ensure a uniform compliance on the part of the receivers of HNS under their jurisdiction.

Article 21 is the principal source of the responsibility of the States Parties under the HNS Convention and states:

- 1 *Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.*
- 2 *For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.[...]*

The obligation under article 21.1 is to ensure that the name of any person liable to pay contributions appears on a list to be established by the Director of the HNS Fund. Article 21.2 sets out the type of information that the State must communicate to the Director.

Before the Convention enters into force, a Contracting State to the Protocol only has the obligation to submit a report on total quantities of contributing cargo received during the previous calendar year (article 20.4 of the 2010 HNS Protocol).

This requirement sets out the “compliance” aspect of the responsibility of Contracting States.

There are two options for States to consider:

- (a) a reporting system administered and closely monitored by a national authority; and
- (b) a self-reporting system by the industry with provisions for verification by a national authority.

During earlier discussions, it was unanimously agreed that option (b) be recommended to States when implementing the Convention.

In addition, States may wish to consider appropriate sanctions in the event of noncompliance by receivers of national reporting requirements.

The proposed regulations in Annex 1 have been drafted with the view to being applicable both before and after the entry into force of the HNS Convention.

## **Annex 1**

### **Suggested text of regulations on compliance and verification**

#### **Introduction**

##### ***General obligations under the Convention***

Each State Party undertakes to give effect to the provisions of the Convention and to these regulations.

Unless expressly stated otherwise, a reference to the HNS Convention constitutes at the same time a reference to these regulations

#### **Regulation 1**

##### ***Reporting of contributing cargo***

Each person who **physically** receives contributing cargo in the preceding calendar year shall submit a report by [31 May] to the designated authority in the State Party if:

- (a) the total amount of substances covered under the General Account received exceeds 15,000 tonnes;
- (b) the total amount of persistent oil received exceeds 150,000 tonnes;
- (c) the total amount of non-persistent oil received exceeds 15,000 tonnes;
- (d) the total amount of LPG received exceeds 15,000 tonnes; or
- (e) any amount of LNG is received.

After the entry into force of the 2010 HNS Convention, the persons liable to report receipts of contributing cargo will be those defined by the internal regulations of the HNS Fund.

#### **Regulation 2**

##### ***Designated authority***

Each State Party shall designate an authority, e.g. maritime directorate or another public or private body, to receive reports pursuant to regulation 1 and to communicate to the Secretary-General of IMO, before entry into force and subsequently to the Director of the HNS Fund, relevant information pursuant to articles 45 and 21 of the Convention.

#### **Regulation 3**

##### ***Records and books***

Every person referred to in the Convention from whom amounts payable pursuant to articles 18, 19, 20 and 21.5 may be recovered shall keep records and books of account at their place of business in the State Party, or at any other place in the State Party that may be designated by the State Party, that sets out:

- (a) the amounts that are payable by that person;
- (b) the type and quantity of the substance in respect of which the amounts referred to in paragraph (a) are payable;
- (c) the time when and the place where the amounts referred to in paragraph (a) were paid or security for their payment was given; and
- (d) any other information that the State Party may require to determine the amounts referred to in paragraph (a) and the time when they become payable.

## **Regulation 4**

### ***Disposal of records***

Every person or body who is required by these regulations to keep records and books of account shall, unless otherwise authorized by the State Party, retain every such record and book of account and every account or voucher necessary to verify the information contained in the record or book until the expiry of [XX] years from the end of the year to which the record or book of account relates.

## **Regulation 5**

### ***Make available for inspection***

Every person who is required by these regulations to keep records and books of account shall, at all reasonable times, make the records and books of account and every account or voucher necessary to verify the information contained in them available to any person designated in writing by the State Party and give that person every facility necessary to inspect the records, books, accounts and vouchers.

## **Regulation 6**

### ***Inspection***

Any person designated in writing by the State Party for the purpose may, at any reasonable time, enter any premises where the person believes on reasonable grounds that there are any records, books, accounts, vouchers or other documents relating to payments under the Convention and

- (a) examine anything on the premises and copy or take away for further examination or copying any record, book, account, voucher or other document that they believe, on reasonable grounds, contains any information relevant to the enforcement of articles 18,19, 20 and 21.5; and
- (b) require the owner, occupier or person in charge of the premises to give the person all reasonable assistance in connection with the examination under paragraph (a) and to answer all proper questions relating to the examination and, for that purpose, require the owner, occupier or person in charge of the premises to attend those premises with the person.

## **Regulation 7**

### ***Certificate of designation***

Persons designated by the State Party under regulation 6 shall be furnished with a certificate of their designation and, on entering any premises referred to in that regulation, shall, if so requested, produce the certificate to the owner, occupier or person in charge of the premises.

## **Regulation 8**

### ***Report to State Party***

On the conclusion of an examination under regulations 3-7, the person conducting the examination shall transmit a full report of their findings to the designated authority in the State Party.

## **Regulation 9**

### ***Return of original documents or copies of documents***

The original or copy of any record, book, account, voucher or other document taken away under regulation 6 shall be returned to the person from whose custody it was taken within [XX] days after it was taken or within any longer period that is directed by a judge of a superior court in a State Party for cause or agreed to by a person who is entitled to its return.

## **Regulation 10**

### ***Notice of application for extension of time***

An application to a judge mentioned in regulation 9 for a direction under that regulation may only be made on notice to the person from whose custody the record, book, account, voucher or other document was taken.

## **Regulation 11**

### ***Copies of documents***

A document purporting to be certified by the State Party to be a copy of a record, book, account, voucher or other document made under regulation 6 is admissible evidence in any prosecution for an offence under these regulations and is, in the absence of evidence to the contrary, proof of its contents.

## **Regulation 12**

### ***Obstruction, false statements***

No person shall obstruct or hinder anyone engaged in carrying out their duties and functions under regulations 3-11, or knowingly make a false or misleading statement, either orally or in writing, to any person so engaged.