

GUIDANCE NOTE 05/2023

INSURANCE REQUIREMENTS FOR CAYMAN ISLANDS VESSELS

This Guidance Note replaces Guidance Note 01/2012 which is now withdrawn.

To: OWNERS, MANAGERS, CHARTERERS, CREWING AGENCIES AND MASTERS OF CAYMAN ISLANDS SHIPS (INCLUDING PRIVATE AND COMMERCIAL YACHTS).

1. BACKGROUND

- 1.1 The purpose of this notice is to –
 - 1.1.1 draw attention to Cayman Islands Law regarding maintenance of insurance on ships;
 - 1.1.2 provide information on EU requirements;
 - 1.1.3 advise what level of insurance will be required;
 - 1.1.4 advise how to demonstrate this; and
 - 1.1.5 warn of the potential penalties for not carrying such insurance within the EU.
- 1.2 In accordance with the Cayman Islands Merchant Shipping Act, all Cayman Islands vessels wherever they may be and all other vessels whilst in Cayman Islands waters, regardless of size, type or mode of operation, require third party insurance to cover their liabilities under the Act and it is an offence not to have such insurance in place (See also paragraph 2.1).
- 1.3 In accordance with a European Union (EU) directive all seagoing vessels regardless of type, size, mode of operation or flag, of 300 gross tonnage (gt) and above, must carry insurance cover against liability arising from maritime claims which as a minimum, meets the limits of liability specified in the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976, referred to hereafter as LLMC 96, in order for the vessel to enter any EU port (see also paragraph 3.4 for information on the claims which may be limited under LLMC 96).

2. EXISTING CAYMAN ISLANDS MERCHANT SHIPPING LAW

- 2.1 All Cayman Islands flagged vessels are required under Section 54 of the Merchant Shipping Act (2021 Revision) (MSA 2021) to maintain third party liability insurance. Section 54 provides that:
- “(1) *Every Cayman Islands ship shall carry insurance cover against risks of loss or damage to third parties, and in particular:*
- (a) *in respect of the shipowner’s liabilities to a crew member under Part V; and*
- (b) *without prejudice to the relevant provisions of Part XIV, claims in respect of loss or damage caused by any cargo carried on board the ship.*
- (2) *Every ship anchoring in or trading in or from Cayman Islands waters or entering a port in the Cayman Islands shall carry insurance cover against risks of loss or damage to third parties, and against wreck removal expenses in an amount satisfactory to the Receiver of Wreck.*
- (3) *If a ship is in contravention of this section, the owner is guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars.”*
- 2.2 All vessels of 300gt and above are additionally required to carry third party Protection and Indemnity (P&I) insurance to meet their liabilities under the Wreck Removal Convention and evidenced by a Certificate issued by the CISR to verify maintenance of this insurance as implemented by the Merchant Shipping (Wreck Removal Convention) Regulations, 2017. See also Shipping Notice 02/2017 (as amended).
- 2.3 All vessels of greater than 1000gt are required to carry third party (Protection and Indemnity (P&I)) insurance to meet their liabilities under the Bunkers Convention and evidenced by a Certificate issued by the CISR to verify maintenance of this insurance. as implemented by sections 348A and 349 of the MSA 2021. See also Shipping Notice 04/2008 (as amended).
- 2.4 The limit of liability, and therefore the minimum level of insurance to be maintained, under the Bunkers Convention is governed by the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC96) which is implemented in sections 394 – 418 of the MSA 2021. Whilst the same applies under the Wreck Removal Convention, the limits of liability for wreck removal are disapplied for Cayman Islands ships meaning that liability is unlimited. Some examples of the types of claims that may be limited under the LLMC regime are detailed in paragraph 3.4 of this Shipping Notice.
- 2.5 All oil tankers carrying 2000 tonnes or more of persistent oil as cargo are required to carry third party (P&I) insurance to meet their liabilities under the Civil Liability Convention (CLC) and evidenced by a Certificate issued by the CISR to verify maintenance of this insurance as implemented by sections 348 and 349 of the MSA 2021.

