

## TO ALL MEMBERS

24 September 2012

Dear Sirs

### **Entry into force of the Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the Liability of Carriers of Passengers by Sea in the Event of Accidents (the “PLR”)**

The PLR will apply in all European Union (EU) and European Economic Area (EEA) Member States<sup>1</sup> from 31 December 2012. The Regulation essentially gives effect to the key provisions of the *Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974* as amended by the *2002 Protocol* (the “Convention”), together with the *2006 IMO Reservation and Guidelines for Implementation of the Convention* covering war risks (the “Guidelines”). A significant feature of the PLR is that it extends the provisions of the Convention to certain categories of passenger ships engaged in domestic sea going voyages<sup>2</sup>, unless the Member State or EEA State takes steps to defer application of the Regulation to such voyages. It also adds a specific obligation to compensate for loss of or damage to mobility equipment and provides that the carrier shall make advance payment sufficient to cover immediate economic needs where the death of or personal injury to a passenger is caused by a shipping incident<sup>3</sup> as defined in the Convention.

As of 28 August 2012, eight States have acceded to the Convention, which will enter into force twelve months after the tenth State has ratified/acceded. The Convention will therefore enter into force **after** the Regulation takes effect. It is possible that the Convention will enter into force in the 2013/14 policy year and, when it does so, there will be two distinct and separate regimes (the PLR and Athens Convention) in force and applicable. By virtue of the EEA Treaty, EEA States have an obligation to implement and apply the PLR by 31.12.2012.

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<sup>1</sup> EU membership is comprised of the 27 States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. EEA States: Iceland, Norway and Liechtenstein. Croatia will accede to the EU on 1 July 2013 and will apply the Regulation from 31/12/2012.

<sup>2</sup> The Athens Convention 2002 applies only to “international carriage”. Article 1.9 defines international carriage as meaning “any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State”.

<sup>3</sup> “Shipping incident” means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship or defect in the ship.

An update to members will be issued closer to the time of entry into force of the Convention.

### **Liability of the Carrier**

The PLR provides a liability, compensation and compulsory insurance system for death of and personal injury to passengers and loss of or damage to luggage and vehicles and provides that the carrier is:

1. Strictly liable to pay compensation for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident up to an amount of SDR 250,000<sup>4</sup> (approx. US\$387,500) per passenger. If the loss or damage exceeds SDR250, 000 the carrier is further liable up to a limit of SDR 400,000 (approx. US\$620,000) per passenger unless the carrier proves he was not at fault; and
2. If the incident is not a shipping incident the carrier is liable up to a limit of SDR 400,000 (approx. US\$620, 0000) per passenger, if the claimant can prove fault or negligence on the part of the carrier.

### **Insurance & Certification requirements**

Ships licensed to carry more than twelve passengers and registered in an EU/EEA Member State or entering or leaving a port in the territory of an EU/EEA Member State, will be required to maintain insurance which meets the requirements of the PLR and to obtain a certificate issued by an EU/EEA Member State attesting that such insurance is in force. The State issued certificate must be carried on board at all times.

The Convention provides that carriers are required to have insurance in place or some other form of financial security to cover liabilities under the Convention up to SDR 250,000 per passenger.

### **Certification and pooling of liability under certificates**

Following consideration by all Club Boards, it has been agreed that Clubs in the International Group will be able to issue the required non war risk PLR "Blue Cards" to enable owners to apply to an EU/EEA Member State for their PLR certificates in advance of 31 December 2012 and that claims arising under the non-war risk blue cards will be poolable within the International Group's pooling and reinsurance arrangements, subject to the US\$2 billion limit placed by the International Group on passenger claims.

The non war risk blue cards will not refer to the PLR but will refer to the Convention since the Certificates to be issued by States in reliance on the blue cards are in a form prescribed in the PLR and this form only refers to the Convention and not to the PLR. The PLR itself does not prescribe a separate PLR blue card or PLR State certificate.

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<sup>4</sup> A Special Drawing Right (SDR) is based on a basket of four key international currencies and is currently equivalent to approx. USD 1.54 or EUR 1.2. Exchange rates can be found on [www.imf.org](http://www.imf.org).

Owners will also be required to obtain a war risks blue card which will be signed by an insurer or other provider of financial security who will in effect guarantee the owners' liability to passengers for injury and death arising out of acts of war and terrorism. The form and procedure for the war risks blue card are contained in the 2006 IMO Guidelines. A lengthy and detailed consultation has taken place over recent months with the Boards of all thirteen Clubs in the International Group on the question of extending the scope of the Group's pooling and reinsurance arrangements to include cover for war and terrorism risks. Under the current arrangements war and terrorism risks are subject to a general exclusion and any change must be agreed to by a three quarters majority. Whilst there was not such a majority in favour of change for the Group Clubs to become primary war risk underwriters, International Group Clubs are continuing to examine alternatives aimed at ensuring that members are in a position to comply with the requirements of the Regulation. Further developments will be reported to members in the near future.

