

RULES GOVERNING THE MANDATORY MARINE INSURANCE TO COVER LEGAL LIABILITIES ARISING OUT OF ANY MARITIME RELATED ACCIDENTS

MIA MARINA CIRCULAR 2009-01, February 04, 2009

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Pursuant to Presidential Decree No. 474 and Executive Order No. 125 as amended, and Republic Act No. 9295 and its Implementing Rules and Regulations (Sections 1 & 2, Rule IX) the following rules are hereby adopted:

I. OBJECTIVES

1. To ensure that domestic shipowners/operators and those shipowners/operators referred to in Section VIII herein will be able to meet their financial responsibility for any legal liability arising out of any maritime related accidents.
2. To ensure that adequate marine insurance coverage against legal liabilities and expenses are secured to answer for claims for damage or compensation to risks not covered under existing regulations.

II. COVERAGE

This Circular shall apply to all persons, corporations, partnerships, cooperatives and entities operating any type of ships, 20 GT and above, including wooden hulled ships 35 GT and above, for hire or compensation in the domestic trade, and tankers which require coverage as stipulated in MC 184.

The following ships shall not be covered:

1. Government owned ships not engaged in commerce
2. Non-motorized wooden hulled ships
3. Yachts and pleasure crafts

III. DEFINITION OF TERMS

1. Protection and Indemnity (P&I) - refers to a form of marine insurance to cover a shipowner's and/or operator's liability to others and generally excludes damage to the insured's own property.
2. P&I Mutual Club – refers to a group of shipowners and bareboat charterers grouped together by becoming members of a Protection and Indemnity Mutual Association to cover any liabilities arising out of the management or navigation of their vessels.
3. P&I Associations' Premiums (also referred to as "Calls") – refers to the amount required as contribution to the mutual fund computed on a rate per GT of the entered ship.
4. Advance Call – refers to the amount required at the commencement of the policy year of the P&I Club to be collected from its members. Often, the advance call is only an installment premium, and at the same time the Club publishes its estimate of the additional call which it anticipates will be necessary to balance the accounts for that year with the actual amount being determined some six months after the end of the policy year.

5. Supplementary Call – refers to additional call, where the claims in any one year exceed the advance call. An owner will be offered cover on a mutual basis, the concept of mutuality being fundamental to the operation of P&I Clubs. This means that in any one year, the premium collected from the Members should be identical to total expenses and claims arising out of incidents during the same period. In this way, the Club makes neither a profit nor loss. To achieve this result it is possible that members may be required to pay a supplementary premium during the course of a policy year in the event that claims exceed the premium initially collected.
6. Renewal Date – refers to Noon of February 20[th] each year, as the major proportion of all P&I Club entries are renewable at the same time – Noon, on 20[th] February, and any new entry (vessels) attaching mid-year has an initial period of insurance up to the next 20th February and thereafter is entered for 12 months.
7. Adequate Insurance – is an insurance cover which complies with the minimum requirements of this Circular.
8. Full Insurance – is an insurance which covers all the risk set out in Section V.
9. Philippine Domestic Insurance Company Market – refers to local insurance companies registered in the Philippines, which have been founded with local Philippine capital and comply with local Philippine regulations. The Philippine Domestic Insurance Market excludes local branches, affiliates, offices or agencies of or any other type of connection with an overseas parent company.
10. Maritime related accidents – are ship related incidents such as, but not limited to collision, grounding, sinking, capsizing & any other extraordinary incidents involving ships.
11. Members of the International Group of P&I Clubs – internationally recognized P&I Clubs as listed in the appendices hereunder.
12. The National Mutual Protection and Indemnity Association of the Philippines Inc. – the local Philippine P&I Mutual Club specifically incorporated by means of an association of Philippine shipowners plying domestic trade with the purpose of providing the adequate insurance to those shipowners who are unable to secure full cover with Members of the International Group of P&I Clubs and from the identified fixed premium underwriters in Appendix 4*.

I V. GENERAL PROVISIONS

1. Only ships with P&I coverage (as defined herein) shall be allowed to operate in the domestic trade.
2. The P&I coverage may be secured from a P&I Association (as defined herein).
3. The adequate marine insurance cover shall be secured from the National Mutual Protection and Indemnity Association of the Philippines Inc. and full cover as set out in Section III Paragraph 8 shall be secured from Protection and Indemnity associations which are Members of the International Group of P&I Clubs or the National Mutual Protection and Indemnity Association of the Philippines Inc. in Appendix Number 1 or from the identified fixed premium underwriters or the Philippine Domestic Insurance Company Market in Appendix 4.
4. The tankers which require cover as stipulated in MC 184 shall secure P&I cover from the list of accredited insurers in Appendix 5*.
5. Current Members entered with the International Group of P&I Clubs in Appendix 1 and those covered by the identified fixed premium underwriters in Appendix 4 – shall have the right to maintain their existing cover, but shall not have the right to reduce their existing cover to the adequate insurance as defined herein. Should their existing cover be less than the mandatory minimum adequate insurance, they shall be obliged to change their cover to the adequate insurance as defined herein.
6. Shipowners who are not able to secure the adequate or the full marine insurance shall be obliged to post a

cash bond equivalent to the liabilities stated herein to be deemed compliant with this circular.

7. The ships covered by International Group of P&I Clubs are deemed in compliance with this Circular provided the liabilities arising from wreck removal and oil pollution are included.

