



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

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Supplementary Fund Assembly	SA12	•

IMPLEMENTATION OF THE 1992 CIVIL LIABILITY CONVENTION

ADDITIONAL GUIDANCE DOCUMENT TO ASSIST MEMBER STATES WHEN VERIFYING CLC CERTIFICATES

Note by the Secretariat

Summary:	<p>At its session in April 2015, the 1992 Fund Administrative Council instructed the Director to look into the specific issues in respect of open incidents where the insurer had not fulfilled its obligations under the 1992 Civil Liability Convention (1992 CLC) and to report back to the 1992 Fund Assembly at a future session (document IOPC/APR15/9/1, paragraph 7.1.11).</p> <p>This document examines the open incidents involving the IOPC Funds taking into consideration the International Maritime Organization (IMO) Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P&I Clubs), when verifying Civil Liability Convention (CLC) certificates.</p>
Action to be taken:	<p><u>The 1992 Fund Assembly</u></p> <p>Consider whether to instruct the Director to request the IMO Legal Committee (LEG) to review the current IMO Guidelines for accepting insurance companies, financial security providers and P&I Clubs.</p>

1 Introduction

- 1.1 At the 14th session of the 1992 Fund Administrative Council held in April 2015, the observer delegation of the International Chamber of Shipping (ICS) made a statement reminding the governing bodies that the compensation system is underpinned by the concept of compulsory insurance, and also reminding Member States about the Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P&I Clubs) when verifying CLC certificates, which were issued by the International Maritime Organization (IMO) in 2011^{<1>}. The observer delegation of ICS also asked the Secretariat to analyse its open cases and address the question of whether the existing Guidelines needed to be further developed.
- 1.2 At that session, the Administrative Council instructed the Director to look into the specific issues in respect of the open cases where the insurer had not fulfilled its obligations under the 1992 Civil Liability Convention (1992 CLC) and to report back to the 1992 Fund Assembly at a future session (document [IOPC/APR15/9/1](#), paragraph 7.1.11).
- 1.3 The Secretariat has examined the open cases to ascertain whether in its view the current IMO Guidelines need to be further developed. A copy of the Guidelines can be found in Annex I.
- 1.4 The Administrative Council also instructed the Secretariat, in consultation with the IMO Secretariat, to explore whether the IOPC Funds could develop some additional guidance documents, such as flowcharts, to assist States when verifying CLC certificates (document [IOPC/APR15/9/1](#),

<1> IMO Circular Letter 3145, superseded by IMO Circular 3464, in 2014.

paragraph 7.1.12). The Secretariat has therefore drafted an additional guidance document contained in Annex II, following consultation with the IMO Secretariat, ICS and the International Group of P&I Associations (the International Group).

2 IMO Guidelines

- 2.1 The IMO Guidelines were first introduced in 2011 in respect of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) for the purpose of promoting harmonised implementation of the Bunkers Convention 2001. The Guidelines help States Parties with the task of verifying the financial standing and hence the solvency of companies providing insurance for vessels under the applicable Conventions, in order to ensure that they are in a position to provide prompt and adequate compensation to victims in the event of an incident.
- 2.2 Taking into consideration that the relevant article of the Bunkers Convention 2001 is modelled on the 1992 CLC and that the purpose of the certificate, tasks and responsibilities of States Parties are the same, the scope of these Guidelines were extended in 2014 to the 1992 CLC, the Nairobi International Convention on the Removal of Wrecks, 2007 (Convention on Wreck Removal) and the 2010 HNS Convention.
- 2.3 The IMO Guidelines detail the recommended practices of accepting Blue Cards issued by a member of the International Group and other insurers (insurance companies, financial security providers and P&I Clubs outside the International Group). For the Blue Cards issued by a member of the International Group, the Guidelines recommend to accept them when it is possible to verify their validity from the relevant P&I Club's website.
- 2.4 The IMO Guidelines also detail the recommended practices of accepting Blue Cards or similar documentation issued by other insurers. For these Blue Cards or similar documentation, the Guidelines recommend authorities to verify the financial standing and solvency of such insurers in order to make sure that prompt and adequate compensation for the victims is available. The Guidelines also recommend States Parties to exchange information on the insurers they have accepted, and to set up criteria for accepting Blue cards or similar documentation.

