



**THE MARITIME TRANSPORT (FUND CONVENTION) LEVIES
ORDER 1996**

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of November 1996

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 385 of the Maritime Transport Act 1994, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Maritime Transport (Fund Convention) Levies Order 1996.

(2) This order shall come into force on the 20th day of February 1997.

2. Interpretation—(1) In this order,—

“Assembly” means the Assembly of the Fund:

“Contributing oil” means oil carried by sea and landed from a ship in any port or oil transfer site in New Zealand (whether or not landed from a country outside New Zealand):

“Contributor” means a person liable to pay an initial levy or an annual levy under this order:

“Director” means the Director of the Fund:

“the Fund” means the International Oil Pollution Compensation Fund established under Article 2 of the Fund Convention:

“the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; and includes any subsequent protocol

or amendment to, or revision of, that convention accepted or ratified by New Zealand, a copy of Articles 10 to 15 of the English text of which convention is set out in the Schedule to this order:

“Oil” has the meaning given to that term by section 385 (3) of the Maritime Transport Act 1994:

“Relevant calendar years” means—

(a) In relation to contributions to the Fund for the satisfaction of payments referred to in paragraph 1 (i) (c) of Article 12 of the Fund Convention, the calendar year preceding the year in which the incident that gave rise to the claims occurred; and

(b) In relation to contributions to the Fund for the satisfaction of payments referred to in paragraph 1 (i) (a) and (b) of Article 12 of the Fund Convention, the calendar year preceding the year in which the contribution is calculated by the Assembly:

“SDR” means the special drawing right as defined by the International Monetary Fund:

“Ton”, in relation to oil, means a metric ton.

(2) For the purposes of this order, a person is an associated person in relation to another person if the persons are—

(a) Bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons; or

(b) A body corporate and a person who has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to 25 percent or more of the voting securities of the body corporate.

3. Initial levy—(1) Subject to subclause (2) of this clause, any person who, in the calendar year commencing on the 1st day of January 1996, received contributing oil in a quantity that exceeded 150,000 tons shall be liable to pay an initial levy to the Fund in accordance with the succeeding provisions of this clause.

(2) Where the quantity of contributing oil received by any person (the “first-mentioned person”) in the calendar year referred to in subclause (1) of this clause, when aggregated with the quantity of contributing oil received by any associated person or persons of that first-mentioned person in that calendar year, exceeds 150,000 tons, the first-mentioned person shall be liable to pay a levy under this clause in respect of the actual quantity of contributing oil received by that person in that calendar year, notwithstanding that that quantity did not exceed 150,000 tons.

(3) A person who is liable under this clause to pay an initial levy shall, not later than the 20th day of May 1997, pay an amount equivalent to X in accordance with the formula—

$$X = A \times B$$

where—

A is the number of tons of contributing oil received by the contributor in the calendar year commencing on the 1st day of January 1996; and B is 0.003145 SDRs.

(4) The initial levy shall be payable in Pounds Sterling.

(5) The contributor shall, on receipt of an invoice from the Director, pay the initial levy directly to the Fund.

4. Annual levies—(1) Subject to subclause (2) of this clause, any person who in either of the relevant calendar years received in excess of 150,000 tons of contributing oil shall be liable to pay an annual levy to the Fund in accordance with the succeeding provisions of this clause.

(2) Where the quantity of contributing oil received by any person (the “first-mentioned person”) in either of the relevant calendar years, when aggregated with the quantity of contributing oil received by any associated person or persons of that first-mentioned person in the same calendar year, exceeds 150,000 tons, the first-mentioned person shall be liable to pay a levy under this clause in respect of the actual quantity of contributing oil received by that person in that calendar year, notwithstanding that that quantity did not exceed 150,000 tons.

(3) The rate of the annual levy and the amount of the annual levy payable by the contributor shall be as determined by the Assembly in accordance with Article 12 of the Fund Convention.

(4) The annual levy shall be payable—

(a) In Pounds Sterling; or

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

(5) The contributor shall, on receipt of an invoice from the Director, pay the levy specified directly to the Fund in accordance with the terms, and by the due date, specified in the invoice.

(6) A contributor shall, if required by the Director in accordance with paragraph 5 of Article 12 of the Fund Convention, provide financial security to the Fund for any annual levy due by the contributor to the Fund.

