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Circular letter No.3145

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To: All IMO Member States
United Nations and specialized agencies
Intergovernmental organizations
Non-governmental organizations in consultative status
Liberation movements

Subject: **Implementation of the International Convention on Civil Liability for
Bunker Oil Pollution Damage, 2001**

Pursuant to the request of the Legal Committee, at its ninety-seventh session (15 to 19 November 2010), the Secretary-General has the honour to transmit herewith:

- the conclusions of the Bunkers Correspondence Group (BCG)*, at annex 1;
- the draft Assembly resolution on the issuing of the bunkers certificates to ships that are also required to hold a CLC certificate, at annex 2; and
- the Guidelines for accepting documentation from insurance companies, financial security providers and International Group of P&I Associations (P&I Clubs), at annex 3,

as approved by the Legal Committee at that session.

* The BCG was established by the Legal Committee at its ninety-fifth session (30 March to 3 April 2009), to facilitate further ratifications and to promote harmonized implementations of the Bunkers Convention.

ANNEX 1

CONCLUSIONS OF THE BUNKERS CORRESPONDENCE GROUP (BCG) AS APPROVED BY THE LEGAL COMMITTEE AT ITS NINETY-SEVENTH SESSION (15-19 NOVEMBER 2010) – Extracts from document LEG 97/7

The interface between the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC), and the Bunkers Convention

11 ... the majority of the BCG members argued that oil tankers falling within the provision of the CLC are not excluded from the definition of ship under article 1, paragraph 1 of the Bunkers Convention. As a consequence, oil tankers holding CLC certificates are also required to hold bunkers certificates. Furthermore, it was pointed out that the CLC has a more narrow definition of oil and that it is possible for an oil tanker to carry oil not covered by the CLC definition of oil (for example, non-persistent oil or lubricating oil used in the operation of the ship, as opposed to carried as cargo) and, therefore, it is of paramount importance that CLC ships also carry bunkers certificates. Lastly, it was argued that it would be extremely burdensome for a State to determine, in every case and at all times, the use to which a particular oil tanker may be put.

12 The majority expressed themselves in favour of a resolution* on the subject matter as this would provide a pragmatic solution to the problem and a common interpretation and understanding of how to resolve the issue. A common understanding and united interpretation were considered important because oil tankers without bunkers certificates could risk difficulties with Port State Control as they are often targeted for inspections.

Insurance and liability for claims where the LLMC does not apply (claims concerning Mobile Offshore Drilling Units (MODUs) or claims covered by a reservation under article 18, paragraph 1 of the LLMC)

19 The conclusion on this issue is that MODUs are covered by the Bunkers Convention and by the insurance requirement under article 7. The amount of insurance for all types of ships falling under the definition of ships in the Bunkers Convention, including MODUs, is to be calculated under the LLMC or a national system, but should in no case exceed the maximum LLMC amount in force internationally. The reference made in article 7, paragraph 1 of the Bunkers Convention specifies the maximum amount of insurance required if no lower limit is applicable. This does not, however, prevent a State Party from having higher national limitation amounts, but the Bunkers Convention insurance will be the special provisions, for example, direct action does not apply to these higher limits.

20 Taking into account the argument put forward by the P&I Clubs**, Member States are urged to consider allowing MODUs the right to limitation of liability in accordance with the LLMC in national law in order to ensure insurance coverage under the Bunkers Convention.

* The text of a draft resolution on the issuing of bunkers certificates to ships that are also required to hold a CLC certificate, as prepared by the BCG and approved by the Legal Committee at its ninety-seventh session for submission to the twenty-sixth extraordinary session of the Council for consideration and, thereafter, for submission to the twenty-seventh regular session of the Assembly for adoption, is contained at annex 2 to this Circular letter.

** The observer from the P&I Clubs pointed out that it might be difficult to obtain insurance coverage if the insurer is not allowed to limit its liability in accordance with the principles of the LLMC. On this issue, many States recognized that it may be necessary for national law to allow for limitation of liability in accordance with the LLMC to ensure insurance coverage under the Bunkers Convention.

The issuance of bunkers certificates to new buildings

26 ... The conclusion is that when a hull is registered it follows from the Bunkers Convention that it is the registered owner who should take out insurance when the hull is seagoing and the State of registry which should issue the insurance certificate, and when there is no registered owner, the issue of determining the owner should be left to individual States. In all other cases it is left to national legislation.

The procedure for accepting P&I Clubs' certificates and certificates from Clubs outside the International Group of P&I Associations and insurance companies

31 Bearing in mind that most States accept Blue Cards issued by the P&I Clubs, all States Parties are recommended to follow this practice. As for Blue Cards issued electronically, such a practice is also recommended when it is evident that the e-mail comes from the P&I Clubs. The P&I Clubs have informed that all Clubs maintain lists of vessels on their websites which are accessible to States Parties and which indicate whether a Blue Card has been issued, thereby providing a means for easy verification. This does not prevent a State Party from requiring further documentation in case of doubt.

36 It was generally agreed that the adoption of common guidelines^{*} would ease the States Parties' ability to exchange information on the acceptance of, *inter alia*, P&I Clubs outside the International Group. Consequently, this would provide for mutual recognition and thus minimize administrative burdens.

