MEMBER SERVICING

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Providing a high-quality level of service is of the utmost importance and is one of the club's key objectives. One of the ways that we look to achieve this is by having teams, or syndicates, looking after members' entries in the club. These syndicates are organised on a regional basis or according to business type, and focus on the claims, underwriting and documentary requirements of their designated members.

The club has grown in recent years, and this has led us to look carefully at the balance of work, and we are making some adjustments in the way our operational teams are structured. With effect from June, the syndicate that has until now looked after members in the Americas, UK and Europe will be divided into two syndicates. One syndicate will look after the club's members from the Americas and UK. Within the other, the team that looks after the club's northern European ocean-going members will co-operate and work with the team that looks after the European Standard London Class small craft members, in a combined overall syndicate.

There will be some promotions and consequential staff movements between syndicates to ensure that we have strong teams supporting all areas of the business. We appreciate how important it is for members to maintain the relationships that they have built up with the claims handlers and underwriters who they know and who have developed a strong understanding of their business. We have as far as possible sought to maintain those relationships within the new structure.

TOUGH NEW RULES FOLLOWING CHANGE TO AUSTRALIAN POLLUTION LAWS

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MARITIME LEGISLATION AMENDMENTS ACT 2011

On 21 November 2011, the Australian Parliament finalised the amendments to two pieces of Australian legislation concerning pollution, the Navigation Act 1912 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983. The Maritime Legislation Amendments Act 2011 received assent on 3 December 2011 and now has force of law. The amendments were driven by recent maritime pollution incidents in Australia, involving damage to reef and oil spillage, notably the cases of the *Pacific Adventurer* and *Shen Neng 1* in 2009 and 2010 respectively.

The Act creates new offences for oil pollution incidents, broadens the scope of liability and increases penalties for pollution offences. The changes have generated some debate and, as a minimum, should be a cause for parties to reconsider their potential liabilities when trading in or around Australia.

PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS) ACT 1983 (PSPPSA)

The PSPPSA was amended to:

1. Extend existing penalties to all ships within the Exclusive Economic Zone (EEZ) and all Australian ships outside the EEZ.
2. Expand the list of persons who may be charged with an offence to include 'charterers'.
3. Increase the maximum penalty:
   - for individuals: from A$55,000 to A$2.2m.
   - for corporations: from A$275,000 to A$11m.

These changes reflect a departure from previously settled law in Australia and many other common law jurisdictions.

The scope of liability has been widened in that these strict liability offences are likely to affect time and voyage charterers, irrespective of their degree of control over the day-to-day operations of a ship that may cause pollution. Previously, a discharge of oil or an oily mixture from a ship into the sea would be the responsibility of the owner and master of a ship. The discussion papers surrounding the amendments provide little detail as to the rationale behind this change and there is some doubt as to the intention of the legislators and the Australian Maritime Safety Authority (AMSA). Nevertheless, it is thought that the local courts are likely to give the term 'charterer' a broad interpretation.

There are limited defences available, but deploying these would likely necessitate overcoming high threshold tests.

No doubt the Australian government will hope that these changes will act as a general and serious deterrent against pollution.

NAVIGATION ACT 1912

The Navigation Act 1912 was amended:

1. To create an offence if the master of a ship negligently or recklessly operates a ship in a manner that causes pollution or damage to the marine environment or negligently or recklessly fails to prevent such pollution or damage. The court is empowered to take into account certain factors when considering liability, including but not limited to, the characteristics of the ship, type of cargo, state of visibility and presence of other ships.

2. To extend liability whereby, in certain cases, a person can be penalised as an accessory to a breach of these new obligations. This includes a person who has been '*directly or indirectly, knowingly concerned in, or party to, a contravention*'. This might include charterers.

3. Such that the maximum applicable penalties for breach are now A$660,000 for individuals and A$3.3m for corporations. The penalty is said to increase where there is an aggravated breach, namely a breach involving serious harm to the environment, or for being an accessory to an aggravated breach.

CONCLUSION

The impact of these new rule changes has not been tested. Members, especially those chartering ships operating in Australian waters, are advised to mitigate their effect by:

- Actively reviewing risk management practices and SMS procedures.
- Consider seeking indemnities from their trading partners.
- Reviewing their insurance arrangements.

GUARDCON GATHERS MOMENTUM – SOME ISSUES TO CONSIDER

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INTRODUCTION

The demand for armed and unarmed guards to protect crew, ships and cargo transiting high-risk areas has created a unique maritime security industry and has led to a surge in the number of providers marketing their 'specialist' teams to owners, operators and their insurers. There is presently very little regulation governing the activities of these companies. While there are a number of well-established, professional and highly reputable maritime security firms in operation, there are also many in their infancy which do not apply the same high standards.

Until recently, security providers have been contracting with owners on their own standard terms, which have given rise to a number of issues.

GUARDCON IS BORN

Responding to industry demand for a clearly worded and comprehensive standard contract, on 26 March, BIMCO published GUARDCON, a standardised contract for the employment of security guards on ships, with the aim of raising the bar in terms of the minimum standards that security companies must meet. In what is one of the first contracts of its kind, it envisages (albeit in the last resort) the use of lethal force to ensure the success of a commercial venture rather than a military operation. A necessary but controversial part of GUARDCON are the rules for the use of that force and these terms need to be agreed in advance between owners and their security provider in conjunction with flag states and other interested parties.

Although GUARDCON runs to 16 pages with six annexes, this should not present difficulties to reputable security providers. If problems do arise members should question whether an alternative provider should be engaged. An intended consequence of the introduction of this contract is either to encourage providers to raise their standards to meet the demands of the market that they seek to operate in or that they fall away.

This article highlights a few of the issues that members should be aware of when contemplating the use of GUARDCON.

THE CONCEPT OF THE CONTRACT

Members will be familiar with the concept of a 'knock-for-knock' allocation of risk, i.e. each party bearing responsibility for damage to their own property and personnel. GUARDCON embraces this concept, and to ensure the division of risk is maintained in practice, the security provider is required to obtain insurance cover of a minimum of $5m and to ensure that guards are also required to sign a 'waiver' in respect of any rights they may have against the ship and/or owner.