

# CIRCULAR

20th July 2021

To All Members whose vessels trade in Indonesian Waters

## **IMO CONVENTION LIMITS AFFECTING THE ASSOCIATION'S MEMBERS TRADING IN INDONESIAN WATERS**

There are three main IMO Conventions which Indonesia has now ratified affecting the minimum limits of liability required by the Association's Members trading in Indonesian waters.

Under all three Conventions limits of liability are measured in Special Drawing Rights (SDRs). The SDR is based on a basket of international currencies comprising the US Dollar, Euro, Japanese Yen, Pound Sterling and Chinese Renminbi. The value of an SDR fluctuates from day to day depending on the value of each of these currencies. For the purposes of calculating the appropriate conversion the Club uses the current exchange rate of 1 SDR = 1.425 USD.

### **1) International Convention on Civil Liability for Oil Pollution Damage ('CLC Convention')**

Came into force in Indonesia on 1/7/1978.

(A) What type of vessel needs to comply with the CLC Convention?

The Convention applies to all seagoing vessels actually carrying petroleum products in bulk as cargo, but only ships carrying more than 2,000 tons of petroleum products are required to maintain insurance in respect of oil pollution damage.

(B) What does the CLC Convention cover?

The Convention covers pollution damage resulting from spills of persistent petroleum products suffered in the territory (including the territorial sea) of a State Party to the Convention. It is applicable to all vessels actually carrying petroleum products in bulk as cargo, ie laden oil tankers.

The Convention places the liability for such damage on the owner of the vessel from which the polluting petroleum product escaped or was discharged. The Convention introduces strict liability for shipowners. The shipowner cannot limit liability if it is proven that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The Convention requires vessels covered by it to maintain insurance or other financial security in sums equivalent to the owner's total liability for one incident.

(C) Defences under the CLC Convention are very limited. They are restricted to proving that the pollution damage:

(i) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(ii) was wholly caused by an act or omission done with intent to cause damage by a third party; or

- (iii) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids.

(D) Limits of liability required under the CLC Convention

The compensation limits are as follows:

- For a vessel not exceeding 5,000 gross tonnage, liability is limited to 4.51 million SDR. (Special Drawing Rights (1 SDR = USD 1.425 as of July 2021)
- For a vessel 5,000 to 140,000 gross tonnage: liability is limited to 4.51 million SDR plus 631 SDR for each additional unit of tonnage
- For a vessel over 140,000 gross tonnage: liability is limited to 89.77 million SDR

**(2) International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ('Bunker Convention')**

Came into force in Indonesia on 4/7/2014

(A) What type of vessel needs to comply with the Bunker Convention?

The Bunker Convention applies to all seagoing vessels but only ships or barges of 1,000 GT or more are required to maintain insurance or other financial security in respect of bunker pollution damage

(B) What does the Bunker Convention cover?

The Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer pollution damage caused by spills of oil carried as fuel in vessel's bunkers.

"Pollution damage" means:

- (i) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from a vessel, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (ii) the costs of preventive measures and further loss or damage caused by preventive measures.

(C) Defences under the Bunker Convention are very limited. These are restricted to proving that the pollution damage:

- (i) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (ii) was wholly caused by an act or omission done with intent to cause damage by a third party; or
- (iii) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(D) Limits of liability required under the Bunker Convention

The shipowner and the person or persons providing insurance or other financial security may limit liability under any applicable national or international regime, but in all cases liability shall not exceed the amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976), as amended by the Protocol of 1996.

The LLMC 1976 Protocol of 1996 compensation limits, applying since 08/06/2015, are as follows:

- For ships not exceeding 2,000 gross tonnage: 1.51 million SDR. (Currently about USD 2.25m)
- For larger vessels, the following additional amounts are used in calculating the limitation amount:
  - For each ton from 2,001 to 30,000 tons, 604 SDR
  - For each ton from 30,001 to 70,000 tons, 453 SDR
  - For each ton in excess of 70,000 tons, 302 SDR

**3) Nairobi International Convention on the Removal of Wrecks 2007 ('Wreck Removal Convention')**

Came into force in Indonesia on 20/7/2020.

(A) What type of vessel needs to comply with the Nairobi Wreck Removal Convention?

The Nairobi Wreck Removal Convention applies to all vessels but only ships or barges of 300 GT or more are required to maintain insurance in respect of wreck removal liability

(B) What does the Wreck Removal Convention cover?

The Convention provides a legal basis for coastal States who have ratified the Convention to remove, or have removed, from their coastlines, wrecks which may have the potential to affect adversely the safety of lives, goods and property at sea, pose a hazard to the safety of navigation or to the marine and coastal environments, or both. The treaty also covers any prevention, mitigation or elimination of hazards created by any object lost at sea from a vessel (e.g. lost containers).

The Convention makes shipowners financially liable for, and requires them to take out insurance or provide other financial security to cover the costs of, wreck removal.

The Convention defines "Wreck", following upon a maritime casualty, as:

- (i) a sunken or stranded vessel; or
- (ii) any part of a sunken or stranded, vessel including any object that is or has been on board such a ship; or
- (iii) any object that is lost at sea from a vessel and that is stranded, sunken or adrift at sea; or
- (iv) a vessel 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.

- (C) Defences under the Wreck Removal Convention are very limited. These are restricted to proving that the maritime casualty that caused the wreck:
- (i) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
  - (ii) was wholly caused by an act or omission done with intent to cause damage by a third party;
  - (iii) as wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids.

(D) Limits of liability required under the Wreck Removal Convention

The shipowner and the person or persons providing insurance or other financial security may limit liability under any applicable national or international regime, but in all cases liability shall not exceed the amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976), as amended by the Protocol of 1996.

The LLMC 1976 Protocol of 1996 compensation limits, applying since 08/06/2015, are as follows:

- For ships not exceeding 2,000 gross tonnage: 1.51 million SDR. (Currently about USD 2.25m)
- For larger ships, the following additional amounts are used in calculating the limitation amount:
  - For each ton from 2,001 to 30,000 tons, 604 SDR
  - For each ton from 30,001 to 70,000 tons, 453 SDR
  - For each ton in excess of 70,000 tons, 302 SD

### Financial Security

Separate evidence of insurance or financial security is required for each of the three Conventions. This can be provided by the Association, upon the application of the Members or their representatives, in the form of Certificates of Insurance known as a 'Blue Card' which may be submitted to the Indonesian Director of Sea Communications ('Seacomm') to satisfy their requirements.

The Managers are on hand to assist their Members with any questions or concerns which they may have in this regard and may be contacted in the usual manner.

Yours faithfully

The Board of Directors

**Maritime Mutual Insurance Association (NZ) Limited**