37 Accordingly, it is recommended that States Parties in general exchange information on which insurance companies and/or P&I Clubs they have accepted.

Additional issues: name and address of the owner; name and principal place of business of the registered owner; cancellation of coverage and withdrawal of the Bunkers certificate

49 It is recommended that States Parties in general co-operate on the issue of certificates and furthermore provide the information stipulated in the Bunkers Convention which is relevant for the issuance of the insurance certificate. It is further recommended that States Parties, to avoid unnecessary bureaucracy and to assist other States Parties when withdrawing the certificate/cancelling the certificate, inform of the reason for the withdrawal/cancellation.

* The guidelines, as prepared by the BCG and approved by the Legal Committee at its ninety-seventh session, are contained in annex 3 to this Circular letter.

ANNEX 2

DRAFT RESOLUTION ON THE ISSUING OF BUNKERS CERTIFICATES TO SHIPS THAT ARE ALSO REQUIRED TO HOLD A CLC CERTIFICATE

The ASSEMBLY,

RECALLING Article 33 of the Convention on the International Maritime Organization concerning the functions of the Legal Committee,

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage 1992, as amended (hereinafter referred to as "the Civil Liability Convention"),

RECALLING FURTHER the adoption by the International Conference on Liability and Compensation for Bunker Oil Pollution Damage, held at the Organization's Headquarters in 2001, of the International Convention on Civil Liability for Bunker Oil Pollution Damage (hereinafter referred to as "the Bunkers Convention"),

RECALLING ALSO that, according to both the Civil Liability Convention and the Bunkers Convention, the registered owner is required to obtain liability insurance and hold certificates attesting that such insurance is in force,

ACKNOWLEDGING that the Bunkers Convention has a broader scope of application than the Civil Liability Convention, because both the definition of ship and the types of oil included are more comprehensive,

ACKNOWLEDGING ALSO that the Bunkers Convention does not provide a clear guidance on the subject matter and may lead to States Parties to the Bunkers Convention having differing interpretations on whether both certificates should be required,

DESIRING to remove ambiguity and assist present and future States Parties to the Bunkers Convention to apply it in a uniform manner,

BEING CONSCIOUS of the need to provide certainty in the application of the Bunkers Convention, thereby assisting shipowners, ship operators, ship managers and ship companies in avoiding unnecessary delay or detention of ships and desiring to minimize administrative burdens imposed on the shipping industry,

CONCERNED that, if shipowners do not have effective and adequate insurance coverage or equivalent financial security, eligible claimants may not obtain prompt and adequate compensation,

HAVING CONSIDERED the recommendations made by the Legal Committee at its ninety-seventh session,

1. RECOMMENDS that:

- .1 all States Parties to the Bunkers Convention issue the certificate prescribed by the Bunkers Convention even when the ship also holds a CLC certificate;

- .2 all States Parties to the Bunkers Convention require ships having a gross tonnage greater than 1,000, flying their flag or entering or leaving ports or offshore facilities in their territory, to be insured and to hold a bunkers certificate as prescribed by the Bunkers Convention even when the ship already holds a CLC certificate; and
- .3 States Parties should avoid taking action that could cause unnecessary bureaucracy.

2. REQUESTS that States Parties bring the content of this resolution to the attention of shipowners, ship managers, shipping companies and all other parties concerned, for information and action, as appropriate.

ANNEX 3

GUIDELINES FOR ACCEPTING DOCUMENTATION FROM INSURANCE COMPANIES, FINANCIAL SECURITY PROVIDERS AND P&I CLUBS

The purpose of these guidelines is to provide States Parties to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter "the Bunkers Convention") guidance for accepting Blue Cards or similar documentation from insurance companies.

A State Party to the Bunkers Convention should accept Blue Cards issued by a member of the International Group of P&I Associations (hereinafter "P&I Clubs") when it is possible to verify the Blue Card from the P&I Clubs website.

A State Party to the Bunkers Convention should, when receiving a Blue Card or similar documentation from insurance companies, financial security providers and P&I Clubs outside the International Group, verify the financial standing and hence the solvency of such company in order to make sure that prompt and adequate compensation for the victims is available.

1 Exchange of information

In order to minimize the administrative burdens States Parties should, when appropriate, exchange information including which P&I Clubs outside the International Group they have accepted in the process of issuing Bunkers Certificates.

2 Criteria for acceptance

The following list of criteria may be used by States Parties for accepting Blue Cards or similar documentation including from P&I Clubs outside the International Group:

- (i) adequate documentation on the company's financial standing and hence solvency. Adequate documentation could be in the form of audited financial statements from the past three years duly authenticated and signed by the auditor;
- (ii) adequate documentation on approval by the relevant authority that the company is eligible to carry out insurance business in the country of the authority;
- (iii) adequate documentation on reinsurance coverage on claims met by the company for liability incurred under the Bunkers Convention;
- (iv) a guarantee by the company and its parent company, if one exists, that it will cover liability incurred under the Bunkers Convention and up to the limits of liability according to the International Convention on Limitation of Liability for Maritime Claims 1976, as amended;
- (v) a statement to the effect that liability incurred under the Bunkers Convention due to an act of terrorism is covered; and
- (vi) the rating that the insurance company and/or its reinsurers hold by an independent and internationally recognized rating agency.