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Purpose of paper:

- ☒ Input
☐ Information

Agenda item	9.1
Author(s) / Submitter(s)	Secretariat

Change of Status

The transition period

1 BACKGROUND (9.1)

The first signing ceremony of the Convention on the International Organization for Marine Aids to Navigation was held on 27 January 2021 in Paris and as depositary State of the Convention, France, represented by Mrs. Annick Girardin, Minister for Marine Affairs, was the first State to sign the Convention.

This ceremony marked the opening for signature of the Convention for a period of one year. All Member States of the United Nations, and in particular the other signatories of the Final Act of the Kuala Lumpur Conference, were invited to sign the Convention at the Protocol of the Ministry for Europe and Foreign Affairs.

A final signing ceremony was held at the last day of the signature period on 26 January 2022 in the IALA HQ in St. Germain en Laye. During the year 51 States have signed the Convention and five States have ratified or accepted the Convention.

States that have signed the Convention are then invited to transmit the instruments of ratification, acceptance or approval to France, the depositary State. All Member States of the United Nations that have not signed during the signature period, may accede to the Convention, which will enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.

The certified versions of the Convention in Arabic, Chinese, English, French, Russian and Spanish can be found on the IALA web site <https://www.iala-aism.org/the-igo-project/>

The Secretariat has started the detailed preparation for the transition period between the start of the new organization and the termination of the present association. For this purpose and after advice from the LAP, the Secretariat has appointed a French law firm, Carlara Avocats, to provide legal assistance throughout the transition period and until the winding up of the Association is complete. Carlara Avocats will provide assistance with respect to the administrative formalities required by French law for the transfer of the rights, interests, assets and liabilities in favour of the new IGO.

Of special interest is the Annex to the Convention (Transitional Arrangements), that is attached as Annex 1, and Article 13 to the Constitution of the present IALA, that reads:

The duration of IALA is unlimited.

Except as noted below, the termination of IALA can be decided upon under the same conditions as required for the alterations to the Constitution. On termination, the Council is responsible for the winding up of IALA and distribution of assets to charitable or technical organisations connected with Marine Aids to Navigation.

In the event of IALA being constituted as an international organization based on an international agreement the Council must arrange for the winding up of IALA and the formal transfer of ownership of all assets free of charge and without reservation into the possession of the organization constituted according to the international agreement. This Constitution will terminate without further action when the formalities for termination required by French law commenced by the Council are complete.

A schematic overview of the whole transition period is attached as Annex 2.

It is important to note, that upon entry into force of the Convention and until the first General Assembly of the IGO (maximum six month), the President, Vice President, the Council, the Secretary General, the Secretariat and the organs of the present IALA will execute the same roles in the IGO in accordance with the relevant Articles of the Convention. This provision ensures that IALA will be able to continue its tasks during the transition period until the first General Assembly of the IGO will elect the first President, Vice President, the Council, the Secretary-General and all other relevant positions according to the Convention.

9.1.1 USE OF THE GENERAL REGULATIONS MUTATIS MUTANDIS

As part of the Basic Documents, IALA has developed the General Regulations including Financial Regulations (See input paper 11.1). In the present IALA the General Regulations and the Financial Regulations shall be agreed and changed by the Council, but in accordance with the Convention the General Assembly will have to agree the General Regulations and Financial Regulations in the IGO.

As part of the Transitional Arrangements, it has been decided that the present General Regulations should be used mutatis mutandis in the period from the entry into force of the Convention and until new General Regulations have been agreed at the first General Assembly of the IGO.

Mutatis mutandis translates in legal terms to “all necessary changes having been made” or “with the necessary changes”. In the present situation this means mainly that the IGO will be governed according to the General Regulations of the association until the IGO decides upon its General Regulations during the first General Assembly. Therefore, the technical work and every-day-business of IALA will continue as before.

In case there will be any specific legal problems coming up during this period about the interpretation of the General Regulations mutatis mutandis, it is proposed that the Secretariat will liaise with the LAP on a case-by-case basis to find solutions in a most pragmatic way to ensure a smooth transition.

9.1.2 ADVISE ON PROCEDURE (LETTER) TO MEMBERS OF IALA TO JOIN THE IGO.

A very important part of the Transitional Arrangements is point 5) and 7):

5. All National Members of the International Association of Marine Aids to Navigation and Lighthouse Authorities from States that are not Member States shall, subject to their formal request, become Associate Members of the Organization for a duration of up to ten years from the date of entry into force of this Convention, unless the General Assembly decides to extend that period.

7. All Associate and Industrial Members of the International Association of Marine Aids to Navigation and Lighthouse Authorities up to date with their fees shall, subject to their formal request, become Affiliate Members of the Organization.

Some National members might not have ratified, accepted or acceded to the Convention when it enters into force, and it is important to keep them as members of the organization for political, technical and financial reasons. The same goes for the Industrial members and Associate members who contribute with invaluable technical knowledge to the development of the technical documents.

Therefore, the process of inviting these members and the formal request procedure must be well prepared and easy to handle for the potential members.

A draft letter is attached as Annex 3 for comments and suggestions.

9.1.3 ADVICE ON HOW TO PROCEED WITH THE DEVELOPMENT OF THE GENERAL REGULATIONS FOR THE IGO.

In the beginning of the Change of Status project, the draft General Regulations were handled in the same way as the draft Convention. They were issued before each meeting and after comments by States they were negotiated at the meetings. This was given up as they were much too complicated to agree on and took too much time from the more important negotiation on the draft Convention. The last version of the draft General Regulations were issued as an input paper to the Diplomatic Conference in Marrakesh in 2019.

Experience has shown that it can be cumbersome to achieve agreement on the detailed General Regulation and it is therefore necessary to have a very mature draft ready for the first General Assembly of the IGO.

As this should probably not be done at a diplomatic conference it is proposed to convene the signatory and accession States to a meeting in the first quarter of 2023 in the IALA HQ to discuss and finalize the draft General Regulations and the Financial Regulations. Alternatively, a signatory or accession State could host the event. There might be need for a week long meeting or more than one meeting. It is proposed that the Secretary-General chairs this meeting with the help of the IALA Secretariat.

The draft would have to be sent to the potential participants in advance to get relevant comments.

THE LAP IS INVITED TO

Note the information provided in this document and the annexes and give any comments or advice.