



International Oil Pollution
Compensation Funds

Agenda Item 8	IOPC/MAR22/8/1	
Date	28 March 2022	
Original	English	
1992 Fund Assembly	92AES26	●
1992 Fund Executive Committee	92EC78	
Supplementary Fund Assembly	SAES10	●

ANY OTHER BUSINESS

GUIDANCE ON THE IMPACT OF THE SITUATION IN THE BLACK SEA AND THE SEA OF AZOV ON INSURANCE OR OTHER FINANCIAL SECURITY CERTIFICATES

Note by the Secretariat

Summary:	Document LEG 109/WP.6, which was published by the International Maritime Organization (IMO) on 23 March 2022, includes a draft circular containing guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates. The draft LEG circular includes information relevant to the IOPC Funds and is reproduced at the Annex to this document.
Action to be taken:	<p><u>1992 Fund Assembly and Supplementary Fund Assembly</u></p> <p>(a) Take note of the draft LEG circular contained in IMO document LEG 109/WP.6, reproduced at the Annex; and</p> <p>(b) provide instructions to the Director as the governing bodies may deem appropriate.</p>

1 Introduction

- 1.1 The IMO Legal Committee convened from 21 to 25 March 2022 and agreed on the text for guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates. It decided that the guidance should be issued as a circular of the Legal Committee (IMO document LEG 109/WP.1, paragraphs 5.14 and 5.15).
- 1.2 IMO document LEG 109/WP.6, which sets out the draft LEG circular containing the guidance, is reproduced at the Annex. The draft LEG circular includes information relevant to the IOPC Funds.

2 Action to be taken

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to:

- (a) take note of the draft LEG circular contained in IMO document LEG 109/WP.6, set out in the Annex; and
- (b) provide instructions to the Director as the governing bodies may deem appropriate.

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LEGAL COMMITTEE
109th session
Agenda item 5

LEG 109/WP.6
23 March 2022
Original: ENGLISH

DISCLAIMER

As at its date of issue, this document, in whole or in part, is subject to consideration by the IMO organ to which it has been submitted. Accordingly, its contents are subject to approval and amendment of a substantive and drafting nature, which may be agreed after that date.

ADVICE AND GUIDANCE IN CONNECTION WITH THE IMPLEMENTATION OF IMO INSTRUMENTS Report of the Working Group

GENERAL

1 The Working Group was held remotely from 22 to 23 March 2022, and was chaired by Mr. Diego Ramirez (Marshall Islands).

2 The Working Group was attended by representatives from the following Member States:

AUSTRALIA	LUXEMBOURG
BAHAMAS	MALAYSIA
BELGIUM	MALTA
BRAZIL	MARSHALL ISLANDS
CANADA	MAURITIUS
CHINA	MEXICO
CROATIA	MYANMAR
CYPRUS	NETHERLANDS
DENMARK	NICARAGUA
DOMINICA	PANAMA
FINLAND	PHILIPPINES
FRANCE	POLAND
GEORGIA	PORTUGAL
GERMANY	QATAR
GHANA	REPUBLIC OF KOREA
GREECE	RUSSIAN FEDERATION
GUYANA	SINGAPORE
INDIA	SPAIN
IRAQ	SWEDEN
ITALY	TURKEY
JAMAICA	UKRAINE
JAPAN	UNITED KINGDOM
KENYA	UNITED REPUBLIC OF
LATVIA	TANZANIA
LIBERIA	UNITED STATES

and by a representative from the following Associate Member of IMO:

FAROES

3 The Working Group was also attended by observers from the following intergovernmental organizations:

EUROPEAN COMMISSION (EC)

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)

and the following non-governmental organizations in consultative status:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)

INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)

INTERNATIONAL GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS
(P & I CLUBS)

INTERNATIONAL MARINE CONTRACTORS ASSOCIATION (IMCA)

INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)

Terms of reference

4 The Working Group was instructed, using document LEG 109/J/4 as the base document, and taking into consideration comments, proposals and decisions made by the Committee, to:

- .1 finalize the guidance on the implications of the situation in the Black Sea and the Sea of Azov on the implementation of the conventions under the purview of the Legal Committee, and in particular, on insurance certificates issued pursuant to these conventions;
- .2 advise the Committee on the format of such guidance (i.e. LEG resolution, LEG circular, decisions of the Committee, etc.); and
- .3 submit a written report on the work carried out, including the text of the final guidance, to plenary on Friday, 25 March 2022.

Format of the guidance

5 The Working Group started with paragraph .2 of its terms of reference. The Working Group agreed that the guidance should be issued as a circular of the Legal Committee (LEG/Circ.).

Text of the guidance

6 As instructed, the Working Group considered, with a view to finalizing it, the text of the draft guidance, as contained in document LEG 109/J/4. The Working Group decided that the title should be "Guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates".

