



WORKSHOP ON THE 2010 HNS CONVENTION

Wednesday, 1 May 2024, to Thursday, 2 May 2024

Clarification of HNS reporting procedures

1 Introduction

- 1.1 During the HNS workshop organised by Canada in cooperation with IMO and the IOPC Funds on 3 and 4 April 2023, it was agreed that, to facilitate the entry into force of the 2010 HNS Convention, as well as the effective functioning of the HNS Fund once established, an efficient and jointly approved system for reporting HNS contributing cargo should be developed. Accordingly, the IOPC Funds' Secretariat has continued to offer assistance to States with regards to HNS reporting procedures and held discussions with a number of interested States specifically on their particular reporting procedures.
- 1.2 Following these discussions and to assist States when considering the practical aspects of implementing the Convention, the 1992 Fund Secretariat has looked to convey the two possible options for reporting under the Convention via two flow charts, as set out in Annexes I and II to this note. The note and the charts will be further explained during a presentation on day two of the May 2024 HNS workshop.

2 Clarification of the definition of 'Receiver'

Requirements under the 2010 HNS Convention

- 2.1 The definition of the receiver of contributing cargo is referenced in Article 1.4 of the 2010 HNS Convention:

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).

- 2.2 This definition does not apply to persistent oil, as indicated in Article 19.1(a)(i) or to LNG, as indicated in Article 19.1*bis* (a) and (b). Those substances are regulated separately and, as such, Article 1.4, paragraphs (a) and (b) do not apply to them.
- 2.3 Article 19.1(a)(i) indicates that the reporting of persistent oils (but not non-persistent oils) shall be made in line with the rules established under the 1992 Fund Convention.
- 2.4 Article 19.1*bis* of the 2010 HNS Convention relates to contributions to the LNG account and states that:
- (a) *In the case of the LNG account, [...], 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. [...]*

3 Points which require further clarification in the guidelines

The relationship between the Physical Receiver and the Principal if the Physical Receiver acts as an Agent

- 3.1 The Agent/Principal option in Article 1.4(a) (see paragraph 2.1 above) has caused difficulties for some States during the process of implementing the 2010 HNS Convention and has also raised some practical issues, both for States and for the future HNS Fund. This option appears to cause more difficult and bureaucratic reporting procedures for all parties involved.

The management of Principal Receivers located in other States than the location of the Agent

- 3.2 Should the Agent/Principal option be applied in a transboundary situation, where the Principal Receiver and the Agent are located in different locations, the issues experienced are likely to be further complex, since, among other things, this could cause difficulties in conciliating reporting information between States. If the Principal is located in a non-Contracting State to the Convention, the Agent/Principal option cannot be applied.

4 Simplified reporting procedure

4.1 Using the Physical Receiver option is the default solution under Article 1.4(a). The Agent/Principal option only applies "IF the agent discloses the Principal to the HNS Fund", it is therefore the decision of the Agent and its Principal(s) concerned whether it is their preferred option. That decision will form part of their commercial agreement. The parties may decide that the Agent/Principal option is too complex and entails additional bureaucracy. They may therefore decide not to use that option.

Article 1.4(b)

4.2 Under Article 1.4(b) States can devise their own reporting system in their national law, '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)'.

4.3 As such, States could decide to ensure that their national law identifies the Physical Receiver as the only 'Receiver' of contributing cargo in their ports and terminals.

4.4 Using Article 1.4(b), States would put the obligation of reporting and contributing solely on the Physical Receivers, in the same way as they do for the purpose of managing oil reporting and contributions for the IOPC Funds. This could simplify the management of reporting and contributions for States and for the HNS Fund.

