

No. 5 - Year 2000 – Recent Developments

July 1999

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We refer to our circulars No. 2 1998/99 of April 1998 and No. 5 1998/99 of September 1998 in which we advised members about potential Year 2000 problems and their effect on Club cover.

Earlier this year the US Coastguard and the United Kingdom Maritime and Coastguard Agency sponsored a meeting held in London on the 3rd and 4th March 1999. Representatives from a wide spectrum of marine industry organisations attended, including a team from the International Group. The meeting's initial aim was to share information amongst the various organisations in order to establish common ground and, if possible, agree on means of combating the Year 2000 problem.

Following two days of intensive debate, the meeting adopted two documents, a Code of Good Practice and Key Elements of Year 2000 Contingency Plans for Ships, Ports and Terminals. Both documents have been circulated by IMO under circular No. 2121 to member governments and affiliated bodies. You should be able to obtain copies of these documents from your national shipping organisation. Alternatively, they may be downloaded from the IMO website at www.imo.org in the Year 2000 section. Copies are also available from the Managers.

Code of Good Practice and Contingency Planning

The Code of Good Practice sets out certain precautions which ship operators, port authorities and terminal operators should adopt in order to minimise the risks associated with Y2K equipment failure or system malfunctions. The underlying principles of the Code are simplicity and a common standard, which will avoid unnecessary duplication in questionnaires and approaches to contingency planning. However, the Code will only be effective if it is implemented by as many sides of the industry as possible. Key Elements of Year 2000 Contingency Plans for Ships, Ports and Terminals is a short guide aimed at assisting those in the maritime transportation industry to understand the elements of Year 2000 contingency planning which may supplement/complement existing emergency response plans.

However, observing the precautions set out in the Code may mean that ship operators could face claims for deviation and delay and terminal operators and port authorities for delay. Thus, in order to promote the principles set out in the Code, whilst at the same time wishing to protect ship operators, port authorities and terminal operators from the potential consequences of implementing its recommendations, the International Chamber of Shipping, in co-operation with other industry bodies including the International Group, has produced the Year 2000 Safety Protocol. A Memorandum which explains the reasoning behind the Safety Protocol has also been prepared. Both documents are attached hereto.

It must be stressed that the function of the Protocol is not to provide a defence in respect of accidents or delays caused by Year 2000 equipment failures or system malfunctions. Rather, it seeks to protect the ship operator only from the direct consequences of following the recommendations set out in the relevant paragraphs of the Code of Good Practice.

Acceptance of the Protocol by ship operators, charterers and port operators, as well as representative bodies within the industry will mean that they endorse the concept of the Code of Good Practice and, in particular, the practices recommended in paragraphs 5, 6 and 7. By subscribing to the Protocol individual commercial organisations will acknowledge that no claim should be made in respect of any loss or liability caused by implementing such practices.

Members are encouraged to register as a party to the Protocol.

Year 2000 Clause

Where parties wish to give contractual effect to adherence to the Code of Good Practice in bills of lading or charter parties, a specific clause, incorporating the terms of the Protocol, will need to be added to such contracts. Such a clause has been drafted by BIMCO with the support and advice of other industry organisations involved with the Protocol project. It reads as follows:-

It is agreed that the Year 2000 Safety Protocol (dated 14/06/1999) together with the Code of Good Practice contained in IMO circular letter No. 2121 dated 5th March 1999, shall be incorporated into this contract and that any practices implemented in accordance therewith shall not be considered a breach of this contract nor form the basis of any claim in tort and shall be deemed taken in good faith and in the exercise of due diligence.

Practical Guidelines for Year 2000 Contingency Planning

The International Group in association with other representative bodies, including the International Chamber of Shipping and the Joint Hull Committee has supported the publication of Practical Guidelines for Year 2000 Contingency Planning. The purpose of the Guidelines, which come with a CD-Rom containing the full text, is to offer practical assistance to ship operators and others in the industry who are preparing their contingency plans. The Guidelines can be obtained from Lloyds Register, Corporate Design and Production, telephone +44 207 423 2658, fax: +44 207 488 4796, from their website at www.lr.org/publications/ or from the Managers.

