

**Pre-DIPCON****12-14 March 2019  
Istanbul****2.1.6 (E) – Information Paper on IALA termination as an NGO – transfer of assets and liabilities**

Note by the IALA Secretariat

**1. GENERAL**

At the XIIth General Assembly held in A Coruña from the 25<sup>th</sup> to 31<sup>st</sup> May 2014, the International Association of Marine aids to Navigation and Lighthouse Authorities adopted a Resolution affirming that the status of an International Organization would best serve its objectives. Further, the Assembly determined that such status should be achieved as soon as possible by the means of the adoption of an International Convention.

As a consequence, Article 13 of the Constitution of the Association was amended to facilitate the winding up/termination of the International Association of Marine aids to Navigation and Lighthouse Authorities and the transition of its assets to the new International Organization.

It was suggested to develop transition arrangements as a part of the draft Convention text to ensure that uninterrupted international efforts to develop, improve and harmonize Marine Aids to Navigation continue whilst facilitating the transition from the International Association of Marine aids to Navigation and Lighthouse Authorities to the new International Organization.

In order to prepare for the termination of IALA and make arrangements for the transfer of assets and liabilities to the new International Organization, it was further decided to seek advice from a French Lawyer on two issues - (1) an amendment to the Constitution of IALA and (2) the steps required for termination. The Memorandum from the lawyer, Avocat à la Cour Hector O. FARINA, can be found as an Annex to this paper.

**2. AMENDMENTS TO THE CONSTITUTION.**

At the General Assembly in A Coruña the Constitution was amended after securing the required two-thirds majority.

The Constitution Article 13 (Duration and Termination) 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 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.*

The text was made with advice from the French Lawyer, who also advised on the procedures to follow for the future termination.

There will be a need for a specific declaration to the French Administration and a non-binding publicity measure in the Journal Officiel de la République Française.

### **3. TRANSFER OF RIGHTS, INTERESTS, ASSETS AND LIABILITIES.**

The legal advice does not identify any absolute obstacles to the transfer of rights, interests, assets and liabilities from IALA to the new International Organization. However, a process of legal and contractual due diligence of the Association is necessary to guarantee the success of the transfer.

With regard to the transfer of rights, interests, assets and liabilities, the Lawyer concluded that it is imperative that both entities (the “old” IALA and the new International Organization) are in existence at the moment of transfer. He also concluded that the Council of the “old” IALA has the necessary power and obligation to make the necessary decisions with regard to the winding up of IALA and the formal transfer of assets.

Another important issue is that the transfer will require a separate transfer of each right, interest, asset and liability because there is no legal basis for the global transfer of IALA’s current estate to the new International Organization.

Even though IALA is the owner of its premises and most assets, a full inventory of rights, interests, assets and liabilities will have to be made in order to study and determine the formalities of their transferability.

The financial situation of IALA is satisfactory and there is an obligation in the Financial Regulations, Article 8, for IALA to keep a cash reserve of no less than four months of the annual budget.

For the transfer of the employment contracts from IALA to the new International Organization, the Lawyer points out that there are some areas that require particular attention with respect to French labour law. After the transfer, IALA could be responsible for offering the employees of the present Association equivalent posts in the new International Organization.

Many issues need clarification during the development of the Headquarters Agreement for the International Organization. This work has started in close cooperation with the French Foreign Ministry and the Ministry of Finance.

All the legal aspects of the transfer will be further analysed in the Legal Advisory Panel.



#### 4. THE CONFERENCE IS INVITED TO

Take the information provided into consideration when deciding on the transitional arrangements (Annex to the draft Convention) for IALA.

**Annex: Memorandum – IALA Termination as NGO Regulated by 1901's French Associations Law**, Avocat à la Cour Hector O. FARINA, Paris 15<sup>th</sup> January 2014.