

CIRCULAR REF: 2012/039

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS
ATTENTION INSURANCE DEPARTMENT**

**07 DECEMBER 2012
CGT/PO**

ENTRY INTO FORCE OF THE REGULATION (EC) NO 392/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 APRIL 2009 ON THE LIABILITY OF CARRIERS OF PASSENGERS BY SEA IN THE EVENT OF ACCIDENTS (THE "PLR")

We refer Members to Circular No 2012/032 of 24 September 2012 on the PLR, that will apply in all European Union (EU) and European Economic Area (EEA) Member States¹ from 31 December 2012. The Regulation essentially gives effect to the key provisions of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 as amended by the 2002 Protocol (the "Convention"), together with the 2006 IMO Reservation and Guidelines for Implementation of the Convention covering war risks (the "Guidelines").

As Members have previously been informed, a significant feature of the PLR is that it also extends the provisions of the Convention to certain categories of passenger ships engaged in domestic sea-going voyages², unless the Member State or EEA State takes steps to defer application of the Regulation to such voyages.

As of 29 November 2012, nine States have now ratified or acceded to the Convention, which will enter into force 12 months after the 10th State has ratified/acceded. The Convention will therefore enter into force **after** the Regulation takes effect. It remains possible that the Convention will enter into force in the 2013/14 policy year and, when it does so, there will be two distinct and separate regimes (the PLR and Athens Convention) in force and applicable.

An update to Members will be issued closer to the time of entry into force of the Convention.

¹ EU membership is comprised of the 27 States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. EEA States: Iceland, Norway and Liechtenstein. Croatia will accede to the EU on 1 July 2013 and will apply the Regulation from 31/12/2012. The Regulation also applies to Gibraltar and, in terms of French overseas territories, the insurance and certification requirements also apply to Martinique, Guadeloupe, Réunion, French Guyana, the Territory of the Wallis and Futana Islands, French Antarctic Territories, New Caledonia, Mayotte, Saint Pierre and Miquelon, Saint Martin and Saint Barthélemy.

² The Athens Convention 2002 applies only to "international carriage". Article 1.9 defines international carriage as meaning "any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State".

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Insurance & Certification requirements

Circular 2012/032 outlined the insurance and certification requirements stemming from the Regulation; the ships covered by the Regulation and the need for ships falling within the scope of the Regulation to maintain insurance which meets the requirements of the PLR and to obtain a certificate issued by an EU/EEA Member State attesting that such insurance is in force. Member States will issue one PLR State certificate on receipt of a war risk and a separate non-war risk blue card. The State issued certificate must be carried on board at all times.

The International Group has liaised closely with Member States since the PLR was adopted in April 2009 and understands that some States are now in a position to issue their State certificates and that others will be in a position to do so shortly. Member States are also in the process of issuing guidance to owners informing them of the procedures for applying for a State certificate. Members should contact their registry to obtain the necessary information on the certification procedures to ensure that they are in compliance with the Regulation on 31 December 2012.

Operators of vessels registered in an EU/EEA Member State should obtain their certificate from that State, which will then be accepted as evidence of insurance when calling at any port or terminal in an EU/EEA Member State.

In the case of vessels registered in a non EU/EEA State, the International Group understands that a number of Member States will issue certificates to such vessels if calling at a port in that State after 31 December 2012. Members with such vessels which will be calling at EU/EEA Member State ports should contact the authorities in such States in advance of submitting their applications. The necessary contact information for the EU/EEA Member States can be obtained from the Club.

Members will need two blue cards (war and non-war) in order to obtain their certificates. The Clubs in the International Group will issue the non war PLR blue cards. However, as Members will be aware from the previous Circular, the International Group Clubs are not able to issue war blue cards in reliance on the Group's Pooling and reinsurance programme. Clubs have examined alternative insurance schemes and the Club will provide information separately about how Members will be able to obtain war blue cards.

Application to Domestic carriage

The PLR will apply to Class A & Class B vessels engaged in domestic sea-going voyages from 31.12.12 in EU/EEA States, unless States choose to defer application as follows:

- Class A vessels until four years after the date of application of the PLR ie 31.12.16, and
- Class B vessels until six years after the date of application of the PLR ie 31.12.18.

In addition, States have the option of extending the scope of the PLR to include all ships in domestic sea-going traffic. In practice this means including Class C and Class D vessels. Circular 2012/032 defined Class A, B, C and D vessels under Article 4 of EU Directive 98/18/EC.

Not all EU/EEA States have taken a policy decision yet on application of the PLR to those classes of vessels engaged in domestic sea-going voyages, but the updated position of those States that have taken a decision is as follows:

PLR to apply to domestic carriage and Class A, B, C and D vessels from 31.12.2012

- Netherlands
- Finland
- Denmark

PLR to apply to Class A and B from 31.12.2012

- Croatia
- Poland
- Sweden
- France

PLR not to apply to domestic carriage until 31.12.2016 for Class A vessels and 31.12.2018 for Class B vessels

- UK
- Italy
- Spain
- Belgium
- Latvia
- Germany
- Estonia
- Cyprus (to be formally decided soon)
- Greece
- Ireland (although no Class A vessels on their registry at present)

Not decided yet

- Norway
- Portugal

No Class A or B vessels on their registry

- Malta
- Slovakia

As previously advised, Members engaged in carriage in a single State or the domestic waters of an EU/EEA State are encouraged to contact the authorities in that State to determine the State's application of the PLR to domestic waters.

PLR requirement to provide passenger information

PLR article 7 introduces an obligation on carriers and performing carriers to provide information to passengers, which explains their rights under the Regulation. To facilitate the provision of this information, the European Commission is required to prepare and publish a publicly accessible summary of the PLR, including a summary of the information to be promulgated by carriers and performing carriers. The International Group continues to liaise with the European Commission and understands that this will be published shortly. An update will be provided to Members as soon as this is the case.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

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