Finally, we remind members that, in accordance with the Club Rules, where any claim arises directly or indirectly from millennium non-compliance, members will be expected to demonstrate to the satisfaction of the Board that they have taken such steps as an uninsured person acting reasonably in similar circumstances would have taken to avoid such a claim. Where an individual member has not so acted, recovery in respect of any claim will be subject to the Board's discretion.

Yours faithfully

**The West of England Ship Owners
Insurance Services Limited**
(As Managers)

R J B Searle
Director

Memorandum to explain the reasons for the Year 2000 Safety Protocol

Much has been written on the subject of the millennium problem, some of it ill informed, but there is little doubt that there is potential for serious disruption to world trade. The maritime transport industry is especially vulnerable in view of the long chains of international inter-dependencies that exist between manufacturers, shippers, receivers, ports and terminals, owners, charterers and operators – and all those who act for them or supply services to them.

As a consequence, attention has been focused on the industry's systems and equipment and much vital work has been done to fix or replace suspect systems and equipment. However, it is now generally accepted that even the most thorough and conscientious remediation programme cannot guarantee that critical IT systems and electronic micro-processors will function correctly. Furthermore, even those who are successful and whose systems function perfectly may be at risk from others – customers, suppliers, business partners or third parties – who have not been so conscientious. And there is no sure way of knowing who those others are.

In the maritime transport industry, the consequences of errors or failures in electronic systems and equipment could be

extremely serious and involve loss of life and damage to the environment. It is therefore recognised that it is essential for each party to make contingency plans to establish in advance what he will do if either his or others' equipment malfunctions. This realisation is reflected in the Year 2000 Code of Good Practice published by IMO in Circular No 2121 of 5th March 1999. The Code was adopted at a meeting of industry interests (listed at the foot of this memorandum) hosted by the US Coast Guard and the UK Maritime and Coastguard Agency.

The Code reiterates the owners', masters', port authorities' and terminal operators' respective responsibilities for safety and the environment and recommends, inter alia, that the following precautions should be adopted by ship operators, port authorities and terminal operators:

Prior to a ship entering or navigating within a port, the port authority or terminal operator should advise the ship of any additional conditions or constraints on navigation or cargo handling that the port authority or terminal operator has decided are necessary in order to minimise the risks associated with any Year 2000 equipment malfunction. Such measures might include minimum separation between ships, speed constraints, the use of tugs, loading/discharge restrictions, etc.

Prior to entering confined or congested waters and areas where hazards to navigation exist, the master, taking into account the prevailing circumstances and any advice or instructions received, should decide on the appropriate action to be taken to ensure the continued safety of his ship, crew, passengers and cargo, bearing in mind that not only the ship, but other ships in the vicinity, could lose power, steering or the use of electronic navigation equipment. If the master deems that the safety of the ship is at risk, the master should consider measures to minimise the risk by such means as reducing speed, delaying entry to the port or steering an alternative course.

In the maritime transport industry, simple adherence to these prudent safety measures could lay shipowners open to claims for deviation and delay and port authorities and/or terminal operators to claims for delay. As a consequence, the parties concerned may face a serious dilemma at a time when their only concern should be that of safety.

To overcome this problem, various industry organisations are advocating the adoption of the Year 2000 Safety Protocol. This Protocol will, hopefully, be supported by as wide a spectrum as possible of those serving or engaged in the maritime transport industry including regulatory, safety, judicial and trade bodies as well as individual commercial organisations. Acceptance of the Protocol will indicate that the body or organisation concerned believes that all the parties in the maritime transport industry should support the Code of Good Practice, while acceptance by individual commercial organisations will acknowledge that they waive any right to bring claims against any other party occasioned solely by compliance with the Code.

It should be made clear, however, that while the Year 2000 Safety Protocol seeks to protect the prudent shipowner, master, port authority and terminal operator from claims consequent on following the Code of Good Practice, it will not protect them from the consequences of any Year 2000 equipment and system failures. The Protocol is not a device to excuse those who have failed to exercise due diligence to remediate their systems and equipment.

