



**REPUBLIC OF
THE MARSHALL ISLANDS**
MARITIME ADMINISTRATOR

Marine Notice

No. 2-011-46

2/15

**TO: ALL SHIPOWNERS, OPERATORS, MASTERS AND OFFICERS OF
MERCHANT SHIPS, AND RECOGNIZED ORGANIZATIONS**

**SUBJECT: Athens Convention Relating to the Carriage of Passengers and Their Luggage
by Sea, 2002, Certification Requirements**

- References:**
- (a) Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002
 - (b) Convention on Limitation of Liability for Maritime Claims, 1976, as amended
 - (c) RMI Maritime Act, 1990 as amended (MI-107), Sections 103 and 155
 - (d) RMI Maritime Regulations (MI-108), Chapter 2, Sections 2.11.2 and 2.11.3, *Compliance with International Conventions, Agreements and National Standards, and Responsibility*
 - (e) RMI Vessel Registration and Mortgage Recordation (MI-100), Chapter III, Section 2, B, 11h, *Proof of Liability Insurance*
 - (f) RMI Marine Notice 1-002-1, *List of Office and Service Locations*

PURPOSE:

This Notice serves to advise all parties that the Republic of the Marshall Islands (RMI) has ratified the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 (the "Convention"), reference (a) above, on 30 September 2014 and deposited its instrument of accession with the International Maritime Organization (IMO) on 27 October 2014. The entry into force of the Convention for the RMI is 27 January 2015 and requires the maintenance of compulsory insurance or financial security, the proof of which coverage shall be through certification. This Marine Notice outlines the Convention requirements, including those for a ship to obtain a certificate of insurance or other financial security to cover financial liabilities.

APPLICATION

- 1.0 The Convention applies to all RMI registered seagoing vessels certified to carry more than 12 passengers.
- 1.1 The Convention declares a carrier liable for damage suffered by a passenger resulting from death, personal injury or damage to luggage if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. Such fault or neglect is presumed, unless the contrary is proved.

- 1.2 The Convention also introduces compulsory insurance, as well as mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents, backed by the requirement that the carrier take out compulsory insurance to cover these potential claims.

DEFINITIONS

2.0 Convention

For the purposes of this Notice, the following definitions are excerpted from the Convention:

2.1 Carrier has the following meanings:

- .1 *carrier* means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;
- .2 *performing carrier* means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;
- .3 *carrier who actually performs the whole or a part of the carriage* means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;

2.2 *contract of carriage* means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;

2.3 *ship* means only a seagoing vessel, excluding an air-cushion vehicle;

2.4 *passenger* means any person carried in a ship,

- .1 under a contract of carriage, or
- .2 who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;

2.5 *luggage* means any article or vehicle carried by the carrier under a contract of carriage, excluding:

- .1 articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and
- .2 live animals;

- 2.6 *cabin luggage* means luggage which the passenger has in his/her cabin or is otherwise in his/her possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his/her vehicle;
- 2.7 *loss of or damage to luggage* includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
- 2.8 *carriage* covers the following periods:
- .1 with regard to the passenger and his/her cabin luggage, the period during which the passenger and/or his/her cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his/her cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he/she is in a marine terminal or station or on a quay or in or on any other port installation;
 - .2 with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or the carrier's appointed servant or agent and has not been re-delivered to the passenger;
 - .3 with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;
- 2.9 *international carriage* means 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;

3.0 Administrator

For the purpose of providing unified understanding, the following terms are also defined:

- 3.1 *Ship* includes passenger yachts.
- 3.2 *Person* means any individual, legal entity, or partnership, whether corporate or not.

REQUIREMENTS:

4.0 Liability of the Carrier

4.1 Subject to Article 3 of the Convention, for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account, unless the carrier proves that the incident:

- .1 resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- .2 was wholly caused by an act or omission done with the intent to cause the incident by a third party.

