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Agenda item 6

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PROVISION OF FINANCIAL SECURITY

(ii) Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974

Bareboat Chartered Vessels

Submitted by the Comité Maritime International (CMI)

SUMMARY

<i>Executive summary:</i>	This document contains the result of further research done by the CMI into the effect on the rights of passengers of a ship being bareboat chartered under the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 and the 2002 Protocol
<i>Action to be taken:</i>	Paragraph 14
<i>Related documents:</i>	Article 4bis 2002 Protocol to the Athens Convention of 1974 and LEG 89/6

Background

1 In November 2002 the Diplomatic Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, adopted a number of resolutions, including a resolution calling on the Secretariat of the International Maritime Organization (IMO) to carry out a study of the issuing of certificates in the context of the Athens Protocol, attesting that insurance or other financial security is in force with regard to the position of bareboat Charterers. If found necessary, the development of appropriate guidelines would be put in hand.

2 In document LEG 89/6 CMI concentrated on the position under the HNS Convention, the CLC and other liability Conventions where the obligation to maintain insurance or other financial security to cover liability is placed upon “the owner of a ship registered in a State Party.”

3 This paper addresses the position in relation to compulsory insurance/security under the 2002 Athens Protocol where a ship is bareboat chartered.

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Consideration

4 Article 3 of the Athens Convention 1974, as amended by the Athens Protocol 2002 provides that “*For the loss suffered as a result of the death of or personal injury to a passenger...the carrier shall be liable*”.

5 Article 1(1)(a) as amended by the Athens Protocol provides that “*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.”

6 Article 4*bis* (introduced by the Athens Protocol 2002) requires “*any carrier who actually performs... the carriage*” to maintain insurance.

7 The term “carrier who actually performs” is defined as “*the performing carrier, or, insofar as the carrier actually performs the carriage, the carrier.*” (article 1(1)(c)). It is suggested that the combined effect of article 4*bis* and article 1(1)(c) means that if the person who enters into the contract of carriage also performs the carriage – that person must maintain the insurance. If the person who enters into the contract does not perform the carriage himself it is the person who does perform the carriage who must maintain insurance. That person could well be a charterer or bareboat charterer and may operate from within a State Party or a non-State Party to the Athens Convention.

8 It is to be noted that it is the “*carrier*” (see definition in paragraph 4 above) who is made liable for losses suffered – not the actual carrier (article 3) – whereas it is the actual carrier who is required to maintain insurance (article 4*bis*). As indicated above these will be one and the same person only where the person who enters into the contract of carriage actually performs it.

9 Is this likely to cause a problem for passenger claimants?

10 In practice, following an incident, a passenger may decide to pursue his claim:

- (i) against the carrier under the ticket contract;
- (ii) against the actual carrier;
- (iii) in rem against the ship; or
- (iv) against the insurer direct (article 4*bis* (10)) in the appropriate jurisdiction (article 17).

11 In this context, either the carrier or the actual carrier could be a charterer or a bareboat charterer. This should not adversely effect the rights of the passenger provided that the actual carrier has complied with article 4*bis* and obtained insurance. In these circumstances the claimant would still be able to choose between the four options listed above.

12 In theory, the policing of the compulsory insurance requirement will be left to flag States. In practice port States will police the scheme and insist that ships trading to their ports shall carry evidence of insurance. Provided that insurance is in place and the name of the insurer is recorded in the ship’s papers it matters not whether the person who took out that insurance was the owner or a bareboat charterer. The insurer will be the primary or secondary defendant in any action which may be commenced by the claimant.

Conclusion

13 The fact that a ship is bareboat chartered should not, therefore, weaken the passenger's position.

Action requested of the Legal Committee

14 The Legal Committee is invited to take note of the information contained in this document and to make such comments and recommendations as it may deem appropriate.