3 Examination of open cases in the light of the IMO Guidelines

- 3.1 The Secretariat looked into the open cases of the IOPC Funds where the insurer had not fulfilled its obligations under the 1992 CLC. Specifically, the Secretariat examined the following cases.
 - In the *Volgoneft 139* incident, the insurer of the vessel contends that its insurance cover of 3 million SDR was sufficient, although this was less than the necessary insurance cover of 4.51 million SDR in accordance with the 1992 CLC. The Secretariat believes this is a result of non-implementation of the 1992 CLC by the Member State government, rather than a consequence of non-fulfilment of the obligation under the 1992 CLC by the insurer, because the insurer fulfilled the obligation of national legislation in force at the time of issuing the CLC certificate. For this reason, this case may be considered irrelevant for the further development of the IMO Guidelines.
 - In the *Nesa R3* incident, the insurer of the vessel refused to consider any claims from this incident since the cargo on board the vessel came from the Islamic Republic of Iran. The Secretariat believes that this case is also not a result of non-fulfilment of the obligation of the 1992 CLC by the insurer, because of the special nature of the case with international sanctions imposed on the Islamic Republic of Iran, and may also be considered irrelevant for the further development of the IMO Guidelines.
 - In the *Alfa I* incident, the insurer argued that its policy covered only the carriage of non-persistent mineral oil, and that its cover was limited to €2 million instead of 4.51 million SDR (approx. €5.65 million), notwithstanding that the insurer issued the Blue Card to the shipowner.

This case shows some discrepancies between the terms of the insurance policy and the Blue Card. The Secretariat believes that this incident is as a result of non-fulfilment of the obligation of the 1992 CLC by the insurer, and is relevant for considering further development of the IMO Guidelines.

- 3.2 In order to prevent the re-occurrence of such discrepancies between Blue Cards and the cover provided in the insurance policy, a solution would be to check, in addition to the Blue Card or similar documentation, the actual insurance policy, which should clearly state the terms and conditions of insurance cover. In this regard, the only relevant provision currently in the IMO Guidelines is paragraph 2(iv), which states:

“a guarantee by the company and its parent company, if one exists, that it will cover liability incurred under the relevant convention and up to the limits of liability provided for by that convention”.

The requirement to check the actual insurance policy is not currently mentioned in the Guidelines.

- 3.3 Based on the above examination, the Secretariat concludes that the current IMO Guidelines could be further developed in this area, in order to prevent the insurers' non-fulfilment of the 1992 CLC obligations in future. One possible solution would be to add the requirement, that a copy of the insurance policy be provided to the State Party, to the IMO Guidelines. However, this solution could cause additional administrative burden to government officials, particularly in relation to the application of such criteria to the Bunkers Convention 2001 certificates and the Convention on Wreck Removal certificates, because the IMO Guidelines mention not only the 1992 CLC but also other Conventions.
- 3.4 In view of the fact that the IMO Guidelines were approved by the IMO Legal Committee (LEG), any amendment would need to be put forward to and approved by the LEG. In this regard, the Director proposes that he submit this topic to the LEG at its next meeting.
- 3.5 With regard to an additional guidance document, the Secretariat has drafted a flowchart to provide an overview of the IMO Guidelines, as attached at Annex II. Illustrating the IMO Guidelines, the flowchart broadly divides the decision-flows depending on the type of insurer (a member of the International Group or other insurers) and each decision-flow explains how State Parties should check and issue their CLC certificates. At this stage, the draft has been submitted for reference purposes only, because it does not reflect the consideration mentioned in paragraph 3.3 above.

4 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to consider whether to instruct the Director to request the IMO Legal Committee to review the current IMO Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P&I Clubs).

ANNEX I

GUIDELINES FOR ACCEPTING INSURANCE COMPANIES, FINANCIAL SECURITY PROVIDERS AND THE INTERNATIONAL GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS (P&I CLUBS)

The purpose of these guidelines is to provide guidance for accepting Blue Cards or similar documentation from insurance companies to States Parties to any of the following conventions ("the relevant conventions"):

- the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended (1992 Civil Liability Convention);
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention);
- the Nairobi International Convention on the Removal of Wrecks, 2007 (2007 Nairobi WRC); or
- the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of 2010 to the Convention (the 2010 HNS Convention).

States Parties to any of the relevant conventions should:

- (i) accept Blue Cards issued by a member of the International Group of P&I Associations (P&I Clubs) when it is possible to verify the Blue Card from the P&I Clubs website; and
- (ii) when receiving a Blue Card or similar documentation from insurance companies, financial security providers and P&I Clubs outside the International Group, verify the financial standing and solvency of such company in order to make sure that prompt and adequate compensation for the victims is available.

