A compensation system that will provide payouts of up to $321m in the wake of chemical tanker, gas carrier or certain other bulker or cargoship casualties has been given the kiss of life.

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Prospects for the Hazardous and Noxious Substances convention becoming a fact of shipping life are looking good, although it had appeared the damage-compensation regime was stillborn.

Like compensation for oil-tanker spills, funding of the HNS convention system will come from shipowners — or in practice their protection-and-indemnity (P&I) clubs — with cargo interests providing a substantial amount on top.

There has been little activity on the HNS convention since it was agreed at an International Maritime Organisation (IMO)-sponsored diplomatic conference in London just over six years ago.

But Russia and Angola have recently ratified the convention and it now looks as if a spate of European countries will also ratify before too long.

The revival of interest in the convention is being put down to a delayed reaction to the high-profile casualty in October 2000 involving the T 300- dwt chemical carrier Levil Sun (built 1989).

The International Oil Pollution Compensation (IOPC) Funds, which runs the existing tanker compensation, is preparing for HNS by setting up a computerised system that will help with the huge and complicated task of identifying the cargo companies that will face a levy following a chemical spill.

Making cash calls under HNS will be a much more complicated task than under the oil-tanker spill conventions where a limited number of mostly large energy companies are the contributers and the cargo involved is always persistent oil.

In contrast, thousands of different chemical substances carried for a huge number of companies will be covered by the HNS system. The substances could be highly toxic or relatively benign materials carried in bulk on chemical or bulk carriers or in relatively small drums or packs on a container or pallet. They could also be LNG.

Like the oil-tanker spill compensation system, shipowners and P&I clubs will provide a first layer of compensation up to 100m ($130m), although payouts for the smallest ships could be limited to 10m ($13m).

After this the HNS funds would pay further compensation to lift the total available to as much as 250m ($321m). These payouts would be recovered from companies that received chemicals following sea transport.

The HNS convention will go into force 18 months after ratification by 12 states including the US, Canada, Japan and China, but delays are likely, particularly in the US.

The international fund system for compensation that funds both HNS and the Oil Pollution Compensation (OPC) convention is similar to that created under the current IOPC Funds which runs the existing tanker system.

The difficulties are further compounded by the fact that victims and their families will have a direct claim against P&I clubs rather than there being the cut-out in the liability chain provided by the traditional “pay to be paid” rule.

The solution proposed by insurance broker Graham Barnes is similar to that developed to keep ships trading to the US during a similar stand-off over Certificates of Financial Responsibility (Cofs) in the early and mid-1990s.

Barnes was one of the inventors of the this type of solution in which the P&I clubs continue to provide a first layer of coverage while victims and their families will have a direct claim against P&I clubs rather than there being the cut-out in the liability chain provided by the traditional “pay to be paid” rule.

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