

The 2010 HNS Convention



September 2014



WHAT IS THE 2010 HNS CONVENTION?

Originally adopted at an International Conference organised by the International Maritime Organization (IMO) in 1996, and amended by a Protocol in 2010, the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, aims to ensure adequate compensation is available for damage occurring as a result of the maritime transport of hazardous and noxious substances (HNS).

> WHAT ARE HAZARDOUS AND NOXIOUS SUBSTANCES (HNS)?

HNS represent a wide array of chemical substances of varying properties and hazards, which include both bulk cargoes and packaged goods. Bulk cargoes can be solids, liquids, including both persistent and non-persistent oils, and liquefied gases, such as liquefied natural gas (LNG) or liquefied petroleum gas (LPG). The definition of HNS set out in the HNS Convention is based on lists of individual substances identified in a number of IMO Conventions and Codes, designed to ensure maritime safety and prevention of pollution. There are a large number of substances covered by the Convention, such as those which appear under the International Maritime Dangerous Goods Code (IMDG Code), which lists hundreds of substances which can be dangerous when shipped in packaged form.

> HOW DOES THE CONVENTION WORK?

The HNS Convention is based on the earlier and highly successful model of the Civil Liability and Fund Conventions which cover pollution damage caused by spills of persistent oil from tankers (see www.iopcfunds.org). As with the original oil pollution compensation regime, the HNS Convention will establish a two-tier system for compensation to be paid in the event of accidents at sea, in this case, involving hazardous and noxious substances, such as chemicals.

Tier one will be covered by compulsory insurance taken out by shipowners, who would be able to limit their liability. In those cases where the insurance does not cover an incident, or is insufficient to satisfy the claim, a second tier of compensation will be paid from a Fund (the HNS Fund), made up of contributions from the receivers of HNS carried in bulk. Contributions will be calculated according to the amount of bulk HNS received in each Member State in the preceding calendar year.

> WHAT TYPES OF DAMAGE WILL BE COVERED BY THE HNS CONVENTION?

The HNS Convention covers any damage in the territory or territorial sea of a State Party to the Convention. It also covers pollution damage in the exclusive economic zone (EEZ), or equivalent area, of a Member State and damage (other than pollution damage) caused by HNS carried on board ships registered in the flag of the Member State outside the territorial sea of any State.

The following types of damage will be covered:

- Loss of life or personal injury on board or outside the ship carrying the HNS
- Loss of or damage to property outside the ship
- Economic losses resulting from contamination, e.g. in the fishing, mariculture and tourism sectors
- Costs of preventive measures, e.g. clean-up operations at sea and onshore
- Costs of reasonable measures of reinstatement of the environment

Claims under the HNS Convention will be assessed according to criteria that will be established by the Governments of the States Parties.



> HOW MUCH COMPENSATION WILL BE AVAILABLE?

A maximum amount of SDR 250 million (approximately USD 380 million) in compensation will be available under the HNS Fund. That figure includes any amount paid by the shipowner and his insurer.

Where damage is caused by HNS in bulk, the shipowner will normally be able to limit his financial liability to an amount between 10 million and 100 million SDR (approximately USD 15 million to USD 150 million)*, depending on the gross tonnage of the ship. Where damage is caused by packaged HNS, the maximum liability for the shipowner is SDR 115 million (approximately USD 175 million). In any case, once the shipowner's limit has been reached, the HNS Fund will step in with the additional tier of compensation.

*The unit of account in the treaty instrument is the Special Drawing Right (SDR) as defined by the International Monetary Fund. Conversion of currencies has been made on the basis of the rates at 2 September 2014 (on that day 1 SDR = £0.915407 or US\$1.513710).

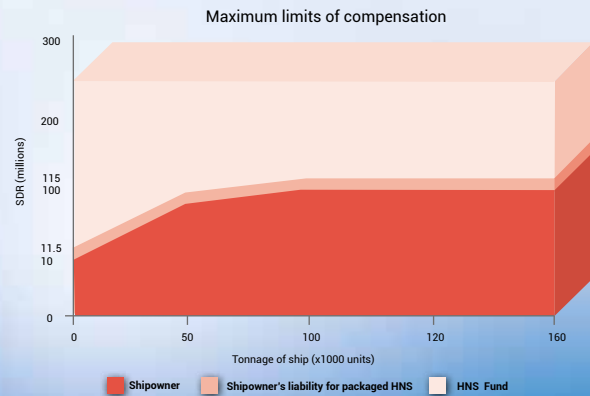
> WHEN IS THE SHIPOWNER LIABLE?