7 The delegation of the Russian Federation raised some concern with the use of the term "sanctions" in paragraph 2.2 of the guidance. Furthermore, they explained that in the Russian Federation, there was a system in place whereby insurers falling under some restrictive measures were automatically reinsured and that was checked by the Government.

8 The Working Group noted the concern raised by the delegation of the Russian Federation. The Group also noted that the wording in paragraph 2.2 (i.e. "may") indicated that there was a possibility that the introduction of economic sanctions would, in some cases, restrict the processing or payment of claims.

9 The Group agreed to delete the terms "Blue card" in paragraphs 2.2 and 2.3 of the guidance, as blue cards were not referenced in the conventions.

10 The Working Group also agreed to include an additional paragraph explaining that the absence of insurance or other financial security may lead to insufficient compensation for States and victims of pollution and may also expose the IOPC Funds and its contributors to the risk of having to pay the full compensation for oil spills if no sufficient insurance was available to cover the shipowner's liability. The Group also agreed that the chapeau in paragraph 2 of the guidance should contain the implications of the situation in the Black Sea and the Sea of Azov for IMO instruments and that a chapeau should be added in a new paragraph 3 to contain the actions that the Legal Committee would recommend. The Working Group consequently agreed to renumber the paragraphs accordingly.

11 The Group considered the question raised by a delegation on the availability of information regarding termination of contracts of insurance. The Group agreed that there were requirements in the relevant conventions related to the reporting of such information to the issuing State.

12 The Working Group also considered the concern raised by a delegation that the renumbered paragraph 3.3 of the guidance was placing a huge burden on flag and port States. The Group agreed that this paragraph was one of the main points of action and that, in accordance with the conventions, port States may request, at any time, consultation with the issuing or certifying State, should they believe that the insurer or guarantor named in the insurance certificate was not financially capable of meeting the obligations imposed in the conventions.

13 The Working Group further considered the concern raised by some delegations regarding the language in the renumbered paragraph 3.3 but decided that the verb "should" should be kept in, as it was consistent with the main intention of the circular.

14 The Group agreed to make some final editorial changes to the text of the guidance. The finalized guidance, as agreed by the Working Group, is set out in the annex.

Action requested of the Committee

15 The Legal Committee is invited to approve the report of the Working Group in general and to approve the draft LEG circular containing the guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates, as set out in the annex.

ANNEX**DRAFT LEG CIRCULAR****Guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates**

1 At the thirty-fifth extraordinary session of the IMO Council, relating to the conflict in Ukraine, the Council requested that IMO committees consider ways to enhance the efforts of Member States and observer organizations in supporting affected seafarers and commercial vessels, consider also the implications of this situation for the implementation of the Organization's instruments, take appropriate action and report back to Council.

2 In accordance with this request, the Legal Committee notes the following implications for IMO instruments under its purview:

- .1 The International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention), the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1992 CLC Protocol), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention), the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (2002 Athens Protocol) and the Nairobi International Convention on the Removal of Wrecks, 2007 (2007 WRC) require that State Parties issue certificates attesting that insurance or other financial security is in force which meets the requirements of the conventions.
- .2 Due to recent sanctions against Russian banks and other interests, including prohibitions on certain origin cargoes and ships from the Russian Federation, insurers or other financial security providers will be required to comply with the applicable sanctions or measures in their respective jurisdictions. The introduction of these economic sanctions may in some cases restrict the insurers or other financial security providers referred to in the certificate from processing claims or prohibit the payment of claims arising under these conventions. This could lead to the insurer or financial security provider cancelling the coverage.
- .3 The absence of insurance or other financial security in accordance with the requirements of the conventions may lead to insufficient compensation for States and victims of pollution and other incidents. It may also expose the IOPC Funds and its contributors to the risk of having to pay all of the compensation for oil spills from tankers because there is not sufficient insurance to cover the shipowner's liability.

3 Against this background, the Legal Committee recommends the following actions:

- .1 If a State Party to the following Conventions has issued certificates pursuant to Article VII of the 1969 Civil Liability Convention, Article 7 of the 1992 CLC Protocol, Article 7 of the 2001 Bunkers Convention, Article 12 of the 2007 Nairobi WRC and Article 4*bis* of the 2002 Athens Protocol, the issuing State or its designated authority should ensure that it cancels the certificate in accordance with the conventions if or when they receive notification of termination of the insurance or other financial security.

- .2 In the meantime, State Parties to these conventions should continue to honour their obligations by complying with the recommendations set out in Circular Letter No.3464 and this guidance.
- .3 In particular, flag or certifying States issuing certificates based on Russian insurers or Russian financial security providers should verify that the coverage meets the criteria outlined in Circular Letter No.3464. Port States encountering certificates involving Russian insurers or financial security providers should consult with the issuing or certifying State whose responsibility is to ensure that the insurance or financial security remains adequate, as called for in the IMO liability and compensation conventions.

4 The Committee requests that Member States bring the contents of this circular to the attention of the managers of their shipping registries, port State control authorities and other interested parties.
