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Standard Bulletin - Bunkers Certificates for Offshore Units

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Certification requirements and issuance of Blue Cards and State certificates for FPSOs, FSUs and drilling units (offshore units) – problem solved!

The introduction of the Bunkers Convention has presented the owners of offshore units such as FPSOs, FSUs and drilling units with a potentially costly problem in obtaining the required certification. Now the Standard Club has succeeded in providing a simple and cost-effective solution to this problem and is able to provide Bunkers Blue Cards acceptable to the relevant authorities at no cost to its members.

Certification requirements

Following ratification by the required number of States, with the requisite combined gross tonnage, the International Convention on Civil Liability for Bunker Oil Pollution 2001 (the "Bunkers Convention") entered into force in State Parties on 21 November 2008. The Convention provides a liability, compensation and compulsory insurance system for the victims of oil pollution damage caused by spills of bunker and operational oil. The registered owner of any ship over 1,000 gross tons, of any type whatsoever, registered in a State Party or entering or leaving a port in the territory of a State Party, is required to maintain insurance which meets the requirements of the Convention and to obtain a certificate issued by a State Party attesting that such insurance is in force. The State-issued certificate must be carried on board at all times.

The Convention definition of a "ship" is "any seagoing vessel and seaborne craft of any type whatsoever", which would encompass offshore units such as FPSOs, FSUs and mobile drilling rigs. Such units are therefore required to have Bunkers Blue Cards if they are flagged by a State Party or if they are entering or leaving a port in a State Party. Unfortunately the drafting of the Bunkers Convention inadvertently created a problem for the operators of offshore units, since this definition of "ship" is different to that in the 1976 Limitation Convention (LLMC).

LLMC specifically excludes from the definition of ships which are entitled to limit "floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof". This would not be a problem, except that the Bunkers Convention provides that the insurer of a ship may be sued directly for the owner's liability under the Convention to a limit calculated in accordance with LLMC as amended by the 1996 protocol. Because the LLMC definition of "ship" potentially excludes mobile offshore drilling and production units, there is a possibility that the insurer's liability under the Bunkers Convention might not be subject to limitation. This was clearly not the intention of the legislators, who cannot have had this anomaly in mind.

Blue Cards

By providing Bunkers Blue Cards in respect of such units, a club could potentially expose itself to unlimited liability, which it clearly cannot do, especially as the club has limited reinsurance. Other clubs have dealt with this in different ways, for example by the use of a single-purpose vehicle to provide the required Bunkers Blue Cards for these units, but this solution gives rise to a significant cost for the member disproportionate, in our view, to the additional risk.

The Standard Club believes that it is unacceptable to impose a cost on its members for the provision of certification which they are required to have in order to comply with international regulatory requirements. The solution proposed by the Standard Club is to issue Bunkers Blue Cards for offshore units but specifically incorporating reference to the limit calculated by applying the limitation amounts in LLMC (as amended) to the gross tonnage of the unit.

Discussions with flag states have confirmed that it was not intended, when drafting the Bunkers Convention, to require the owner of any type of ship to provide unlimited insurance cover, and states have proved extremely helpful in seeking a workable and cost-effective solution to the problem faced by our members. We are delighted to report that the Standard Club's Bunkers Blue Cards issued on this wording have been accepted by all those State Parties with which offshore units entered with the club are flagged, including the UK, Liberia and the Bahamas.



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Bunkers Certificates for Offshore Units

Bio-chem, nuclear and war risks exposure

Under the Bunkers Convention shipowners will be liable for claims arising out of bio-chemical and nuclear risks. This presents a further problem for the issuers of Bunkers Blue cards, since the P&I cover given by the club in respect of offshore units does contain exclusions in respect of bio-chem and nuclear risks, but it would not be possible for the club to exclude these risks under any Bunkers Blue Cards it might provide.

The problem of uninsured risks has been dealt with in the case of seagoing cargo and passenger ships, where these risks are limited to war risks, by an agreement by the IG clubs to pool these exposures on the basis that members will indemnify the clubs where there is an underlying war risks P&I cover. The position in respect of offshore units is different, in that these exposures are wider, encompassing nuclear and bio-chemical risks as well as war risks, and in that they cannot be pooled. Other clubs have taken the view that they should not take any exposure for such risks, for example, in the case of the single-purpose vehicle referred to above, by providing cover for these exposures included in the cost of the Bunkers Blue Card for each unit.

The Standard Club believes that it is important to find cost-effective solutions for all members. It is important that our members operating mobile offshore units should not be disadvantaged compared to members in conventional cargo-carrying trades, when both are subject to the same regulatory requirements, even though those regulations were inadvertently drafted in a way which created potential problems for offshore members.

We also believe that our members should be able to decide for themselves whether or not they wish to purchase a particular insurance, particularly for risks as remote, albeit potentially serious, as pollution caused by nuclear and bio-chemical risks. We have therefore advised our members that where the club issues a Bunkers Blue Card for an offshore unit, it does so on condition that the member agrees to indemnify the club for any payment by the club under the certificate in respect of liabilities which are either excluded from club cover or otherwise not insured by the club. By requesting a Bunkers Blue Card the member is deemed to have agreed to these conditions.

Since the Standard Club's solution does not involve the club in any additional cost, and only very little more risk, we do not charge for issuing Bunkers Blue Cards for offshore units entered with the club.

