



**MARITIME TRANSPORT (FUND CONVENTION) LEVIES
AMENDMENT ORDER 1999**

SIAN ELIAS, Administrator of the Government

ORDER IN COUNCIL

At Wellington this 9th day of August 1999

Present:

HER EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL
PURSUANT to section 385 of the Maritime Transport Act 1994, Her
Excellency the Administrator of the Government, acting by and with the
advice and consent of the Executive Council, makes the following order.

ANALYSIS

1. Title and commencement
 2. Interpretation
 3. Initial levy
 4. Annual contribution
 5. New schedule substituted
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SCHEDULE

Articles 10, 12 to 15 of the International
Convention on the Establishment of an
International Fund for Compensation for Oil
Pollution Damage, 1992

ORDER

1. Title and commencement—(1) This order may be cited as the
Maritime Transport (Fund Convention) Levies Amendment Order 1999,
and is part of the Maritime Transport (Fund Convention) Levies Order
1996* (“the principal order”).

(2) This order comes into force on the 28th day after the date of its notification in the *Gazette*.

2. Interpretation—(1) Clause 2 (1) of the principal order is amended by omitting from the definition of “contributor” the words “an initial levy or”.

(2) Clause 2 (1) of the principal order is amended by revoking the definition of “the Fund Convention”, and substituting the following definition:

“‘the Fund Convention’—

“(a) Subject to paragraph (b), means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (articles 10, and 12 to 15, of the English text of which are set out in the Schedule), as from time to time amended by any later protocols, amendments, and revisions accepted or ratified by New Zealand:

“(b) In relation to matters occurring, or obligations arising, before New Zealand became a party to the convention referred to in paragraph (a), means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (articles 10 to 15 of the English text of which were formerly set out in the Schedule), as from time to time amended by any later protocols, amendments, and revisions accepted or ratified by New Zealand while New Zealand was a party to it.”.

(3) Clause 2 (1) of the principal order is amended by revoking the definition of “relevant calendar years”.

3. Initial levy—(1) Clause 3 of the principal order is revoked.

(2) Subclause (1) does not affect the liability of any person who—

(a) Was required by the former clause 3 (3) of the principal order to pay any amount not later than 20 May 1997; and

(b) Immediately before the commencement of this order, had failed or refused to pay the amount (or any part of it).

4. Annual contribution—The principal order is amended by revoking clause 4, and substituting the following clause:

“4. (1) A person is liable to pay an annual contribution to the Fund in respect of a calendar year if, in that year, the person received, in total,—

“(a) More than 150,000 tons of contributing oil; or

“(b) A quantity of contributing oil that, when aggregated with the quantity of contributing oil in total received by any associated person or persons in that year, was more than 150,000 tons.

“(2) The amount of the annual contribution payable in respect of a calendar year by a person liable to pay it under subclause (1) (b) must be calculated in respect of the actual quantity of contributing oil received by the person in that year.

“(3) The amount of a person’s annual contribution must be calculated by the Director, on the basis of the total amount of contributions to be levied decided by the Assembly, in accordance with Article 12 of the Fund Convention.

“(4) On receiving an invoice from the Director, a person liable to pay an annual contribution to the Fund must pay the amount specified in the

invoice directly to the Fund, in accordance with the terms, and by the due date, specified in the invoice.

“(5) An annual contribution is payable—

“(a) In Pounds Sterling; or

“(b) If the Director so requires, in New Zealand dollars, or in a combination of Pounds Sterling and New Zealand dollars.”

5. New schedule substituted—The principal order is amended by revoking the Schedule, and substituting the schedule set out in the Schedule of this order.

SCHEDULE

ARTICLES 10, 12 TO 15 OF THE INTERNATIONAL CONVENTION ON THE
ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL
POLLUTION DAMAGE, 1992*Contributions***Article 10**

1 Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 12, paragraph 2 (a) or (b), has received in total quantities exceeding 150,000 tons:

- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
- (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2 (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.

- (b) *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.

Article 11

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Article 12

1 With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

- (i) *Expenditure*
 - (a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;

SCHEDULE—*continued*

- (b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under article 4, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed four million units of account.
 - (c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of four million units of account;
- (ii) *Income*
- (a) surplus funds from operations in preceding years, including any interest;
 - (b) annual contributions, if required to balance the budget;
 - (c) any other income.

2 The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in article 10 the amount of his annual contribution:

- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and
- (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (c) of this article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that the State was a Party to this Convention at the date of the incident.

3 The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4 The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.

5 The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with article 12.2 (a) and funds received in accordance with article 12.2 (b).

SCHEDULE—*continued***Article 13**

1 The amount of any contribution due under article 12 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.

2 Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.

3 Where a person who is liable in accordance with the provisions of articles 10 and 12 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise warrant, the Assembly may, upon recommendation of the Director, decide that no action be taken or continued against the contributor.

Article 14

1 Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with article 10, paragraph 1, in respect of oil received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.

2 Where a declaration under paragraph 1 is made to the entry into force of this Convention in accordance with article 40, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the 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 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.

SCHEDULE—*continued***Article 15**

1 Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this article.

2 For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

3 For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund in accordance with article 10, paragraph 1, and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prima facie* evidence of the facts stated therein.

4 Where a Contracting State does not fulfil its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable to compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force 28 days after notification in the *Gazette*, amends the Maritime Transport (Fund Convention) Levies Order 1996 to reflect New Zealand's accession on 25 June 1999 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

The 1992 convention, which replaces a predecessor arrived at in 1971,—

- does not contain provisions relating to initial contributions to the fund (established under the 1971 convention) continued in effect by it;
- does not contain the power to require financial security from contributors that was contained in the 1971 convention:

- provides for a process for fixing the amount of the levy payable by contributors that differs from the process under the 1971 convention;
- imposes on contracting states liability for losses incurred by the fund as a result of failures by contracting states to submit data on persons liable to contribute to the fund.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 August 1999.
This order is administered in the Ministry of Transport