If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

4.2 For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.

4.3 For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

4.4 For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

4.5 For the purposes of this article:

- .1 “shipping incident” means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
- .2 “fault or neglect of the carrier” includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;
- .3 “defect in the ship” means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and
- .4 “loss” shall not include punitive or exemplary damages.

- 4.6 The liability of the carrier under Article 3 only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.
- 4.7 Nothing in the Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of the Convention. Nothing in Article 3 shall prejudice any right of limitation under Articles 7 or 8 of the Convention.

5.0 Carrier's Limitation of Liability

- 5.1 Nothing in the Convention affects the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on the Limitation of Liability for Maritime Claims, 1976, as amended, reference (b) above, to which the RMI is a State Party.
- 5.2 Any claim for compensation covered by insurance or other financial security pursuant to Article 3 may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 4.1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defenses (other than the bankruptcy or winding up) which the carrier referred to in paragraph 4.1 would have been entitled to invoke in accordance with the Convention.
- 5.3 Furthermore, the defendant may invoke the defense that the damage resulted from the willful misconduct of the assured, but the defendant shall not invoke any other defense which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

6.0 Compulsory Insurance or Financial Security

- 6.1 When passengers are carried on board a ship registered in the RMI, a State Party, that is certified to carry more than 12 passengers, and the Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under the Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250,000 units of account per passenger on each distinct occasion. See Section 7.1 below for certification requirements.
- 6.2 In accordance with Article 4bis, paragraphs 2 and 13, of the Convention, the carrier of any ship registered in a Non-State Party that is certified to carry more than 12 passengers, to which the Convention applies, entering or leaving a port in the territory of the RMI, shall be required to maintain insurance or other financial security, such as the guarantee of a bank or

similar financial institution, to cover the liability of the carrier under the Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250,000 units of account per passenger on each distinct occasion. See paragraph 7.2 below for certification requirements.

7.0 Certification Requirements

7.1 RMI Registered Ships

- 7.1.1 There shall be issued to each RMI registered ship that is certified to carry more than 12 passengers a Certificate of Insurance or Other Financial Security in Respect of Liability for the Death of and Personal Injury to Passengers (PLC), form MI-238 (sample attached in Annex I of this Notice), attesting that insurance or other financial security is in force as required by Article 4bis of the Convention. The PLC must be carried on board the ship at all times. The RMI Maritime Administrator (the “Administrator”) will not permit a ship registered in the RMI flag to which the Convention applies to operate at any time, unless a certificate has been issued.
- 7.1.2 A PLC shall be issued by the Administrator, or an official who is authorized to act for and on behalf of the Administrator, upon receipt and approval of proof of liability insurance or other financial security submitted by the *carrier* for the standard civil liability certificate fee.
- 7.1.3 Proof of coverage will generally be in the form of a “cover note” or similar confirmation sometimes referred to as a “Blue Card,” which verifies that liability insurance coverage is currently in full force and effect for the vessel.
- 7.1.4 Proof of insurance or other financial security shall cover the following:
- .1 protection and indemnity cover in force with respect to the vessel and issued by either:
 - (a) a member Club of the International Group of P & I Clubs;
 - (b) a non-member Club of the International Group of P & I Clubs with a contractual agreement for re-insurance with member/members of the International Group of P & I Clubs;
 - (c) a publicly traded Insurer with verifiable reserves that fulfill the obligations required under the various International Conventions to which the RMI is a party; or
 - (d) a non-member Club of the International Group of P & I Clubs with verifiable financial reserves that fulfill the obligations required under the various International Conventions to which the RMI is a party.
 - .2 in the case of a pleasure yacht, third party liability and hull and machinery insurance issued by an underwriter in policy form acceptable to the Administrator.

7.1.5 In the case of a self-insurer, proof of coverage must be a duly acknowledged statement (see RMI publication [MI-100](#), Chapter V, Section 2(B)(2) for an example) with an attached auditor's report, setting forth the type and amount of the ship's liability reserve, and the nature of security provided.

