# IUMI Policy Agenda

## 8. Limitation of liability

The insurance of marine liabilities helps to protect third party rights. Since the liability (e.g. for environmental damages caused by an oil-spill) can be extraordinarily high, sufficient insurance coverage for these liabilities is crucial. Many international liability conventions rule compulsory insurance requirements, and direct action against insurers is partly ruled as well.

Marine liability insurance is mainly provided by Protection and Indemnity Clubs (P&I Clubs) organized as mutual insurers with shipowners as members. The 13 largest P&I Clubs are organized under the umbrella of the International Group of P&I Clubs (IG).

While the member companies of IUMI's member associations predominantly provide insurance coverage for property damages to the hull and machinery of vessels or offshore energy units, and cargoes in transit, some of the companies also offer marine liability insurance through reinsurance arrangements or directly through covers such as 'fixed premium P&I'.

**Potential gaps in liability insurance for 'non-IG insurers'**

In April/May 2014, the IMO Legal Committee (LEG 101) adopted Guidelines for accepting insurance companies, financial security providers and IG P & I Clubs to verify the compulsory insurance requirements. With a reference to these guidelines, six member states suggested in a submission to LEG 107 in March 2020 that further consideration may be desired of problems encountered in some oil pollution incidents involving insurers that are not members of the IG. The belief is that this is an issue that affects not only the 1992 CLC, but also other IMO liability conventions.

The issue is also being examined by the governing bodies of the IOPC Funds, and during the 108th session of the IMO Legal Committee in July 2021, the IOPC Funds provided an update on the problems encountered in some oil pollution incidents involving 'non-IG insurers'. 147 incidents were identified of which 44 incidents either had no insurer or the insurer was unidentified. Of the remaining 103 incidents, 20 incidents were found to be insured by non-IG insurers and 6 of these resulted in the IOPC Funds providing compensation before the shipowner's limit of liability had been reached. Even though the majority of the incidents only pertain to the Civil Liability and Fund Conventions, it is in the IOPC Funds' view a more general problem that needs to be addressed to ensure that victims can be properly compensated in the event of a marine incident. In the case of incidents covered by the Civil Liability and Fund Conventions, victims can be

compensated by the IOPC Funds if oil pollution damage occurs in a State that is a member of the Fund conventions. However, this safety net does not exist for the other liability and compensation conventions where no fund exists and only the shipowner and their insurer can provide compensation. These problems can be grouped into three categories:

- Proper implementation of international conventions: State Parties to the Conventions have an obligation to ensure that they have properly implemented the Conventions, including any subsequent amendments.
- Proper understanding of international convention requirements: Not all parties involved in the international conventions may have a proper understanding of the requirements. For example, non-IG insurers may not be aware that the conventions provide a right to direct-action against an insurer.
- Proper application/enforcement of international conventions: For international conventions with compulsory insurance requirements, States are required to ensure that ships flying their flag do not operate without having the appropriate State issued certificate validating that insurance or other financial is in place. States are also required to ensure that ships entering or leaving ports in their States have a valid State issued certificate. When States are issuing Convention certificates, they need to ensure that the insurance in place, including the amount, complies with the Convention requirement. The amount of insurance is intended to cover all of their liabilities under the specific international conventions, but also requires dedicated amounts.

LEG 108 further noted the intention of Canada to submit a proposal for a new output at LEG 109, and expressed support for discussing these insurance problems. To address the issues, it is proposed that material be developed to assist Flag States, Port State control officers, shipowners, and insurers. Revisions could also be made to existing IMO guidelines to ensure proper understanding, implementation and application of the liability and compensation conventions.

Following LEG 108 and in preparation of LEG 109 in March 2022, a group of Flag States, the IG and IUMI took part in informal discussions on a new output for the 2022-2023 biennial agenda with a target completion date of 2024. The purpose is to develop guidance for the proper implementation and application of IMO liability and compensation conventions.

The proposal for a new output was submitted by five member States in December 2021 with the following potential fields of action:

- The review of the Guidelines for accepting insurance companies (Circ. No. 3464),
- The development of educational and practical information sources.

