



IALA COUNCIL 80th session



24-28 June 2024
Istanbul, Türkiye

8– Strategy and Policy

8.2– Change of Status

8.2.2 – Status on the transition arrangements

TRANSITIONAL ARRANGEMENTS AS FORESEEN IN THE CONVENTION

As detailed in paper C80 8,2.1 Rev 1, the Convention will enter into force on 22 August 2024, and by the kind invitation from Singapore the first General Assembly of the Intergovernmental Organization (IGO) is scheduled to take place on 18-21 February 2025. The period between the entry into force and the General Assembly is called the transition period.

The Secretariat has started the detailed preparation for the transition period. For this purpose and after advice from the Legal Advisory Panel, the Secretariat has appointed a French law firm to provide legal assistance throughout the transition period and until the winding up of the association is complete. The law firm will help 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) and Article 13 of the constitution of the present IALA (the association) describing the automatic termination of IALA as an association.

It is important to note, that until the IGO has elected the President, the Vice President, the Council and the Secretary-General, the President, Vice President, the Council and the Secretary-General of the association will continue in their functions as the “transition President, Vice President, Council and Secretary-General”. This provision ensures that IALA (IGO) will be able to continue its tasks during the transition period until the first General Assembly will elect the President, the Vice President, the Council, the Secretary-General and all other relevant positions according to the Convention and approve its General Regulations and Financial Regulations.

The first meeting of the Transition Council is proposed is scheduled to take place 17-18 September 2024 back to back with the meeting of the Policy Advisory Panel.

TRANSFER OF RIGHTS, INTERESTS, ASSETS, LIABILITIES AND STAFF

Rights, assets, interests, liabilities and the staff must be transferred from the association to the IGO. The transfer is pursuant to French law as explicitly stated in No. 8 of the transitional arrangements of the Convention.



In line with Art. 13 of the constitution of the association the Council must arrange for the winding up of IALA (the association) and the formal transfer of assets etc. into the possession of the IGO.

After seeking advice from the French lawyer and to arrange for the winding up of the association, the Council needs to agree formally on three aspects:

- Transfer of rights, interests, assets, liabilities and the staff of the association to the IGO.
- Transfer of the head office real estate property complex to the IGO.
- Explicitly authorizing the Secretary-General of the association to carry out all formalities, filings, dealings with any administration or institution to make any declarations, sign any documents and generally do anything useful and necessary when transferring the rights, assets, interests, liabilities and the staff.

The Council is invited to approve the Resolution as included in the Annex.

USE OF THE GENERAL REGULATIONS MUTATIS MUTANDIS

As part of the Basic Documents, IALA (the association) has developed the General Regulations including Financial Regulations. In the present IALA (the association) 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 of the IGO.

As part of the transitional arrangements, it has been decided that the present General Regulations (of the association) will be used “mutatis mutandis” in the period from the entry into force of the Convention and until the General Regulations of the IGO has been agreed at the first General Assembly of the IGO.

“Mutatis mutandis” translates in legal terms to “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 and Financial Regulations during the first General Assembly. Therefore, the technical work and everyday business of IALA (the IGO) 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 (of the association) “mutatis mutandis”, the Secretariat will consult with the LAP on a case-by-case basis to find solutions in a most pragmatic way to ensure a smooth transition.

DEVELOPMENT OF THE DRAFT GENERAL REGULATIONS AND FINANCIAL REGULATIONS

In the beginning of the Change of Status project, the draft General Regulations (of the IGO) were managed in the same way as the draft Convention. They were issued before each meeting and after comments by the States they were negotiated at the pre-diplomatic conferences. This was given up as it took too much time from the more important negotiations on the draft Convention. The last version of the draft General Regulations (IGO) during that process was issued as an input paper to the Diplomatic Conference in Kuala Lumpur in 2020.

By the generous invitation of Japan Coast Guard, a Conference was convened 7-10 November 2023 in Tokyo with the purpose to develop the draft General Regulations and Financial Regulations ready to be presented to the first General Assembly of the IGO.



The Conference was very successful with almost 100 participants from 38 Countries. A draft text was agreed with only a few points left in square brackets for the General Assembly to decide on.

DEVELOPMENT OF THE STAFF RULES

The transfer of staff members remains a priority and essential for the future of the Organization.

The draft Staff Rules have been developed by the Secretariat with the assistance of the Chair of the Legal Advisory Panel and have been discussed by the Finance and Audit Committee (FAC) at three meetings.

The draft Staff Rules were an input paper to Council 79 in December 2023 (paper C79-8.3.2.2), and the Council was invited to submit comments to the Secretariat. Two Council members sent comments to the Secretariat, which were incorporated into the draft as far as possible. In the meantime, the Secretariat has asked the advice of the French lawyer to help with the dissolution of the association, the transfer of rights, assets, interest, liabilities and the staff as this will take place according to French law.

The transition of staff is subject to the provisions of the Convention, especially regarding the entry into force and the transitional arrangements.

It is however important both to the IGO and its staff members to guarantee a smooth transition process striving for continuity as far as possible under the existing circumstances.

For the transition of staff from the association to the IGO and before the closing of the old contracts and the signing of the contracts, the Headquarters' Agreement (HQ Agreement) with the French Republic must be signed or approved.

