

07089.GEN - Convention on the Removal of Wrecks Stemming



FLEET / SAFETY LETTER 07089.GEN

RE: CONVENTION ON THE REMOVAL OF WRECKS STEMMING FROM THE INTERNATIONAL CONFERENCE ON THE REMOVAL OF WRECKS, 2007, AT NAIROBI, 14 --18 MAY 2007.

June 6, 2007

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RE: CONVENTION ON THE REMOVAL OF WRECKS STEMMING FROM THE INTERNATIONAL CONFERENCE ON THE REMOVAL OF WRECKS, 2007, AT NAIROBI, 14 --18 MAY 2007

We all recognize that wrecks, if not removed, may pose significant hazards to navigation and the marine environment, and we all recognize the need to adopt uniform international rules and procedures to ensure their removal. We also all recognize that many wrecks may be located in a state's exclusive economic zone, territory or territorial sea, and must be dealt with expeditiously, while also recognizing the benefits to be gained through uniformity in legal regimes which govern responsibility and liability for removal of the wrecks themselves.

With that in mind, the Conference held at Nairobi, 14 - 18 May 2007, adopted the text of the Nairobi International [Convention on the Removal of Wrecks, 2007](#), which is contained in document LEG/CONF.16/DC/1 enclosed herewith. The Convention is well laid out and clearly identifies the actions which can and need to be taken by affected states and also clearly defines the obligations of masters, owners, and the state of the ship's registry.

This new convention will provide the legal basis for states to remove, or have removed from their Exclusive Economic Zone, wrecks that may pose a hazard to navigation or, because of the nature of their cargo, to the marine and coastal environments, or both.

Most of the delegations at the International Conference were in favor of extending the scope of application of this convention to the territory including territorial seas as most of the wrecks are located in the territorial sea along the coast lines of affected states. After a lengthy debate, an opt-in option was accepted by consensus: Article 3 was then amended as reflected in the document.

The implication in this Convention is the need for comprehensive risk management, and the establishment of some sort of financial security, be it insurance, bank or other guarantees, or other financial product which will cover any liability under this Convention.

Article 12, Compulsory Insurance or Other Financial Security, specifies that the registered owner of a ship must "...maintain insurance or other financial security, such as a guarantee of a bank or similar institution..." to cover liability equal to the limits of liability under national or international limitation regimes, not exceeding that calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976. We read this Article quite widely such that it could include provisions for properly constructed self-insurance programs or properly created and managed captive insurance companies. Article 12 goes on in quite some detail discussing the issuance of a certificate attesting to such financial security.

It is important to note that if the Convention is ratified it will apply to all Vanuatu ships, including fishing vessels, mobile offshore drilling units, etc., above 300 gross tonnage, and all ships calling into Vanuatu Ports.

Vanuatu along with most of the other delegations paid due attention to the wording of the Convention before its adoption by the Diplomatic Conference to ensure sufficient flexibility in complying with the text. Vanuatu as an archipelago has been lucky in that it has been free from any kind of pollution but has, unfortunately, several wrecks which dot its coasts. Vanuatu intends to stay pollution free and it is, therefore, no surprise that Vanuatu supported the adoption of the Convention and the "opt-in" option.

With this in mind, we solicit your comments on the Convention so that Vanuatu's Permanent Representative to the International Maritime Organization, and the appropriate agencies, ministries and departments in Vanuatu, have a clear picture of the Vanuatu shipowners' point of view before making any further decisions relative to the Convention.

One question in particular we would like to have answered is how will your company manage the financial risk if the Convention is ratified?

Please provide your comments as soon as possible so that Vanuatu can formulate its position. We would appreciate receiving those comments no later than 31 July 2007.

Thank you and Best Regards,

Donald J. Sheetz

Executive Vice President