

LEGAL COMMITTEE  
101st session  
Agenda item 11

LEG 101/11/2  
14 March 2014  
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## ANY OTHER BUSINESS

**(ii) Advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments; consideration of a proposal to extend the scope of the Guidelines for accepting documentation from insurance companies, financial security providers and P&I Clubs adopted in respect of the Bunkers Convention to CLC, HNS Convention and Nairobi WRC certificates**

**Submitted by Canada, Denmark, Germany and Sweden**

### SUMMARY

<i>Executive summary:</i>	This document contains a proposal to extend the scope of the <i>Guidelines for accepting documentation from insurance companies, financial security providers and P&amp;I Clubs</i> adopted in respect of the Bunkers Convention to CLC, HNS Convention and Nairobi WRC certificates
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.0.1
<i>Planned output:</i>	2.0.1.5
<i>Action to be taken:</i>	Paragraph 7
<i>Related documents:</i>	LEG 95/10; LEG 97/7, LEG 97/14; LEG 100/14 and Circular Letter No.3145

1 The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention) entered into force on 21 November 2008. According to article 7 of the Convention, a registered owner of a ship having a gross tonnage greater than 1,000 registered in a State Party is required to obtain insurance to cover the strict liability for bunker oil pollution. In order to document that insurance is in place, the Bunkers Convention requires that a State Party issue certificates under article 7, paragraph 2. In accordance with paragraph 7, the State shall determine the conditions of issue and validity of the certificate.

2 At its ninety-fifth session the Legal Committee considered that the implementation of the Bunkers Convention and the issuance of certificates raised a number of issues of a political as well as a practical nature. Consequently, the Legal Committee decided to establish a correspondence group (document LEG 95/10), to facilitate and encourage further ratifications and to promote harmonized implementation of the Bunkers Convention.

3 At its ninety-seventh session, the correspondence group reported to the Legal Committee on how to facilitate further ratifications and promote harmonized implementation of the Bunkers Convention (document LEG 97/7). The correspondence group submitted a set of guidelines for accepting insurance companies, financial security providers and P&I Clubs, which was approved by the Legal Committee. The purpose of the guidelines was to provide State Parties to the Bunkers Convention with guidance for accepting Blue Cards or similar documentation from financial and insurance companies. This will help with the task of verifying the financial standing and hence the solvency of such companies in order to make sure that prompt and adequate compensation will be available for the victims in the event of an incident. The guidelines are contained in annex 3 of Circular Letter No.3145.

4 Article 7 of the Bunkers Convention is modelled on article VII of the International Convention on Liability for Oil Pollution Damage, 1992 (1992 CLC). Similarly the insurance provisions in the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Convention) and in the Nairobi International Convention on the Removal of Wrecks, 2007 (2007 Nairobi WRC), are also modelled on the 1992 CLC. The relevant article in the 2010 HNS Convention is article 12; the relevant article in the 2007 Nairobi WRC is article 12.

5 As the purpose of the certificates in the three conventions is the same, the tasks and responsibilities of States Parties relating to the issuance of the certificates should be identical under the four conventions. Also practical reasons call for streamlining the administration of the said conventions.

6 The application of the *Guidelines for accepting insurance companies, financial security providers and P&I Clubs for the Bunkers Convention* should also be applied to the 1992 CLC, 2010 HNS Convention and 2007 Nairobi WRC. This would help to remove ambiguity and assist present and future States Parties to the four conventions to apply them in a uniform manner. It would furthermore assist shipowners, ship operators, ship managers and ship companies in avoiding unnecessary delay or detention of ships and minimize administrative burdens imposed on the shipping industry.

#### **Action requested of the Legal Committee**

7 The Legal Committee is invited to consider the information contained in this document and to decide on the application of the drafted guidelines set out in the annex.

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## **ANNEX**

### **GUIDELINES FOR ACCEPTING INSURANCE COMPANIES, FINANCIAL SECURITY PROVIDERS AND 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:

- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter referred to as "the Bunkers Convention"),
- 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 (hereinafter referred to as "the 2010 HNS Convention");
- the Nairobi International Convention on the Removal of Wrecks, 2007 (hereinafter referred to as "the 2007 Nairobi WRC"); or
- the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended (hereinafter referred to as "the 1992 Civil Liability Convention").

A State Party to the Civil Liability Convention, the Bunkers Convention, the 2010 HNS Convention or the 2007 Nairobi WRC should accept Blue Cards issued by a member of the International Group of P&I Associations (hereinafter P&I Clubs) when it is possible to verify the Blue Card from the P&I Clubs website.

A State Party to the Civil Liability Convention, the Bunkers Convention, the 2010 HNS Convention or the 2007 Nairobi WRC should, 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 hence the 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 the administrative burdens States Parties should, when appropriate, exchange information including which P&I Clubs outside the International Group they have accepted in the process of issuing Certificates under the Civil Liability Convention, the Bunkers Convention, the 2010 HNS Convention or the 2007 Nairobi WRC.

#### **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. Adequate documentation could be in the form of audited financial statements from the past three years duly authenticated and signed by the auditor;

- (ii) adequate documentation on 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 cases of the 2007 Nairobi WRC and the Bunkers Convention – 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 of Circular Letter No.3145.

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