3. THE EU INSURANCE DIRECTIVE (DIRECTIVE NO: 2009/20/EC)

- 3.1 The EU Directive, which was required to be implemented by all EU Member States by 01 January 2012, requires maintenance of third party insurance (or other financial guarantee) against liability arising from the vast majority of maritime claims, that meets as a minimum, the applicable limits of liability set out in LLMC 96 for all vessels, regardless of type, size, mode of operation or flag, including private yachts, of 300 gt and above entering EU ports. The provisions of the Directive also apply to all EU flagged vessels regardless of location. As per paragraph 2.2 all vessels of 300gt and above are already required to maintain third party cover to meet their liabilities under the Wreck Removal Convention.
- 3.2 Compliance with the Directive is demonstrated by maintaining onboard the vessel evidence of acceptable third party insurance, such as a Certificate of Entry into a P&I Club, for example, one of the members of the International Group of P&I Clubs (IG). Unlike the Wreck Removal Convention, the Bunkers Convention or CLC no State Issued Certificate is required.
- 3.3 Whilst holding this insurance is without prejudice to any required by the international Conventions with which the vessel must comply, the standard cover policies applied by the IG for a vessel to achieve compliance with these Conventions would generally¹ cover all other maritime claims permitted to be limited under LLMC. As such cover, would therefore comply with the Directive's provisions.
- 3.4 The term "maritime claim" is not defined in the EU Insurance Directive. However, it is understood that the Directive was only ever intended to mandate the current shipping industry practice of having insurance which covers the vast majority of maritime claims subject to limitation under the LLMC 96 – this does not include every conceivable maritime claim. In practice, this would mean to the level that is currently provided as standard by the P&I Clubs in order to cover:
- 3.4.1 claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting there from;
 - 3.4.2 claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
 - 3.4.3 claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
 - 3.4.4 claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such a ship;

¹ Shipowners are advised to clarify any inclusions/exclusions in their insurance cover directly with their insurer

- 3.4.5 claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
 - 3.4.6 claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss of which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.
- 3.5 Self-insurance or a financial guarantee is permitted, under the Directive, instead of P&I cover provided that this provides at least the same level of cover as the LLMC 96 limit for that vessel and that it covers all claims subject to limitation under that Convention. However, the United Kingdom has indicated that any vessel trading in their ports using self-insurance or a financial guarantee would need written approval from the Secretary of State for Transport indicating that this cover is sufficient to meet the vessel's potential liabilities. EU Member States are likely to have similar requirements (see also paragraph 4.5) and therefore, this will not be permitted for Cayman Islands vessels.
- 3.6 Port State Control authorities in the EU will be checking vessels for maintenance of the required insurance during inspections and may impose penalties including heavy fines, detention and expulsion for vessels which do not have the requisite insurance and proof of this insurance. Expulsion would mean that the vessel cannot operate anywhere in the EU until appropriate insurance is purchased.

4. WHAT IS REQUIRED TO COMPLY BY CAYMAN ISLANDS VESSELS

- 4.1 All Cayman Islands vessels, including private yachts already require some form of third party insurance meeting the requirements of section 54 of the MSA 2021.
- 4.2 Additionally, any vessel operating anywhere in the EU should ensure that this insurance covers the vast majority of maritime claims subject to limitation under the LLMC 96 as detailed in paragraph 3.4 of this Shipping Notice.
- 4.3 All Cayman Islands flagged vessels of 300gt and above should already satisfy the requirements set out in the EU Insurance Directive through their normal P&I insurance.
- 4.4 Proof of the maintenance of this insurance should also be carried onboard the vessel at all times within EU waters.
- 4.5 Self-insurance or a financial guarantee instead of P&I cover is likely to prove complicated and time consuming as each vessel using such cover would probably need written approval from each authority they are visiting on the voyage and therefore will not be permitted on Cayman Islands vessels. It is therefore recommended that cover be provided by a P&I Club or other reputable insurer.