



COMITE MARITIME INTERNATIONAL

C M I

International Working Group on Marine Insurance

Guidelines für Mandatory Insurances

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- The International Working Group
- 10 Members from Australia, Belgium, Chile, China, France, Germany, Japan, Russia, UK, USA
- Chairman: Dieter Schwampe

Work Programme

- Mandatory Insurances under International Conventions
- Political Risks in Insurance Contracts
- Transfer of Rights under Insurance Policies

Mandatory Insurances:

- Task:
 - „to consider mandatory insurance provisions in international conventions and give recommendations on whether Guidelines for national governments should be drafted to assist in the formulation and proper implementation of national law giving effect and providing a legal framework for them”

International Conventions:

- CLC 1992 – Oil Pollution
- HNS – Hazardous Cargo
- Bunker Convention
- Wreck Removal Convention
- Athens Protocol 2002 – Passenger Injury

International Conventions:

■ Common Features:

- Particular Liability, e.g. oil pollution
- Direct Action against Insurer
- Limited Liability
- Restriction on Defences
- State Certification

EU Directive on the Insurance of Shipowners for Maritime Claims (23 April 2009):

- Liability for Maritime Claims
- = subject to Limitation under Convention on Limitation of Maritime Claims (LLMC 1996)
- Insurer Certification

Questionnaire - Sent to all national Maritime Law Associations in August 2010

■ 53 Questions

■ Areas:

- Licensing
- Certification
- Statutory Law
- Jurisdiction and Applicable Law
- Particulars on Direct Action
- State Liability

Licensing:

- Only national License or also foreign Licenses accepted ?
- Consequences of unlicensed Business ?
- Obligatory Business for licensed Insurers ?

Certification:

- Foreign Certifications:
 - Subject to any investigations ?
 - Rejected in case of doubts ?
- National Certifications:
 - License sufficient ?
 - Insurance conditions determined ?
 - Financial Standing determined?

Statutory Law:

- Does it exist ?
- What conflict of Laws Rules -
 - if the claimants are nationals but the insurer is not ?
 - If the claimants are foreigners but the insurer is national ?
 - If all are foreigners ?

Jurisdiction/Proceedings:

- Are there special rules for direct actions ?
- Are Arbitration clauses permissible ?
- Do decisions against the party liable bind the insurer ?
- Can party liable and insurer be sued as joint debtors ?

Particulars of Direct Action:

- Are there statutory requirements for Claimants ?
- Are special rules for burden and measure of proof ?
- Can the right for direct action be assigned ?
- Can the insurer file a cross action against his insured ?
- How is limitation of the insurer effected ?

State Liability:

- Is there any -
 - if there is no insurance contract at all ?
 - if the cover does not conform with the conventions ?
 - if the insurer is not financially stable and cannot satisfy the claim ?



Thank you for your interest