5. Interest for late payment—(1) If any initial levy or annual levy payable by a contributor remains unpaid after the date when it became due for payment, the contributor shall be liable to pay to the Fund, in addition to the levy outstanding, an amount of interest calculated in accordance with subclause (2) of this clause.

(2) The amount of interest payable shall be calculated on the unpaid levy from the date on which payment is due at an annual rate which for each period of 12 months from the 1st day of February in any year shall be 2 percent higher than the lowest London clearing bank base rate prevailing on the 1st day of February in that year.

6. Bank charges payable by contributor—Any bank charges that arise in connection with the payment of any levy under this order or the payment of interest on any overdue levy under this order shall be paid by the contributor.

7. Contributors to provide records of contributing oil received—(1) Every contributor shall, on or before the 1st day of March each year, provide to the Director of Maritime Safety a record of the amount of contributing oil received by that person in the preceding calendar year.

(2) The record required to be given by subclause (1) of this clause shall be given in such form as may be agreed between the Director of Maritime Safety and the contributor.

SCHEDULE

Cl. 2 (1)

ARTICLES 10 TO 15 OF THE INTERNATIONAL CONVENTION ON
THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR
COMPENSATION FOR OIL DAMAGE, 1971**Article 10**

1. 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 11, paragraph 1, as regards initial contributions and in Article 12, paragraphs 2 (a) or (b), as regards annual contributions, 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 purpose 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

1. In respect of each Contracting State initial contributions shall be made of an amount which shall for each person referred to in Article 10 be calculated on the basis of a fixed sum for each ton of contributing oil received by him during the calendar year preceding that in which this Convention entered into force for that State.

2. The sum referred to in paragraph 1 shall be determined by the Assembly within two months after the entry into force of this Convention. In performing this function the Assembly shall, to the extent possible, fix the sum in such a way that the total amount of initial contributions would, if contributions were to be made in respect of 90 per cent of the quantities of contributing oil carried by sea in the world, equal 75 million francs.

3. The initial contributions shall in respect of each Contracting State be paid within three months following the date at which the Convention entered into force for that State.

Article 12

1. With a view to assessing for each person referred to in Article 10 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:

SCHEDULE—*continued*(i) *Expenditure*

- (a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;
- (b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, 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 15 million francs;
- (c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, 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 15 million francs;

(ii) *Income*

- (a) surplus funds from operations in preceding years, including any interest;
- (b) initial contributions to be paid in the course of the year;
- (c) annual contributions, if required to balance the budget;
- (d) any other income.

2. For each person referred to in Article 10 the amount of his annual contribution shall be determined by the Assembly and shall be calculated in respect of each Contracting State:

- (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 persons 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 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 Assembly shall decide the portion of the annual contribution which shall be immediately paid in cash and decide on the date of payment. The remaining part of each annual contribution shall be paid upon notification by the Director.

5. The Director may, in cases and in accordance with conditions to be laid down in the Internal Regulations of the Fund, require a contributor to provide financial security for the sums due from him.

6. Any demand for payments made under paragraph 4 shall be called rateably from all individual contributors.

SCHEDULE—*continued***Article 13**

1. The amount of any contribution due under Article 12 and which is in arrear shall bear interest at a rate which shall be determined by the Assembly for each calendar year 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 11 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrear for a period exceeding three months, 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 so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall 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 prior 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.

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

SCHEDULE—*continued*

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.

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 on 20 February 1997, imposes a levy in respect of oil carried by sea and landed in New Zealand. In general, the levy will be payable by persons who receive in excess of 150,000 tons of oil per year.

The purpose of the order is to enable New Zealand to comply with Articles 10 to 15 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The making of this order is necessary to enable New Zealand to ratify the Convention.

Clause 2 defines certain terms used in the order.

Clause 3 imposes an initial levy in respect of oil received in the calendar year from 1 January 1996.

Clause 4 imposes annual levies. The amount of the annual levy will be determined by the Assembly of the Fund in accordance with Article 12 of the Fund Convention.

Clause 5 provides that if any initial or annual levy is unpaid after the due date, interest shall be payable. *Subclause (2)* sets out the method by which the amount of interest will be calculated.

Clause 6 provides that bank charges that arise in connection with the payment of levies or interest under this order shall be paid by the contributor.

Clause 7 requires every contributor to provide to the Director of Maritime Safety, on or before 1 March each year, a record of the contributing oil received by that contributor in the preceding calendar year.