1 Exchange of information

In order to minimize administrative burdens, States Parties should, where appropriate, exchange information including which P&I Clubs outside the International Group they have accepted in the process of issuing Certificates under the relevant conventions.

2 Criteria for acceptance

The following list of criteria may be used by States Parties for accepting Blue Cards or similar documentation, including from P&I Clubs outside the International Group:

- (i) adequate documentation on the company's financial standing, and hence solvency, which could be in the form of audited financial statements from the past three years duly authenticated and signed by the auditor;
- (ii) approval by the relevant authority that the company is eligible to carry out insurance business in the country of the authority;

- (iii) adequate documentation on reinsurance coverage on claims met by the company for liability incurred under the relevant convention;
- (iv) a guarantee by the company and its parent company, if one exists, that it will cover liability incurred under the relevant convention and up to the limits of liability provided for by that convention or, in the case of either the 2001 Bunkers Convention and the 2007 Nairobi WRC, up to the limits of liability provided for by the International Convention on Limitation of Liability for Maritime Claims 1976, as amended;
- (v) a statement to the effect that liability incurred under the relevant convention due to an act of terrorism is covered; and
- (vi) the rating that the insurance company and/or its reinsurers hold by an independent and internationally recognized rating agency.

These Guidelines revoke the guidelines contained in annex 3 to Circular Letter No.3145.

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**ADDITIONAL GUIDANCE DOCUMENT ON IMO GUIDELINES (IMO CIRCULAR LETTER NO. 3664)
APPLICATION FOR ISSUING STATE CLC CERTIFICATE**

The insurer is a member of the International Group*

YES

NO

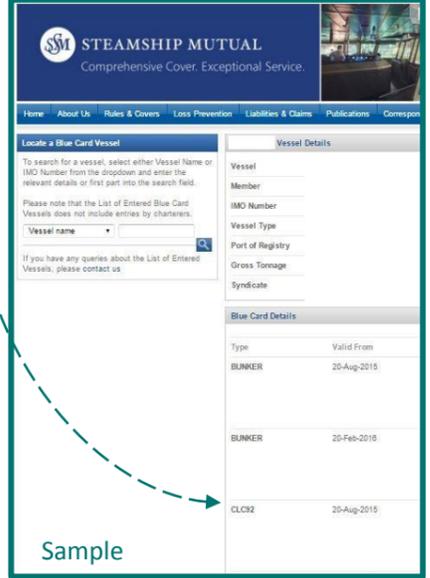
Request the following documents:

- Adequate documentation on the company's financial standing and hence solvency (e.g. 3 years audited financial statement)
- Approval by the relevant authority to carry out insurance business
- Adequate documentation on reinsurance coverage
- Rating that the insurer and/or reinsurer holds
- A guarantee by the insurer or its parent company that it will cover liability incurred under the 1992 CLC and up to the limits of liability provided for by the 1992 CLC
- A statement that liability due to an act of terrorism is covered

1. Check the Blue Card



2. Check the website of the member club



- *Members of the International Group:
1. American Steamship Owners Mutual Protection and Indemnity Association, Inc
 2. Assuranceforeningen Skuld
 3. Gard P&I (Bermuda) Ltd.
 4. The Britannia Steam Ship Insurance Association Limited
 5. The Japan Ship Owners' Mutual Protection & Indemnity Association
 6. The London Steam-Ship Owners' Mutual Insurance Association Limited
 7. The North of England Protecting & Indemnity Association Limited
 8. The Shipowners' Mutual Protection & Indemnity Association (Luxembourg)
 9. The Standard Club Ltd
 10. The Steamship Mutual Underwriting Association (Bermuda) Limited
 11. Sveriges Ångfartygs Assurans Förening / The Swedish Club
 12. United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited
 13. The West of England Ship Owners Mutual Insurance Association (Luxembourg)

Verify the Blue Card by checking the website of the member club

Decline if the website shows contradicting information and member club confirms that the Blue Card is invalid.

Issue the CLC Certificate

Decline if the requested documents
 (i) show contradicting information to the information in the Blue Card
 (ii) do not verify that the financial standing of the insurer is sufficiently sound for prompt and adequate compensation.

Issue the CLC Certificate + share the information on the accepted insurer among Member States of the 1992 CLC.