

The British European & Overseas P&I Insurance

Tuesday, 28 October 2008



This Circular reviews the liability regime within the forthcoming International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 and the action required by Assureds to obtain certification demonstrating compliance with the compulsory insurance provisions therein.

Brief history

This Convention changes the evident anomaly which has existed since the International Convention on Civil Liability for Oil Pollution Damage 1969 ('CLC') was implemented in 1975. Whereas owners and operators are held strictly liable under CLC for pollution from a laden tanker (and, since the 1992 Protocol, for pollution from a tanker in ballast), no similar framework rendered non-tank vessels liable for pollution despite the risk arising from bunker spills. The Bunkers Convention seeks to rectify that.

Commencement

The Bunkers Convention will enter into force on 21 November 2008.

Application

The Convention applies to all vessels over 1,000 GT trading within the territorial waters of any state which is a party to the convention, or which fly the flag of any state which is a party. The definition of 'shipowner' is broad and includes the registered owner, bareboat charterer, manager and operator of the vessel.

Countries party to the Convention (as at April 2008)

Bahamas, Bulgaria, Croatia, Cyprus, Estonia, Germany, Greece, Hungary, Jamaica, Latvia, Liberia, Lithuania, Luxembourg, Marshall Islands, Norway, Poland, Samoa, Sierra Leone, Singapore, Slovenia, Spain, Tonga, UK.

MANAGERS: DGS MARINE MANAGEMENT SERVICES

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Liability

Strict liability, as with CLC, applies in all but limited circumstances. Exceptions arise for spills resulting from an act of war, an intentional act of a third party or the negligence of any authority responsible for conservancy. The Convention does not specifically exclude liability for acts of terrorism.

Limitation of liability is available in accordance with the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976 ('LLMC') which entered into force in 2004 as follows:

Loss of life or personal injury

- For ships not exceeding 2,000 GT the limit is 2 million SDR (USD 3,208,000)
- For each ton from 2,001 to 30,000 GT, 800 SDR (USD 1,283.58) per ton
- For each ton from 30,001 to 70,000 GT, 600 SDR (USD 962.68) per ton
- For each ton in excess of 70,000 GT, 400 SDR (USD 641.79) per ton

For example a 10,000 GT vessel the limitation figure would be **USD 13.5m**

Property

- For ships not exceeding 2,000 GT the limit is 1 million SDR (USD 1,604,000)
- For each ton from 2,001 to 30,000 GT, 400 SDR (USD 641.79) per ton
- For each ton from 30,001 to 70,000, GT 300 SDR (USD 481.35) per ton
- For each ton in excess of 70,000 GT, 200 SDR (USD 320.90) per ton

For example a 10,000 GT vessel the limitation figure would be **USD 6.74m**

(1 SDR = USD 1.604 as at 8th August 2008)

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Both property as well as loss of life/personal injury funds may be combined in qualifying circumstances. The limits are applicable to any person falling within the definition of shipowner within the Bunkers Convention.

Compulsory insurance

Registered owners of vessels to which the Convention applies are required to carry a certificate demonstrating that the vessel has insurance or other security sufficient to cover liabilities arising under the Convention equal to limits of liability under the applicable domestic or international limitation regime, albeit the amount so insured need not exceed the limits set out in LLMC.

Assureds whose vessels are *not* registered in a Country which is a party to the Convention must obtain that certificate from a Country which *is* a party to the Convention, should they wish to trade to any Convention Country.

An application to any relevant state to issue the requisite certificate must be supported by evidence of such compulsory insurance. As with CLC, such evidence is in the form of a so-called 'Blue Card' which is issued by that insurer.

Issuance of Blue Cards

The British European & Overseas P&I is able to issue Blue Cards on request, following provision by the Assured of specified information and subject to a satisfactory assignment of the Assured's war risks policy.

The British European & Overseas P&I is able to insure primary P&I war risks liability on terms to be agreed and cover for standard P&I war risk insurance in excess of hull value can also be arranged if required.

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If The British European & Overseas P&I are not requested to provide such war risks insurance, then a pre-requisite for issuing any Blue Card will be the provision of an indemnity from the Assured to The British European Overseas P&I to cover any payment made under the Blue Card for war risks that are otherwise recoverable, or ought to be recoverable, under the terms of the Assured's own war risk policy. In addition the Assured must assign all rights under that policy which may exist against any third party.

These arrangements are necessary given the non-exclusion of terrorism risks under the Bunkers Convention. By requesting a Blue Card the Assured is deemed to have agreed to these conditions.

Blue Cards and Data Collection

The following information will be required from Assureds in order to issue Blue cards:

Name of Ship
 IMO Number
 Distinctive Number or Letters (Call Sign)
 Port of Registry
 Name and full address of the Registered Owner's principal place of business
 Gross Tonnage
 Issuing State

Once this information has been received and the war risks policy has been assigned, The British European & Overseas P&I will be able to issue Blue Cards to those Assureds to whom the Convention applies, **PROVIDED ALWAYS THAT THE FOLLOWING BLUE CARD DEFICIENCIES DO NOT APPLY.**

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OVERVIEW BLUE CARD DEFICIENCIES

Please find below an overview of the deficiencies that at least need to be rectified in order for The British European & Overseas P&I to release a Bunker Convention Blue Card. Our loss Prevention Department will provide our Assureds with a risk assessment, if applicable.

Assureds are kindly requested to check whether any of the below deficiencies are outstanding on vessel(s) already insured with The British European & Overseas P&I. We strongly recommend proceeding immediately with rectifying any deficiencies in accordance with the instructions mentioned.

Duly note that The British European & Overseas P&I will not be in a position to release a Bunker Convention Blue Card if one of the below deficiencies is still outstanding.

Bunker Convention Blue Card Deficiencies which at least need to be rectified are:

1. IOPP certificate to be in order and valid.
2. ISM certification to be in order and valid.
3. Oil record book to be in order and properly recorded by C/E.
4. Deck/bridge/engine logbooks to be properly kept.
5. Garbage management plan to be properly kept and found approved.
6. Sopep manual to be properly kept and found approved.
7. Crew complement in compliance with safe manning certificate.
8. Crew training/communication to be noted in order.
9. Handheld VHF/UHF's to be in order and available on board.
10. Change over instructions for emergency steering to be available and posted.
(gives me an impression of crew contingency planning preparedness)
11. Main engine control on bridge operational.
12. Main engine emergency stop on bridge to be operational.
13. General condition hull.

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14. Condition deck/hydraulic lines.
15. Ventilators/closing devices on deck in order
16. Air pipes/sounding pipes labeled and in order.
17. Cargo handling equipment in order (hydraulic)
18. Mooring rope winches in order (Hydraulic)
19. Entire current pollution prevention section.
20. Hydraulic operating system hatches.
21. Water tightness hatches.
22. Test of cargo hold bilges/bilge system.
23. Ballast tanks internal + pressure testing.
24. Quick closing valves.
25. Remote stops.
26. Oily water separator/15 ppm alarm.
27. Engine room bilges/level alarms.
28. Engine room piping system color coding available.
29. Procedures for starting up after black out incidents to be available and posted.
30. Local control/emergency steering and display of steering instructions to be available.

For questions in respect of the Blue Cards and/or any of the Blue Cards Deficiencies, please kindly contact your broker and/or your contact at The British European & Overseas P&I.

Yours faithfully

The British European & Overseas P&I

November 2008.

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