



LEGAL COMMITTEE
89th session
Agenda item 7

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PLACES OF REFUGE

Provision of financial security to authorities in relation to vessels granted a place of refuge

Submitted by the International Group of P and I Clubs (International Group)

SUMMARY

Executive summary: This document sets out the proposals of the International Group of P and I Clubs (International Group) on providing financial security to authorities in relation to vessels granted a place of refuge.

Action to be taken: Paragraph 7

Related documents: -

Introduction

1 The thirteen P&I Clubs which are members of the International Group of P&I Clubs (International Group) are mutual insurers and provide cover for the third party liabilities of shipowners. The Clubs between them provide this insurance for approximately 90% of the world's ocean-going tonnage.

2 The Clubs took an active part in the debates which led to the successful formulation of the CLC/Fund, HNS and Bunkers Conventions, which provide *inter alia* for compulsory insurance evidenced by State-issued certificates and direct action against the insurer, for those liabilities covered by the Conventions. The International Group is also taking part in the current discussions which are intended to result in a Wreck Removal Convention (WRC). It is proposed by States that this Convention will also provide for State certification and direct action.

3 The International Group has followed with great interest the discussions which have taken place in IMO and elsewhere in relation to places of refuge. The International Group believes that the great majority of those liabilities which a shipowner may incur when seeking and being granted a place of refuge, in the main, liability for pollution and wreck removal, are already covered (CLC/Fund), or will be covered when the HNS, Bunkers and wreck removal conventions (the framework Conventions) enter into force. At that point, port and other authorities granting refuge to a vessel will then be adequately secured.

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4 The International Group provides cover under its Rules in respect of the generality of the third party liabilities incurred by shipowners, including those provided under the above-mentioned conventions.

5 Only one of the four framework Conventions is currently in force. For the reasons referred to above, the International Group believes that it would be premature for IMO to decide at present that there is a compelling need to draft a further convention relating solely to places of refuge, as has been suggested by some, until the remaining framework Conventions have entered into force and their effect in relation to places of refuge has been determined.

6 The International Group is conscious of the concerns of port and other authorities, that, in the absence of the entry-into-force of all the framework Conventions, they currently lack appropriate security when granting a vessel refuge. In order to address these concerns, the International Group has drafted a standard form letter of guarantee (attached at annex). When a Club is in a position to provide security, it is proposed that it should do so on the basis of this standard text, thereby avoiding a delay in negotiating the terms of security at a time when delay could be critical. The amount of US\$10 million has been inserted in the text as an indicator of the probable maximum amount of security that would be necessary in any particular case, but that could be varied by agreement up or down, according to the circumstances of an individual case.

Action requested of the Legal Committee

7 The Legal Committee is invited to take note of the content of this document and its annex and to comment or decide as appropriate.

ANNEX

**STANDARD LETTER OF GUARANTEE TO BE GIVEN TO PORT OR PROPER
AUTHORITY IN RELATION TO A SHIP SEEKING ENTRY INTO A PLACE OF
REFUGE**

“Dear Sirs,

Heading – details of ship, casualty and place of refuge

In consideration of:

- 1 your agreeing to the entry into port of other place of refuge of the (name of ship) and;
- 2 your agreeing not to arrest or detain the (name of ship) or any other ship or property in the same or associated ownership, management, possession or control;

and upon condition that:

- 1 such refuge is given; and
- 2 the (name of ship) or any other ship or property in the same or associated ownership, management, possession or control is not arrested or detained by you;

we (name of Club) hereby undertake to pay you, within 14 days of receipt by us of your written demand, such sum or sums as may be found by the final unappealable judgement of a Court of competent jurisdiction (or name of specific Court having jurisdiction) or agreed in writing between us to be due to you from (name of Owners) the Owners [(name of Bareboat Charterers) the Bareboat Charterers] of the [name of ship] in respect of (i) the removal, destruction or marking of the wreck of the [name of vessel] and/or (ii) any pollution clean-up or pollution prevention expenses (individually and collectively “the Claims”), provided always that our liability hereunder shall be:

- 1 limited in any event to the total aggregate sum of US\$10 million (ten million United States dollars), less
 - (a) any amounts we (name of Club) have paid under any Certificate of Financial Security issued by us or on our behalf in respect of or relating to the Claims; and
 - (b) any amounts paid or payable by (name of Owners) the Owners [(name of Bareboat Charterers) the bareboat charterers] of the (name of ship) or by us in respect of or relating to the Claims, whether paid under this guarantee or otherwise; and
 - (c) any amount equal to any limitation fund(s) constituted by us and/or (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the (name of ship) may have to limit their liability under any applicable law; and

- 2 without prejudice to or waiver of:
- (a) any rights (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the same (name of ship) may have to limit their liability under any applicable law of convention;
 - (b) any rights (including the right to limit liability) or defences which we (name of Club) may have under any applicable law or convention.

We hereby further undertake, when called upon to do so, to instruct solicitors in (name of appropriate city) to accept service of any proceedings issued on your behalf in connection with the above incident and hereby confirm that we have irrevocable instructions and authority from (name of Owners) Owners [(name of bareboat charterers), the bareboat charterers] of the (name of vessel) so to do and further to agree that any claim of each party against the other and all disputes between the parties arising from this incident shall be exclusively determined by a competent court (or name of specific court).

This guarantee shall be governed by and construed in accordance with law.”
