

CIRCULAR

November 2014

To all Members

Entry into force of the Nairobi International Convention on the Removal of Wrecks

On 14 April 2014 the Nairobi International Convention on the Removal of Wrecks, 2007 ("the Convention") achieved the requisite number of ratifications (10) triggering the entry into force conditions. The Convention will enter into force in State parties on 14 April 2015.

The Convention provides a strict liability, compensation and compulsory insurance regime for States affected by a maritime casualty. It makes the registered owner of a ship liable for locating, marking and removing a wreck deemed to be a hazard in a State's Convention area. Key definitions and terms employed in the Convention are explained at the end of this circular.

Scope of the Convention

There is provision in article 3(2) for a State party to include the territorial sea within the scope of the Convention. So far three States (Bulgaria, Denmark and the United Kingdom) have extended the scope of the Convention to their territorial sea. In States which do not exercise this option, the Convention will apply in the exclusive economic zone but not the territorial sea. The International Group submitted a paper in April 2014 to the International Maritime Organisation Legal Committee reminding States that they may not avail themselves of the right of direct action conferred under the Convention to "wreck" incidents that occur in the territorial sea unless the scope of the Convention has been extended.

Insurance requirements

Registered owners of ships of 300 gross tonnage or more registered in a State party or entering or leaving a port in the territory of a State party, will need insurance cover arrangements which meet the requirements of the Convention and a certificate from a State party attesting that such insurance is in force. That certificate must be carried on board at all times.

The Convention closely follows the strict liability and insurance provisions which currently apply under the Civil Liability Convention (CLC) Bunker Convention.

Certification and pooling of liability under certificates

Following decisions taken by all Club Boards in the International Group, it has been agreed that Clubs will issue the required Wreck Removal Convention "blue cards" to enable Members to obtain Certificates from States parties.

Notwithstanding that Clubs in the International Group do not usually provide shipowners with primary P&I war risks cover, it has been further agreed that Associations will pool all liabilities incurred under certificates issued, including otherwise excluded liabilities, up to, but not exceeding, the amount of the liability so certified. Policy defences and exclusions will continue to apply in the usual way in respect of liabilities arising otherwise than under Certificates. The Convention provides that for compulsory insurance purposes liability under Certificates shall not exceed the limits calculated in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976), as amended by the 1996 Protocol. The Convention also provides an exclusion from liability for acts of war (the definition of war does not include terrorism) and for damage wholly caused by the intentional act of a third party.

The Club will issue blue cards on condition that the Member agrees that where any payment by the Association under the certificate is in respect of war risks, the Member shall indemnify the Association to the extent that such payment is recoverable under the Member's P&I war risks policy or would have been recoverable if the Member had maintained and complied with the terms and conditions of a standard P&I war risks insurance policy, and that there shall be assigned to the Association all the rights of the Member under such insurance and against any third party. By requesting a blue card the Member will be deemed to have agreed this condition.

It is therefore necessary that all Members ensure they have in place P&I war risks cover on standard terms with a separate limit for P&I liabilities.

State certificates

It is clear that there will be a significant administrative requirement on States parties to issue a substantial number of certificates.

Ships registered in a State party must obtain a certificate from that State. This will be accepted as sufficient evidence of insurance when calling at any port or terminal in another State party.

Ships registered in a State which is not party to the Convention but which perform voyages to countries that are parties should obtain a certificate from a State party. The Secretariat of the International Group is in contact with administrations in a number of States parties and will identify those willing to issue Certificates for vessels which do not fly their flag. The Club will provide further information in due course.

Blue cards

Clubs will provide further information about when they will be in a position to process applications for blue cards.

States have already been informed that there is a growing practice amongst Clubs in the International Group to issue blue cards in electronic format. Electronic blue cards can be forwarded by members in electronic format to the relevant authority of the State issuing the State certificate. It should be noted that IMO Circular Letter 3464 encourages States parties to “accept blue cards issued by a member of the International Group of P&I Association (P&I Clubs) when it is possible to verify the blue card from the P&I Club’s website”.

States party to the Convention (as at 10 October 2014)

Country/Territory	Deposit Date	Date of Country Entry into Force
Bulgaria*	08/02/2012	14/04/2015
Congo	19/05/2014	14/04/2015
Denmark*	14/04/2014	14/04/2015
Germany	20/06/2013	14/04/2015
India	23/03/2011	14/04/2015
Iran (Islamic Republic of)	19/04/2011	14/04/2015
Malaysia	28/11/2013	14/04/2015
Morocco	13/06/2013	14/04/2015
Nigeria	23/07/2009	14/04/2015
Palau	29/09/2011	14/04/2015
United Kingdom*	30/11/2012	14/04/2015

* Denotes States that will apply the convention to the territorial sea

Convention definitions and terms used in this circular

“Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator or owner of the ship, “registered owner” shall mean such company.

“Ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

"Wreck", following upon a maritime casualty, means:

- (a) a sunken or stranded ship; or (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

"Hazard" means any condition or threat that: (a) poses a danger or impediment to navigation; or (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

"Convention area" means the exclusive economic zone (EEZ) of a State party, established in accordance with international law or, if a State party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

Territorial sea normally extends 12 nautical miles from the coastal baseline. The EEZ starts at the seaward edge of the territorial sea and extends to a distance of up to 200 nautical miles from the coastal baseline.

All Clubs in the International Group have issued similar circulars.