Industry interests who were present at the meeting held at IMO on 3rd & 4th March 1999 at which the Code of Good Practice was approved.

International Association of Classification Societies (IACS)
International Association of Drilling Contractors (IADC)
International Association of Dry Cargo Shipowners (INTERCARGO)
International Association of Lighthouse Authorities (IALA)
International Association of Ports & Harbours (IAPH)
International Chamber of Shipping (ICS)
International Confederation of Free Trade Unions (ICFTU)
International Council of Cruise Liners (ICCL)
International Group of P&I Clubs
International Marine Contractors Association (IMCA)

International Parcel Tankers Association (IPTA)
International Union of Marine Insurers (IUMI)
Oil Companies International Marine Forum (OCIMF)
The Baltic & International Maritime Council (BIMCO)
The International Association of Independent Tanker Owners (INTERTANKO)
Society of International Gas Tanker & Terminal Operators (SIGTTO)

YEAR 2000 SAFETY PROTOCOL

The Year 2000 problem is unique and will affect everyone - either directly or indirectly. Although the potential consequences of the malfunctioning of electronic equipment can be predicted, no-one can say with certainty what will happen. In the context of shipping there is potential, however thorough and conscientious the remedial action taken by ship and shore operators, for accidents, serious casualties, delays and damage on a substantial scale. There could also be loss of life and damage to the environment. There is no doubt that the most effective way of combating the consequences of the Year 2000 problem will be through the co-ordinated and co-operative efforts of everyone involved in the shipping industry.

It is therefore the wish of the Parties hereto that all sides of the shipping industry should work together

1. to develop contingency plans to deal with the consequences of the Year 2000 problem, and
2. to act in accordance with such plans and to create an atmosphere wherein they can do so without fear of litigation, while accepting that they have a continuing and undiminished obligation to exercise due diligence to ensure their own Year 2000 conformity.

The Parties hereto therefore adopt the following Statement (see over):

STATEMENT

Year 2000 conformity shall mean that neither performance nor functionality of computer systems, electronic and electro-mechanical or similar equipment will be affected by dates prior to or during the year 2000.

The Parties to the Protocol intend to continue to encourage the exercise of due diligence in ensuring Year 2000 conformity. However, whether such due diligence is exercised or not, the Parties hereto believe that property or personnel or rights may be or become exposed to the risks arising out of non-conformity. Such non-conformity may originate on premises or in property in the ownership, possession or control of those who have, as well as those who have not, exercised such due diligence. It is therefore considered desirable that all concerned should adopt and implement the practices recommended in paragraphs 5, 6 and 7 of the Code of Good Practice contained in the IMO Circular Letter No 2121 dated 5th March 1999.

The intention of the parties hereto is that whenever any such practices are adopted there shall be no claims in respect of any loss or liability caused by the implementation of such practices.

We, the following Parties, support and adopt this Protocol, its Statement, and the IMO Code of Good Practice contained in IMO Circular Letter No. 2121 dated 5th March 1999:

This Protocol is open for adoption by any Party. Those wishing to adopt the Protocol should sign below

----- (Name of Company/Organisation)

----- (Name of Signatory)

----- (Position)

----- (Signature)

----- (Date)

and forward the completed document by mail or fax to...

either:- International Chamber of Shipping, Year 2000 Safety Protocol, 12 Carthusian Street, London EC1M 6EZ, England. Fax +44 171 417 8877 E-Mail linda.howlett@marisec.org	or:- The Bal Year 20 161 Ba 2880 B Fax +4 E-Mail I
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Upon receipt of such confirmation, the name of the Party will be registered as a Party on the Register of Parties held by both the International Chamber of Shipping and the Baltic & International Maritime Council (BIMCO). The Register of Parties is a public document, the contents of which will be open to public inspection either upon application and /or by reference to the Ship2000 website (see [http:// www.ship2000.com](http://www.ship2000.com))