5 Conclusion

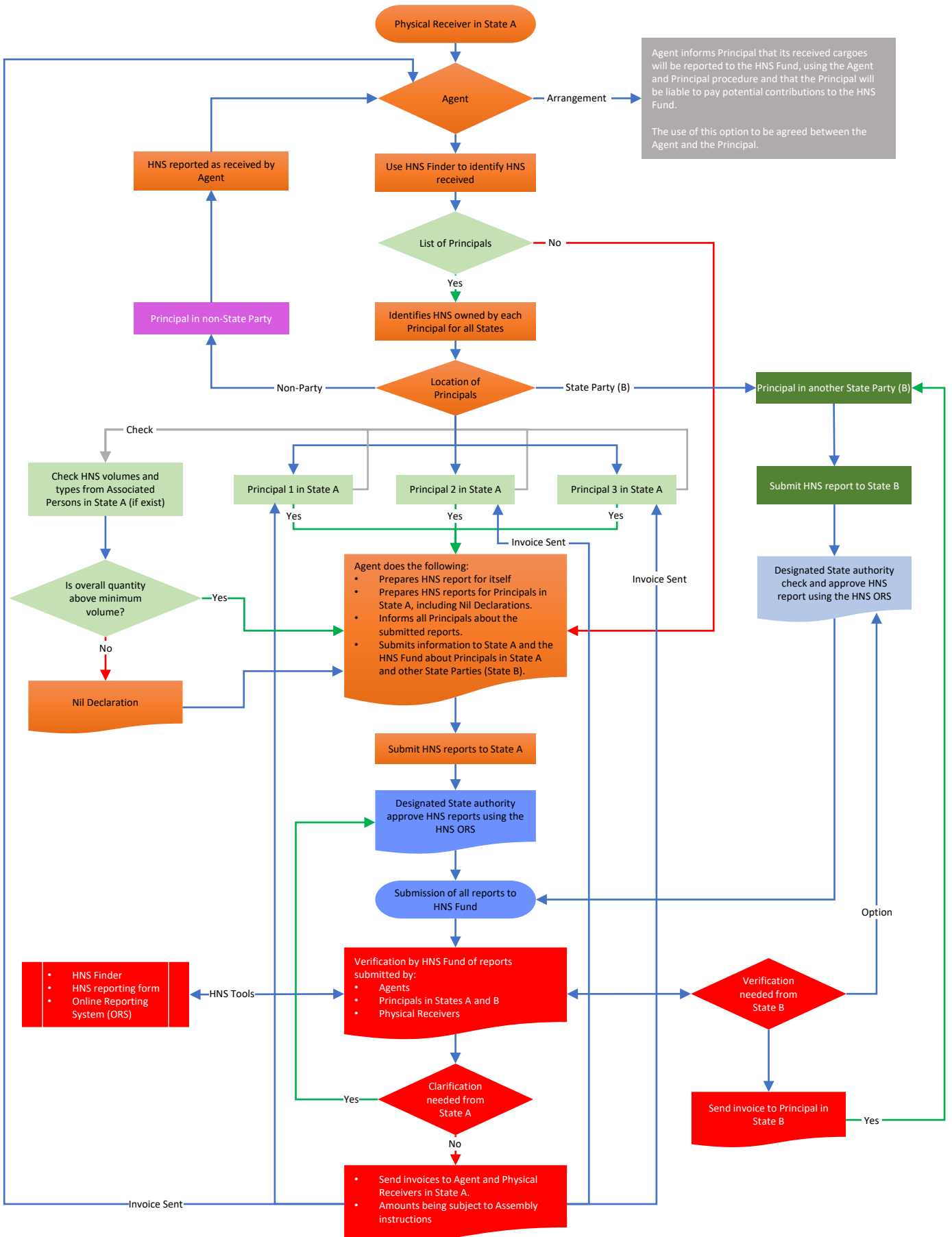
5.1 The Secretariat is working to develop an efficient reporting, financial and administrative system, which will allow the HNS Fund Secretariat to maintain accurate information across all concerned States and receivers.

5.2 The Director of the IOPC Funds encourages States to consider the practical implications of both options before implementing the Convention or adopting national legislation and to take a decision accordingly. He would like to clarify that, the reporting, financial and administrative system to be provided by the Secretariat will accommodate the options under Article 1.4(a) or Article 1.4(b), both for Physical Receiver only, as well as the application of Article 1.4(a), using the Agent/Principal option. The Secretariat will ensure that it is able to operate its reporting and contribution system with either option.

5.3 This note is for information and reference only. It will be further explained and put forward for discussion during the presentation of this subject on Day two.

Current HNS reporting procedure

Application of Article 1.4 (a) using Agent/Principal option



Simplified HNS reporting procedure

Application of Article 1.4(a) – without using Agent/Principal option
Application of Article 1.4(b) – Physical Receiver only