The new output was agreed by LEG in March 2022, and an informal intersessional group will prepare input for further consideration by LEG 110 in March 2023.

**1910 Collision Convention**

The Comité Maritime International (CMI), at the recent Executive Council meeting, established an international working group to consider the review of one of CMI's most successful conventions, the Collision Convention 1910. The Legal Committee of the IMO has shown interest in assisting the CMI in piloting this project. The CMI Intersessional Working Group aims to provide input of what the new convention should include prior to LEG 110.

The initiative for a new IWG flows from two sources. First, the IMO is reviewing a series of instruments, including the Collision Convention 1910, as may be required to accommodate the concept of autonomous ships. Secondly, the Italian Maritime Law Association set up its own working group in 2019 to canvass its membership on the expediency of reviewing the Collison Convention 1910 along with the 1952 conventions concerning civil and penal jurisdiction where a collision occurs.

The 1910 convention covers very important aspects of collision liability. It has been adopted by numerous countries. The review could include the scope of application of a revised convention, court jurisdiction over collisions and compulsory insurance for collision liability. All aspects of the 1910 convention could be considered. IUMI is represented in the CMI WG by Legal & Liability Committee Chair Charles Fernandez and IUMI SG Lars Lange.

*Relevant authority / organisations and documents*

Limitation of liability

- **IMO - Legal Committee**
  - ***LEG106/13***: Proposal to add a new output under the work programme on 'Unified interpretation on the test for breaking the owner's right to limit liability under the IMO Conventions', submitted by Greece, Marshall Islands, ICS and International Group of P&I Clubs, 11 January 2019.
  - ***Resolution A.1165(32):*** Interpretation of Article 5 of the Protocol of 1992 to amend the International Convention on Civil Liability for oil pollution damage, 1969 amending Article V(2) of the International Convention on Civil Liability for oil pollution damage, adopted 15 December 2021.

Non-IG insurers

- **IMO – Legal Committee**
  - ***Circular Letter 3464:*** Guidelines for accepting insurance companies, financial security providers and the IG P & I Clubs, July 2014.
  - ***LEG 107/6:*** Compulsory insurance requirements under IMO conventions and insurance problems, submitted by Canada, Denmark, Italy, Japan, Norway and Republic of Korea, 9 January 2021.
  - ***LEG 108/5****:* Review of insurance problems with non-IG insurers, submitted by IOPC Funds, 20 April 2021.

- ***LEG109/13:*** Proposal to add a new output under the work programme on the Development of guidance for the proper implementation and application of IMO liability and compensation conventions, submitted by Canada, Denmark, Italy, Japan and United Arab Emirates, 24 December 2021.

- **IOPC Funds**
  - ***IOPC/OCT18/5/5/1****:* The 20 incidents involving the IOPC Funds and non-IG insurers are available in this document.
  - ***IOPC/NOV20/5/5/1****:* Conclusions of the sixth joint Audit Body and the recommended measures and future tasks to be undertaken in respect of the risk relating to 'non-IG insurers'.

*Timeline / important dates*

- LEG 106: 27-29 March 2019.
- LEG 107: 27-30 November, 1 December 2020.
- LEG 108: 26-30 July 2021.
- IMO Council, 34th extraordinary session, 8-12 November 2021.
- IMO Assembly, 6-15 December 2021.
- LEG 109: 21-25 March 2022.
- LEG 110: 20-24 March 2023.

*IUMI will:*

- Monitor developments via the IUMI Legal & Liability Committee and Policy Forum.
- Liaise directly with the IMO LEG as required to represent members' interests.
- Support a new output on addressing problems with so called 'non-IG insurers'.
- If agreed, support the work of the IMO Legal Committee in developing further clarity and education to avoid problems with so called 'non-IG insurers'.
- Explain to IMO Member States and other interested bodies such as the IOPC Funds the practical aspects of insurance related to marine liability insurance of insurance entities not belonging to the IG.