Under the HNS Convention, the shipowner will have strict liability for any damage caused by HNS, i.e. the shipowner will be liable even without fault on the part of the ship or its crew. The shipowner will be obliged to maintain insurance to cover his liabilities under the Convention. This insurance will normally be provided by protection and indemnity (P&I) insurers.

> HOW WILL THE HNS FUND WORK?

The HNS Fund will be established once the HNS Convention enters into force. States which ratify the 2010 HNS Protocol will become Members of the HNS Fund. The HNS Fund will provide the second tier of compensation and will be administered by a Secretariat and headed by a Director.

The HNS Fund is expected to function similarly to the International Oil Pollution Compensation Funds (IOPC Funds) and will be governed by an Assembly composed of Government representatives from its Member States. The HNS Fund will also have a Committee to address claims for compensation, which will be similar to the IOPC Fund's Executive Committee.



> HOW WILL THE HNS FUND BE FINANCED?

The HNS Fund will be financed by contributions paid by receivers of bulk HNS, or titleholders for LNG cargo in some cases, that have been transported by sea to the ports and terminals of Member States.

The HNS Fund will have up to four accounts, with separate accounts for oil, LNG and LPG and a general account for bulk solids and other HNS. However, until the quantities of HNS received in all States Parties reach the established thresholds, as shown in the table below, all accounts will be managed out of the general account.

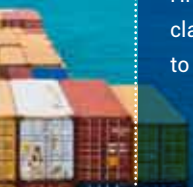
Contributions by individual receivers to the separate accounts and sectors will be in proportion to the quantities of HNS received, provided that the quantities are above the established thresholds.

Whereas the total contributions to the general account will be divided amongst the sectors, according to the level of claims in each sector, the separate accounts will only meet claims resulting from incidents involving the respective cargoes, i.e. there will be no cross-subsidisation.

As part of the changes agreed in the 2010 HNS Protocol, packaged goods will no longer be considered as contributing cargo to the HNS Fund. However, compensation for incidents involving packaged HNS will continue to be covered under the relevant account.

	Establishment of account	Contributions to account/sector per receiver
General account	40 million tonnes*	
• Bulk solids		> 20 000 tonnes
• Other HNS		
Oil account	350 million tonnes	
• Persistent oil		> 150 000 tonnes
• Non-persistent oil		> 20 000 tonnes
LPG account	15 million tonnes	> 20 000 tonnes
LNG account	20 million tonnes	No minimum quantity

(*Condition for entry into force)



> REPORTING REQUIREMENTS

Even before the HNS Convention enters into force, States are obliged when they ratify the Convention, and annually thereafter, to report the total quantities of contributing cargo, for each account and sector, which were received in that State in the preceding year. Failing to comply with the reporting requirements could lead to a suspension of the status of a Contracting State or to withholding of compensation in relation to the State concerned.

> WHEN WILL THE HNS CONVENTION ENTER INTO FORCE?

The HNS Convention will come into force 18 months following the date when

12 States have ratified	Four of which with not less than 2 million units of gross tonnage	The volume of contributing cargo for the general account must be of at least 40 million tonnes
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Once the Protocol enters into force, the 1996 Convention, as amended by the 2010 Protocol, will 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).

> WHAT IS THE ROLE OF THE IOPC FUNDS?

Given the IOPC Funds' long experience in managing the oil pollution compensation system and, as requested by the International Conference that adopted the HNS Convention, the IOPC Funds' Secretariat has been tasked with assisting the IMO Secretariat in setting up the HNS Fund and with making preparations for the first session of the HNS Assembly.

It is not unusual for an international treaty to take several years to enter into force and the 2010 HNS Protocol is relatively new. The IOPC Funds continues to work together with the IMO Secretariat to assist States' ratification of or accession to the Protocol in order to facilitate the entry into force of the 2010 HNS Convention as soon as possible. Reporting guidelines and model reporting forms for providing data on the total quantities of contributing cargo received in a State have been adopted and published; An online database (the HNS Finder) of HNS substances that fall within the definition of contributing cargo under the 2010 HNS Protocol has been developed and made available via the website www.hnsconvention.org; and engagement with States considering ratifying the Protocol and the industry stakeholders potentially affected by the Convention has continued through workshops and other means.



FURTHER INFORMATION

Further information on the HNS Convention and the 2010 HNS Protocol can be found at: www.hnsconvention.org

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Further information on this and other IMO Conventions can be found at: www.imo.org



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