V . SPECIFIC PROVISIONS

1. The adequate marine insurance shall cover the following:

- a. Liabilities arising from wreck removal
- b. Liabilities arising from pollution

2. Non-coverage of any of the above mentioned liabilities shall be construed as non- compliance of this Circular and shall subject the concerned persons, corporations, partnerships, corporations and entities to appropriate penalties as provided herein.

3. The following shall be added to the adequate marine insurance in the second phase of the program:

- c .Loss of life, illness and personal injury (passenger/third parties/Seamen)
- d. Liabilities arising from collisions
- e. Liabilities arising from damage to fixed and floating objects/facilities
- f. Liabilities to cargo (loss, shortage and damage)

4. The non-motorized ships, however, shall be covered only from liabilities arising from wreck removal except those that are utilized to carry petroleum products/petroleum by products or other cargoes, which may cause pollution.

5. The concerned persons, corporations, partnerships, cooperatives and entities shall submit to the MARINA copy of the mandatory insurance cover within five (5) days from date of renewal.

6. Shipowners who will comply with this circular by 20 February 2009, shall be given a one-time discount equivalent to five percent (5%) of the tonnage fee due for the year computed using the rates for first quarter payments.

7. The MARINA shall publish through, an advisory a list of P&I compliant companies/vessels as of 20 February 2009, and another list after the (90)-day grace period.

VI. LIMITS OF LIABILITY

Coverage

Gross Tonnage

Minimum Limit of Liability

- 1. Liabilities arising from Wreck Removal 20/35 (WHS) and above * US\$1.5M per loss
- 2. Liabilities arising from Oil Pollution 20/35 (WHS) or and above other substances * US\$1.5M per loss

In the event of a simultaneous removal of wreck and a pollution incident, the National Mutual Protection and Indemnity Association of the Philippines Inc. will cover a combined single limit of any one event of US\$3,000,000.

VII. SANCTIONS AND PENALTIES

Violation

Sanction/Penalty

1. Operating without adequate marine insurance First Company Offense – suspension until compliance +P1,000 per GT per vessel involved in the accident

2[nd] Company Offense – suspension until compliance +P1,300 per GT per vessel involved in the accident

3[rd] and succeeding Company Offense – suspension until compliance +P1,500 per GT per vessel involved in the accident

2. Submission of fraudulent documents

First Company Offense – suspension until compliance +P1,500 per GT per vessel involved in the accident, without prejudice to filing of criminal charges in a proper Court

2[nd] Company Offense – suspension until compliance +P1,750 per GT per vessel involved in the accident, without prejudice to filing of criminal charges in a proper Court

3[rd] and succeeding Company Offense – suspension until compliance +P2,000 per GT per vessel involved in the accident, without prejudice to filing of criminal charges in a proper Court.

VIII. PORT STATE

All Port State Control shall ensure that foreign-flagged ships and Philippine-flagged ships operating in overseas trade, before entering in Philippine territorial waters, are covered by adequate marine insurance as required under this Circular. A list of accredited insurers for Philippine-flagged ships operating in overseas trade is shown in Appendices 2 & 4, for foreign-flagged non-tanker ships in Appendices 3 & 4 and for foreign-flagged tanker ships carrying persistent oil in Appendix 5.

IX. TRANSITORY PROVISION

Phase 1

Liabilities arising from wreck removal

Liabilities arising from oil pollution

All ships engaged in domestic trade covered under this Circular are hereby given until noon 20[th] February 2009 to secure the required P&I cover in Phase 1 of the provisions of this Circular. An extension of 90 days to comply with this Circular shall be given, upon filing of an Oath of Undertaking stating that compliance is currently being undertaken by the shipowner with either the National Mutual Protection and Indemnity Association of the Philippines Inc. or, in the event of full cover, with the Protection and Indemnity associations which are Members of the International Group of P&I Clubs, a list of which can be found in Appendix 1 hereunder, or from the identified fixed premium underwriters or the Philippine Domestic Insurance Company Market in Appendix 4.

Phase 2

Loss of life, illness and personal injury (Seaman/third parties)

Liabilities arising from collisions

Liabilities arising from damage to fix and floating objects/facilities

All ships engaged in domestic trade covered under this Circular shall be given until a date to be advise to comply with Phase 2 of the provision of this Circular. The adequate marine insurance limits shall be advised at that time.

Phase 3

Loss of life, illness and personal injury (passenger)

Liabilities to cargo (loss, shortage and damage)

All ships engaged in domestic trade covered under this Circular shall be given until a date to be advised to comply with Phase 3 of the provisions of this Circular. The adequate marine insurance limits shall be advised at that time.

X. REPEALING CLAUSE

Any provisions of existing MARINA Circulars, Rules and Regulations, Orders or Decisions which are inconsistent with this Circular are hereby repealed or modified accordingly.

XI. SEPARABILITY CLAUSE

Should any provisions or part of this Circular be declared by competent Authority to be invalid or unconstitutional, the remaining provisions or parts hereof shall remain in full force and effect and shall continue to be valid and effective.

XII. EFFECTIVITY

This Circular shall take effect immediately after publication in a newspaper of national circulation in the Philippines.

Adopted: 04 Feb. 2009

BY THE AUTHORITY OF THE MARINA BOARD:

(SGD.) MARIA ELENA H. BAUTISTA

Administrator

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