

Liabilities and responsibilities

A summary of recent regulatory and related developments worldwide impacting the tanker industry

New oil spill compensation limits

Amendments to the international oil spill compensation regime entered into force on November 1, 2003; they raise by 50 per cent the limits of compensation payable to victims of pollution by oil from oil tankers.

The amendments to the 1992 Protocol of the International Convention on Civil Liability for Oil Pollution Damage (CLC Convention) and to the 1992 Protocol of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IOPC Fund) were adopted in October 2000. The CLC Convention makes the shipowner strictly liable for damage suffered as a result of a pollution incident, and the amendments raise the limits payable to 89.77 million Special Drawing Rights (SDR) (approximately \$127 million) for a ship over 140,000 gross tons. The previous limit was 59.7m SDR (\$85m).

The IOPC Fund amendments raise the maximum amount of compensation payable from the IOPC Fund for a single incident, including the limit established under the CLC amendments, to 203m SDR (\$289m), up from 135m SDR (\$192m). However, if three states contributing to the Fund receive more than 600 million tonnes of oil per annum, the maximum amount is raised to 300,740,000 SDR (\$428m), up from 200m SDR (\$285m).

While the CLC Convention regulates the shipowner's liability, the IOPC Fund is made up of contributions from oil importers, and the two treaties are configured to ensure a sharing of the burden of compensation. If an accident at sea results in pollution damage exceeding the compensation available under CLC, the Fund is available to pay an additional amount.

In May 2003 IMO adopted a protocol establishing an International Oil Pollution Compensation Supplementary Fund to supplement the compensation available under the 1992 Civil Liability and Fund Conventions with an additional, third tier of compensation. The protocol is optional and participation is open to all IMO member states which are parties to the 1992 Fund Convention.

The new Supplementary Fund will come into existence three months after at least eight states receiving a combined total of 450 million tonnes of contributing oil have ratified the protocol. To date only one country has ratified the new Fund.

Spain wins IOPC Fund advance for Prestige

To facilitate the fast-tracking of oil pollution claims stemming from the Prestige sinking, the Spanish government is set to receive an advanced payment of approximately 58m euros (\$68m) from the IOPC Fund. The payment represents 15 per cent of the total 383.7m euros claim submitted by Spain on October 2, 2003. Payments for the spill are pro-rated and, ultimately, the Prestige claims are likely to far exceed the total amount of compensation available. However, despite the relatively modest sum involved, at least the advanced payment enables Spain to expedite the claims.

EU single-hull tanker rules in force

The new European Union Regulation 1726/2003 on single-hull tankers took effect on October 21, 2003. As of that date no single-hull tankers carrying heavy grades of oil, regardless of flag, are permitted to enter or leave ports or offshore installations or anchor in areas under the jurisdiction of the European Union (EU) member states. In addition, all Category 1 tankers delivered before October 21, 1980 are no longer able to fly the flag of EU countries and are not permitted to enter or leave EU ports or

offshore installations. The same restrictions will apply to all other Category 1 tankers on reaching 23 years of age until 2005, after which all Category 1 tankers will no longer be allowed to call at EU ports or fly EU flags.

From October 21, 2003 all Category 2 and 3 tankers delivered in 1975 or earlier are denied the right to fly EU flags or visit EU ports. All such ships will have to be phased out by 2010.

Also, from 2005 all Category 2 and 3 tankers - regardless of flag - over 15 years of age will have to have passed a Condition Assessment Scheme (CAS) inspection prior to visiting an EU port or anchoring in EU waters.

There are exemptions from these requirements for tankers below 5,000 dwt, and for ice-strengthened tankers (see page 19 of the September/October issue of Tanker Operator).

The practical effect of the measures is that, at a stroke, approximately 10 per cent of existing single-hull tankers have been prevented from trading with Europe. The number of countries covered by the new measures will increase from 15 to 25 in May 2004 when 10 new countries join the EU.

IMO "disturbed" at new EU tanker rules

In a press release issued following the entry into force of the new EU single-hull tanker rules on October 21 (see above), IMO secretary-general Bill O'Neil said he was "disturbed" by the "unilateral character" of the measures and said they would have "negative repercussions" on an industry that was international in nature.

"Shipping safety, security and environmental standards must be established on a global basis," he said. O'Neil added that the EU ban "flew in the face" of the IMO's response to the 1998 Erika sinking incident which, he argued, was a reasoned yet rapidly taken international response that had been "received with satisfaction" by the European Union.

He also pointed out that the IMO had already agreed to "adopt a fast track approach" to accommodate the EU's concerns following the sinking of the tanker Prestige in November 2002. Draft IMO measures are expected to be finalised at a special meeting of the Marine Environment Protection Committee in December 2003.

Building "fit-for-purpose" ships

The third meeting of a unique tripartite forum of shipowners, shipbuilders and classification societies met in Seoul, South Korea in late September to continue its dialogue and progress towards a unified approach on designing and building fit-for-purpose ships. The initiative was launched following concerns that due to increasing commercial pressures, modern ships are being built to standards that may not be as high as they should be. Industry is working proactively to address common concerns on standards, shared responsibilities in the delivery of fit-for purpose ships and cooperation on matters of mutual interest.

The Seoul meeting was coordinated by the Round Table of International Maritime Associations (RT) and chaired by Intercargo chairman Fred Tsao. Delegates agreed to establish various task forces to work on issues such as the definition of "goal-based standards" for newbuildings as adopted by the IMO Maritime Safety Committee (MSC); review of the requirements for permanent means of access (PMA); means to provide appropriate protection of bunker tanks on new ships; issues associated with extended shipyard guarantees; coordination of shipyard capacity and shipbuilding demand information.

Goal-based new ship construction standards is a new item on the MSC work programme IMO member governments and non-governmental organisations have been invited to submit to the 78th session of MSC in May 2004 specific proposals on goal-based standards and design philosophy in order to clarify and define their meaning.

The shipbuilders present at the Seoul meeting confirmed their support for the adoption of the so-called Green Passport, a document listing hazardous materials present on board a ship on delivery, for updating by the owner throughout the vessel's life.

The next full meeting of the tripartite forum will be in late 2004, probably in Japan.

New shipbreaking guidelines

An international group of experts on the shipbreaking industry, meeting in Bangkok on October 7-14, has adopted guidelines intended to provide safer working conditions in facilities engaged in the scrapping of ships. The Guidelines on Safety and Health in Shipbreaking were endorsed by representatives from Bangladesh, China, India, Pakistan, and Turkey and officials from the International Metalworkers Federation, the International Maritime Organization, the Secretariat of the Basel Convention, and the International Labor Organisation (ILO). Resource persons from Canada, Germany, Norway, Korea, the UK and the US were also present.

EU to enforce member flag state criteria

Ms Loyola de Palacio, the EU Commissioner responsible for maritime safety, reported to the European Parliament on September 22, 2003 that next year the European Commission would propose minimum criteria governing the performance of EU flag state administrations, probably before March 2004. It is understood that the criteria would be based on existing voluntary flag state criteria developed by IMO but that such requirements would be made mandatory for EU flags.

IMO is also currently drafting a flag state auditing scheme and the European Commission is expected to participate actively in the finalisation of this work.