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COMPENSATION  
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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the International Group of P&I Clubs

<b>Summary:</b>	This document sets out the measures taken by P&I Clubs in relation to substandard shipping.
<b>Action to be taken:</b>	The Working Group is asked to note this information.

### **Measures taken by P&I Clubs in relation to sub-standard shipping**

The primary responsibility for ensuring that acceptable standards are met in the owning, maintenance and operation of ships rests with their owner/operators, Flag State administrations, and Classification Societies, aided by Port State Control.

Apart from the general issue of policy the Clubs in the International Group have a strong self-interest in ensuring that ships are of a standard that enables liabilities to be shared on a mutual basis, both within individual Clubs and between Clubs in the Pool where liabilities are pooled in excess of \$5 million. Measures adopted by Clubs to achieve this aim include (and are not limited to) the following:

1. All Group Clubs' Rules deny rights of recovery for claims arising from failure of vessels to comply with statutory requirements of Flag States.
2. Clubs' Rules similarly deny rights of recovery for claims arising on vessels that are not classed by an approved Classification Society.

The same Rules, adopted by Clubs on a common basis, make it a condition of insurance that the insured

- (a) must promptly report to Class any matters in respect of which Class might make recommendations;
- (b) must comply in timely fashion with Class rules and requirements;

- (c) must authorise Class to disclose information about the ship requested by the Club; and
  - (d) must advise the Club if the Class Society is changed, identifying any recommendations or requirements that are outstanding at the date of the change.
3. Clubs have an agreed policy not to insure, either newly or by way of renewal, any ship that does not hold a valid Safety Management Certificate required under the ISM Code.
  4. Under the Pooling Agreement, Clubs in the International Group refuse to pool risks in respect of vessels which do not meet the main requirements of paragraphs 1, 2 and 3 above.
  5. All Clubs run survey programmes in order to assess whether ships are maintained and operated to an acceptable standard. However, Clubs are insurers, not surveying organisations, and have no capability to substitute the surveys carried out by Classification Societies. The Clubs' survey programs therefore include only a limited proportion of ships entered or applying for entry and the scope of individual surveys may be limited because, for example, tanks cannot be inspected where not gas-freed. Moreover, it should be borne in mind that while Classification Societies look to the structure of a ship, Club surveys tend to examine the operation of a vessel.
  6. The wider use of information obtained from Club surveys may be circumscribed because of the legal restraints on the dissemination of such information. A legal opinion is currently being sought which will provide, it is hoped, further clarification with regard to Clubs' duties and rights in relation to the disclosure of information. If this advice should indicate that useful disclosure is hampered by issues of competition law, it is hoped that States and particularly the EU Commission may provide appropriate assistance to the Clubs.
  7. In the meantime, the International Group is reviewing Club survey practices with a view to developing a minimum standard for the scope of what is included in Club surveys (which individual clubs would always be free to exceed) and a common approach to the targeting factors used to determine which ships are seen (such as age, trade, ship type, class society, PSC detention record, etc).
  8. Mindful of the particularly damaging nature of some kinds of oil cargo, Clubs are considering whether to identify ships carrying heavy fuel oil by way of warranty so that this can be used as one of the factors in targeting ships for survey.
  9. The Clubs already recognise the additional risks of carriage of dirty oils by differentiating in their underwriting and in allocation of reinsurance costs between dirty and clean tankers.

For the reasons indicated, the Clubs share the desire of States to see the end of substandard shipping. However, the Clubs do not believe that this purpose can be served by using compensation as a form of punishment in a context where victims of pollution are protected by compulsory insurance provisions. Furthermore, the Clubs believe that this problem should properly be addressed by an industry-wide initiative with the involvement of governments, and hope to make further proposals in this regard.

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