

## **Proposed Changes to the Legal Status of IALA**

### **- Explanatory Notes**

#### ***1. Why change the current legal status of IALA?***

Council has concluded that there would be substantial benefit in IALA seeking to negotiate a Headquarters Agreement with the Government of France, as it would offer IALA a range of privileges and immunities, which would assist IALA with its mission of improving the safety of navigation worldwide. This cannot be achieved without a change in the legal status of IALA.

The benefits of changing the current status of IALA are set out in more detail in the attached Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis. In summary there are considerable advantages to IALA in clarifying its status as an International Association or Organisation within the International Maritime Community and, additionally, concluding a Headquarters Agreement in the host country, thereby giving the Association more flexibility in its operations with fiscal and other benefits.

#### ***2. Why does IALA need an international agreement?***

It is the position of the French Foreign Affairs Ministry that a basis for concluding a Headquarters Agreement with France and the enhancement of IALA's status to that of an association with international legal capacity is an international agreement signed by a minimum number of States represented at IALA.

#### ***3. What will the International Agreement cover?***

LAP has developed a draft international agreement.

The Agreement will cover inter alia the establishment of IALA as an international association/organisation; its aim; membership categories; the structure of the Association (General Assembly, Council, Committees etc and the Secretariat); funding and expenditure; legal personality; the arrangements for bringing the agreement into force and making amendments to the Agreement; termination of the Association; and transitional arrangements (see Section 6 below).

#### ***4. Who will sign it?***

If agreed by Council and subsequently by the General Assembly in A Corunna in 2014, the International Agreement will be open for signature by States, who are National members of IALA or who are represented at IALA by a national authority responsible for the provision, maintenance and/or operation of marine aids to navigation, either at the time of the General Assembly in A Corunna or subsequently at the offices of IALA. The Agreement will be open for signature for a period of [x] months.

Signatories will need credentials / powers of attorney established according to their national constitution.

The Agreement will be subject to ratification, acceptance or approval by those countries, which have signed it.

The Agreement will be open for accession by any State which has not signed it from the day after the date on which the Agreement closes for signature.

### **5. When will the International Agreement enter into force?**

It will enter into force [x] days after the [xth] State and France as the host nation (if it is not one of the [x] States) have deposited an instrument of ratification, acceptance, approval or accession.

### **6. How will the International Agreement be implemented? (Transitional Arrangements)**

When the International Agreement enters force, all National members, who are not party to the new arrangements, will become affiliate members of the Association. Those that have signed the Agreement will continue as National members.

The Council of IALA, as it existed prior to entry into force of the Agreement, will become the transitional Council of the Association and will operate as such until the first General Assembly is convened under the International Agreement. During the transition Council affiliate members will continue to engage in the work of the Council for the benefit of the Association, as if they were National members.

If a State which has affiliate membership becomes party to the new arrangements, the affiliate membership will cease on the date on which the Agreement enters into force for that State, and the State will become a National member.

### **7. Will the International Agreement cover all IALA's governance arrangements?**

The day to day functions and operation of the Association will be governed by a set of General Regulations, which the Council will be empowered to modify from time to time. This will allow IALA to make day to day changes to the way it operates without the need to seek an amendment to the International Agreement.

A draft set of General Regulations has been prepared by LAP.

The General Regulations will cover inter alia the functions and operation of the Association; the payment of fees; arrangements for the election of the President and Vice President; the operation of the General Assembly, the election of Councillors and the operation of Committees, other bodies and the Secretariat.

All elements of the existing constitution are covered as far as possible in either the International Agreement or the General Regulations.

### **8. What will the Headquarters Agreement with France cover?**

At the same as the International Agreement enters into force, the French Government and IALA will enter into a Headquarters Agreement.

A draft Headquarters Agreement has been prepared by LAP and has been accepted in principle by the French Government.

In broad terms it covers IALA's immunity from French jurisdiction; its exemption from rates and taxes; and the privileges and immunities of its staff, experts and consultants including those attending events organised by IALA in France.

Overall, the Headquarters Agreement will mean lower operating costs for IALA; the employment of more non-EU nationals better reflecting its international character and it being easier for non-EU National delegates to obtain visas to attend IALA events.