7.1.6 The proof of coverage and any additionally required documentation may be sent by mail or email to any of the offices listed in RMI Marine Notice [1-002-1](#).

7.2. Non-State Party Ships

7.2.1 With respect to a ship not registered in the RMI but in a non-State Party to the Convention and not in possession of a Certificate of Insurance or Other Financial Security issued by the State of the ship's registry, the Administrator may, upon request from the carrier, issue a PLC to it to certify proof of liability insurance or other financial security.

7.2.2 The following information must be submitted with the request:

.1 proof of protection and indemnity cover in force with respect to the ship which must be issued by a member Club of the International Group of P & I Clubs except as may be determined at the sole discretion of the Administrator;

.2 a copy of a valid ship Certificate of Registry (COR)

7.2.3 Payment of a fee of US\$500 remitted by check or bank draft payable upon receipt of invoice to "The Trust Company of the Marshall Islands, Inc." in United States (US) dollars and drawn on a US bank or the US branch of an international bank is required. Wire transfers are also acceptable. The most convenient office of the Administrator may be contacted for wire transfer instructions. Fees may also be paid [online](#) by credit card.

7.2.4 The proof of coverage and the COR may be sent by mail or email to any of the offices listed in RMI Marine Notice [1-002-1](#).

7.2.5 In accordance with paragraph 6.2, the above information and certification shall be required for non-State Party ships entering or leaving a port in the territory of the RMI.

7.3 Priority Handling

Applications for liability certification submitted by the registered owner or operator of an RMI registered ship shall be given priority and processed first. Applications from non-State Party ship entities shall be processed as time will allow.

8.0 PLC Format

8.1 The PLC shall be issued in the form of the model set out at Annex I hereto and shall contain the following particulars:

- .1 name of the ship, distinctive number or letters and port of registry;
- .2 IMO ship identification number;
- .3 name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
- .4 type and duration of security;
- .6 name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and
- .7 period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security?

9.0 Issuance and Validity of Certificates

- 9.1 Ships registered in the RMI must be issued a PLC by the entry into force date of 27 January 2015. Ships being registered in the RMI must be issued a WRLC at registration.
- 9.2 Non-State Party ships shall be issued a PLC upon bank confirmation of receipt of payment of the fee stated in paragraph 7.2.2.3 above.
- 9.3 The period of validity of the PLC shall not be longer than the period of validity of the insurance or other security. It must be renewed annually by the carrier by 20th February and whenever there is a change in insurance or financial security.
- 9.4 It shall be the responsibility of the carrier of the ship registered in a non-State Party to place the PLC on board the ship and to notify and provide a copy of the PLC to its flag State administration.
- 9.5 Until further amendments are made to the respective conventions, the PLC issued under the Convention; the CLBC issued under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended; and the WRLC issued under the Nairobi International Convention on the Removal of Wrecks, 2007, as applicable, may not be combined under a single certificate.

ANNEX I

REPUBLIC OF THE MARSHALL ISLANDS

No.



MARITIME ADMINISTRATOR

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002.

Table with 5 columns: Name of Ship, Distinctive Number or Letters, IMO Ship Identification Number, Port of Registry, Name and Full Address of the Principal Place of Business of the Carrier.

This is to certify that there is in force in respect to the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security:

Duration and Effective Date of Security:

Name and Address of the Insurer(s) and/or Guarantor(s):

This Certificate is valid until [day] [month] [year] AND SHALL BE CARRIED ON BOARD AT ALL TIMES AND PRESENTED ON DEMAND OF AUTHORITIES WHILE WITHIN THEIR JURISDICTION.

Issued by order of the Maritime Administrator, Republic of the Marshall Islands

Date _____

At _____

By _____

Explanatory Notes:

- 1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
- 2 If the total amount of security has been furnished by more than one (1) source, the amount of each of them should be indicated.
- 3 If security is furnished in several forms, these should be enumerated.
- 4 The entry “Duration of Security” must stipulate the date on which such security takes effect.
- 5 The entry “Address” of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.