PLR blue cards should not be required for passenger vessels which (i) do not fly an EU/EEA flag and do not call at EU/EEA ports or (ii) are not licensed to carry more than twelve passengers or (iii) operate solely on inland waterways in the EU.

EU/EEA States will issue one PLR State certificate on receipt of a war risk and a non-war risk blue card. The International Group has liaised closely with EU/EEA Member States since the PLR was adopted in May 2009 to facilitate a smooth implementation, and will continue to do so in the run up to its entry into force on 31 December 2012.

### **Issue of Blue Cards**

To comply with the PLR requirements the Blue Card will need to state the name of the ship, the port of registry, the IMO number and the name and full address of the principal place of business of the carrier. Following the approach taken for International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention) Blue Cards, Clubs will insert the address of the registered office unless advised of an alternative address by the Member.

The PLR will become effective approximately seven weeks before the start of the 2013/14 P&I policy year. Members should therefore be aware that blue cards will be issued for the period 31 December 2012 to noon GMT 20 February 2013 and new blue cards will then be needed to cover the new policy year from noon GMT 20 February 2013 to noon GMT 20 February 2014.

### **Issuance of State certificates**

Operators of vessels registered in an EU/EEA Member State need only obtain a State issued certificate from that State. This will be treated as evidence of insurance when calling at any port or terminal in an EU/EEA Member State. Members with ships registered in an EU/EEA Member State are recommended to contact the authorities in that State in order to confirm the application procedures for PLR certificates.

It is hoped that States will agree that vessels registered in a non EU/EEA State will be able to obtain a State issued certificate from an EU/EEA State usually that of the first port of call following the application of the Regulation from 31 December 2012. This certificate will then be treated as evidence of insurance when calling at any port or terminal in an EU/EEA Member State. The International Group is continuing to liaise with States to seek agreement on such an approach.

States are already aware that Clubs in the International Group issue Blue Cards in electronic format (pdf) which can be forwarded by members in electronic format to the relevant authority of the State issuing the State certificate. This practice is widely accepted by States for the purposes of the Bunkers Convention and the International Convention on Civil Liability for Oil Pollution 1992 (CLC).

### **Application to Domestic carriage**

The PLR will apply to Class A & Class B vessels engaged in domestic sea-going voyages from 31.12.12 in EU/EEA States, unless States choose to defer application as follows:

- Class A vessels until four years after the date of application of the PLR i.e. 31.12.16, and
- Class B vessels until six years after the date of application of the PLR i.e. 31.12.18.

In addition, States have the option of extending the scope of the PLR to include all ships in domestic sea-going traffic. In practice this means including Class C and Class D vessels.

Annex I to this document defines Class A, B, C and D vessels under Article 4 of EU Directive 98/18/EC.

Not all EU/EEA States have taken a policy decision yet on application of the PLR to those classes of vessels engaged in domestic sea going voyages. It is understood that the current position of those States that have taken a decision is as follows:

PLR to apply to domestic carriage and Class A, B, C and D vessels from 31.12.2012

- Netherlands
- Finland
- Denmark

PLR to apply to Class A and B from 31.12.12

- Croatia (has given notice that it will apply the Regulation from 31.12.12 as part of the *acquis communautaire* ahead of formal accession to the Union on 1 July 2013)
- Poland
- France

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PLR not to apply to domestic carriage until 31.12.2016 for Class A vessels and 31.12.2018 for Class B vessels in

- UK
- Italy
- Belgium
- Latvia

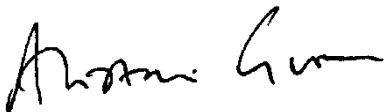
Members engaged in carriage in single State or the domestic waters of an EU/EEA State are encouraged to contact the authorities in that State to determine the State's application of the PLR to domestic waters.

#### **PLR requirement to provide passenger information**

PLR article 7 introduces an obligation on carriers and performing carriers to provide information to passengers, which explains their rights under the Regulation. To facilitate the provision of this information, the European Commission is required to prepare and publish a publicly accessible summary of the PLR, including a summary of the information to be promulgated by carriers and performing carriers. The International Group is liaising with the European Commission and further clarification on this issue will be provided in due course.

All clubs in the International Group will be issuing similar circulars.

Yours faithfully



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## Annex I

### **COUNCIL DIRECTIVE 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships**

#### *Article 4*

#### **Classes of passenger ships**

Passenger ships are divided into the following classes according to the sea area in which they operate:

'Class A' means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D.

'Class B' means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

'Class C' means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2.5 m significant wave height is smaller than 10% over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

'Class D' means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1.5m significant wave height is smaller than 10% over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.