**9. What will be the impact on existing National Members?**

It is not anticipated that there will be any material impact on the role of existing National Members on entry into force of the Agreement or during the transitional arrangements, other than they will become affiliate members unless or until their State becomes a contracting party.

The International Agreement will require National Members to designate one of its delegates, who should be the head of the national authority legally responsible for the provision, maintenance or operation of marine aids to navigation, as its principal delegate at the General Assembly.

Eligibility for election to the office of councillor will be confined to the head of the technical body responsible for the provision, maintenance and/or operation of marine aids to navigation of each National member.

This will ensure that the Council will continue to comprise technical representatives responsible for aids to navigation provision.

**10. What will happen to the Constitution?**

[Response to be discussed at LAP]

**11. What will be the impact on Associate, Industrial and Honorary Members?**





Council sees it as of primary importance that the new arrangements permit IALA to retain its current classes of membership.

It is not anticipated that there will be any impact on any of these classes of member.

**12. What will happen before the General Assembly in a Corunna?**

This is set out in the Road Map and Communications Plan.

## SWOT ANALYSIS

<b>Strengths</b> 	 <b>Weaknesses</b>
<ul style="list-style-type: none"> <li>a) Enhanced recognition of IALA internationally.</li> <li>b) Headquarters Agreement with Host Nation. Fiscal benefits (Reduction in taxes). Lower operating costs for IALA leading the provision of better service to members/beneficial impact on membership fees. IALA could more easily employ non-EU nationals better reflecting its international character. Easier for non-EU National delegates to obtain visas to attend IALA events.</li> <li>c) Improved recognition of IALA with Host Nation.</li> <li>d) Improved ability to collect membership fees if IGO. Rather than French charity/NGO.</li> <li>e) Less exposure of President, Vice President and Treasurer to legal liability than under current arrangements.</li> <li>f) Greater portability of IALA worldwide in the future.</li> </ul>	<ul style="list-style-type: none"> <li>a) The Governments of a number of IALA Members do not sign the Agreement before the end of the transition period and cease to be full members.</li> <li>b) Potential for loss of members, income &amp; collective knowledge and experience.</li> </ul> <p><i>Note: These risks can be mitigated by (i) the IALA Secretariat &amp; the French Foreign Ministry making contact with the Governments / Foreign Ministries of National Members at an early date and explaining the process and (ii) IALA through the LAP and in discussion with the French Government ensuring that satisfactory transitional arrangements are in place.</i></p>
<div data-bbox="614 1041 973 1176" style="text-align: center; border: 1px solid black; border-radius: 10px; padding: 5px; margin: 0 auto; width: fit-content;"> <b>Change in Legal Status of IALA to IGO</b> </div>	
<ul style="list-style-type: none"> <li>a) Increased membership (positive for IMO Audit Scheme).</li> <li>b) IMO could recommend nations to join IALA if IGO (Cannot do so whilst NGO).</li> <li>c) Greater recognition of IALA's capacity building activities through World Wide Academy (WWA).</li> <li>d) Improved access for WWA to Governments and Donors.</li> <li>e) Increased scope for WWA sponsorship &amp; new activities.</li> <li>f) Doors potentially open to IALA to participate in new activities eg. potential for IALA to become standard setting body for discreet areas of activity.</li> </ul>	<ul style="list-style-type: none"> <li>a) The French Government does not sign the International Agreement and/or Headquarters Agreement/Parliamentary approval is not forthcoming.</li> </ul> <p><i>Note: This risk is being mitigated by ongoing contact with the French Government, providing support and addressing concerns, will assist in reducing this threat, although it is accepted that it is to some extent external to IALA.</i></p> <ul style="list-style-type: none"> <li>b) Governments seek to enter into lengthy negotiations on terms of International Agreement.</li> </ul> <p><i>Note: The IALA Secretariat &amp; French Foreign Ministry making early contact with the Governments / Foreign Ministries of National Members and explaining the process, thereby establishing and addressing concerns, will reduce this threat.</i></p>
<b>Opportunities</b> 	 <b>Threats</b>