

No. 2 2008/2009 - Entry into force of the Bunkers Convention

May 2008

Dear Sirs

Entry into force of the Bunkers Convention – certification requirements and issuance of Blue Cards and State certificates

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the “Bunkers Convention”) has now been ratified by the required number of States, with the requisite combined gross tonnage and will enter into force in State Parties on 21 November 2008.

Certification requirements

The Convention provides a liability, compensation and compulsory insurance system for the victims of oil pollution damage caused by spills of bunker oil. The Convention will make the shipowner¹ liable to pay compensation for pollution damage (including the costs of preventive measures) caused in the territory, including the territorial sea of a State Party, as well as its exclusive economic zone or equivalent area.

Registered owners of any sea going vessel and seaborne craft over 1000 gross tonnage, of any type whatsoever, and registered in a State Party or entering or leaving a port in the territory of a State Party, will be required to maintain insurance which meets the requirements of the Convention and to obtain a certificate issued by a State Party attesting that such insurance is in force. The State issued certificate must be carried on board at all times.

The regime closely follows the well established liability and insurance provisions which apply to oil tankers under the Civil Liability Convention (CLC).

Certification and pooling of liability under certificates

Following consideration by all Club Boards, it has been agreed that Clubs in the International Group will issue the required Bunkers Convention “Blue Cards” to enable signatory states to issue certificates from August 2008. Notwithstanding that Associations do not currently provide shipowners with primary P&I war risks cover, it has been further agreed that Associations will pool all liabilities incurred under certificates issued, including otherwise excluded liabilities, up to, but not exceeding, the amount of the liability so certified. Exclusions will continue to apply in the usual way in respect of liabilities arising otherwise than under Certificates. The Convention provides that liability under Certificates shall not exceed limits calculated in accordance with LLMC 1976 as amended and also contains an exclusion of liability for acts of war (although the definition of war does not include terrorism) and for damage wholly caused by the intentional act of a third-party.

The Club will issue Blue Cards on condition that the Member agrees that where any payment by the Association under the certificate is in respect of war risks, the Member shall indemnify the Association to the extent that such payment is recoverable under the Member’s P&I war risks policy or would have been recoverable if the Member had maintained and complied with the terms and conditions of a standard P&I war risks insurance policy, and that there shall be assigned to

the Association all the rights of the Member under such insurance and against any third party. By requesting a “Blue Card”, the Member will be deemed to have agreed to this condition.

It is therefore necessary that all Members requesting blue cards ensure that they have in place P&I war risks cover on standard terms with a separate limit for P&I liabilities.

Issuance of State certificates

The International Group submitted a paper in February to the Executive Committee of the IOPC Funds pointing out that States needed to put in place administrative procedures for the issue of a substantial number of Certificates.

With regard to State issued certificates attesting that the required insurance cover is in force, vessels registered in a State Party need only obtain a State issued certificate from that State. This will be treated as evidence of insurance when calling at any port or terminal in a State Party.

Vessels registered in a State which is not party to the Convention should obtain a State issued certificate from a State Party to the Convention. Ideally, if calling at a port or terminal in a State Party, this should be obtained from the issuing authority of that particular State. Alternatively, in the event that this is not possible, a State issued certificate may be obtained from the issuing authority of another State Party. The Secretariat of the International Group is in contact with the administrations in a number of Party States to identify those willing to issue Certificates for vessels which do not fly their flag and will provide further information in due course.

States have already been informed that there is a growing practice amongst Clubs in the International Group to issue Blue Cards in electronic format. Electronic Blue Cards can be forwarded by Members in electronic format to the relevant authority of the State issuing the State certificate. If the issuing authority deems this to be unacceptable, and requires the Blue Card in a hard copy format, then a hard copy version can be provided on request.

States Party to the Convention (as at April 2008)

Bahamas, Bulgaria, Croatia, Cyprus, Estonia, Germany, Greece, Jamaica, Latvia, Lithuania, Hungary, Luxembourg, Norway, Poland, Samoa, Sierra Leone, Singapore, Slovenia, Spain, Tonga and the United Kingdom.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully

For: **West of England Insurance Services
(Luxembourg) S.A.**
(As Managers)

A Paulson
Director

¹ Defined as including the registered owners, bareboat charterers, managers and operators.