Several rights of the staff members in the IGO are described in the HQ Agreement such as immunities and privileges and the exemption from income tax for the salary.

For technical legal reasons the HQ Agreement between the IGO and the French Republic can only be signed when the IGO formally exists on the 22 August 2024.

The Staff Rules set out the fundamental conditions of service, namely the duties and obligations as well as the basic rights of the staff members. They are subject to approval by the Council in conformity with Article 8.8 (m) of the Convention.

The Staff Rules are also integral parts of the new contracts for the staff members and are linked to the privileges granted by the French Government in the HQ Agreement. Consequently, they can only be approved by the transitional Council after the signing of the HQ Agreement.

For the successful transition from the association to the IGO it is desirable to employ the staff members of the association as staff members of the IGO, but the decision to sign a contract with the IGO lies solely with the staff members of the association.

It is in the interest of the IGO to conclude contracts based on templates which as much as possible have the same content for all staff members.

The basic salary will be based on the range indicated for each category and grade in the annex to the Staff Rules and the individual qualifications and experience of each staff member.



However, for the staff transitioning from the association to the IGO as they are technically new staff members of the IGO, but in fact have been working for the association before, some chapters of the staff contract template do not apply or will be waived.

Consequently, an additional agreement will be made with each transitioning staff member and the IGO detailing where certain chapters of the template for the staff contract will be waived and at the same time including additional wording out of technical legal necessity regarding the winding-up of the association.

During the necessary assessment on how to achieve the dissolution of the association and the transfer of rights, assets, interests, liabilities and the staff to the IGO, the lawyer recommended a clear separation of Staff Rules for permanent staff and rules for non-permanent staff. Otherwise, there remains a risk that a non-permanent staff member might claim more easily the status as a permanent staff member.

The Staff Rules are now in draft form and will undergo final adjustments before it is presented to the Transition Council for approval.

The draft Staff Rules is included as input paper 8.2.2.1 for information.

THE COUNCIL IS INVITED TO

Note the information provided and give comments as deemed necessary, and to **approve** the Resolution as included in the Annex.



Annex

8.2.2 – RESOLUTION adopted on XXX

English version.

THE COUNCIL,

RECALLING Article 8 of the constitution of the International Association for Marine Aids to Navigation and Lighthouse Authorities and the powers of the Council;

RECALLING Article 13 of the constitution of the International Association for Marine Aids to Navigation and Lighthouse Authorities in case IALA is being constituted an international Organization;

MINDFUL OF the responsibility of the Council for the winding up of the association and the formal transfer of ownership of all assets according to French law;

RECOGNIZING that the Secretary-General acts as legal representative and Chief Executive of the association in accordance with Article 8.2.2;

DECIDES

1. Based on a global universal transfer, all rights, assets, interests, liabilities and the staff will be transferred from the International Association of Marine Aids to Navigation and Lighthouse Authorities to the International Organization for Marine Aids to Navigation as soon as possible after the entry into force of the convention in order to foster winding up of the association according to the requirements of French law before.
2. Explicitly, that the head office real estate property complex, situated in Saint Germain en Laye (78100), France, 10 to 30 rue des Gaudines and 21 to 29 avenue Saint Flacre , will be transferred to the International Organization for Marine Aids to Navigation.
3. To this end, the Council mandate and gives full powers to the Secretary-General to, on its behalf, execute and carry out all formalities, filings, dealings with any administration or institution in order to make any declarations, sign any documents legal act of transfer and generally do anything useful and necessary to achieve the transfer of all rights, assets, interests, liabilities and the staff.



Version française.

LE CONSEIL,

RAPPELANT l'article 8 des statuts de l'Association Internationale de Signalisation Maritime (AISM) au cas où l'AISM serait constituée en organisation internationale ;

RAPPELANT l'article 13 des statuts de l'Association Internationale de Signalisation Maritime (AISM) au cas où l'AISM serait constituée en organisation internationale ;

CONSCIENT de la responsabilité du Conseil pour la dissolution de l'association et le transfert formel de la propriété de tous les actifs conformément à la loi française ;

RECONNAISSANT que le Secrétaire général agit en tant que représentant légal et chef exécutif de l'association conformément à l'article 8.2.2. ;

DÉCIDE

1. Sur la base d'un transfert universel global, que tous les droits, actifs, intérêts, passifs et le personnel seront transférés de l'Association internationale des aides maritimes à la navigation et des autorités de phare à l'Organisation internationale des aides maritimes à la navigation dès que possible après l'entrée en vigueur de la convention afin de favoriser la dissolution de l'association conformément aux exigences de la législation française en vigueur.
2. Explicitement, que l'ensemble immobilier du siège social, situé à Saint Germain en Laye (78100), France, 10 à 30 rue des Gaudines et 21 à 29 avenue Saint Flacre, sera transféré à l'Organisation Internationale des Aides Maritimes à la Navigation.
3. A cet effet, le Conseil mandate et donne tous pouvoirs au Secrétaire général pour, en son nom, exécuter et effectuer toutes formalités, dépôts, démarches auprès de toute administration ou institution en vue de faire toutes déclarations, signer tous documents, actes juridiques de transfert et généralement faire tout ce qui sera utile et nécessaire pour réaliser le transfert de tous les droits, actifs, intérêts, passifs et du personnel.