

Liquefaction – the latest position

Members will be aware that the Club has recently published a circular (Circular 8/12) highlighting the potential dangers posed by cargoes of nickel ore which are shipped from Indonesia and the Philippines.

The circular, which was published in very similar form by all clubs within the International Group of P&I Clubs, was prompted by recent casualties attributed to nickel ore cargoes loaded from ports in Indonesia or in the Philippines, together with concerns at whether the authorities in both countries were willing to effectively oversee the trade in this commodity.

The circular also follows a period of significant comment on ore cargoes generally and the risks of liquefaction posed in the transportation of such cargoes. Five bulk carriers have been lost over the past two years following what is widely assumed to have been the liquefaction of their cargoes of nickel ore. At the same time, trade in ore cargoes has played a significant role within the bulk carrier market with hundreds of millions of tonnes of cargo shipped worldwide in 2011.

Our aim within these pages is to explain the rationale behind the latest circular, and to assist Members in assimilating the contrasting commercial pressures of transporting these cargoes with the overriding desire for safety. We also explain how the UK Club has and continues to support its Members through the dissemination of advice, provision of practical assistance at load ports and direct one-to-one exchanges with its executives in the Club's international network of offices.

What does this latest circular mean?

The circular follows a number of previous publications regarding nickel ore cargoes, and the advice given in those publications remains valid and should be followed by all Members. What is new is that all of the P&I clubs within the International Group now require to be notified by members who plan to fix or charter a ship to load nickel ore, or where a ship under an existing charter is ordered to load such a cargo.

What is the purpose of mandatory notification?

The purpose is also to allow the Club the opportunity to assess whether a survey of the cargo should be carried out prior to loading, in order to determine the safety of the consignment. It is additionally envisaged that, over time, the information provided on notification will allow the clubs collectively to gain knowledge of the areas, ports and shippers which have historically posed problems, as well as those where loadings have taken place with a measure of cooperation and without incident.

What will the Club do after I provide notification?

The Club will generally seek advice from local correspondents on the location of loading and the shippers involved, and the level of caution which should be exercised when accepting the cargo for loading. Depending on the advice obtained, consideration will be given to the appointment of a local surveyor to assess the condition of the cargo (if the Member has not already done so.)

Abbreviations:

IMSBC:

The International Maritime Solid Bulk Cargoes Code or IMSBC Code (referred to here as 'the Code') became mandatory on 1 January 2011. Copies of the Code can be obtained from the IMO and other maritime booksellers.

FMP:

The Flow Moisture Point is the point where bulk cargoes lose shear strength and begin to move like a liquid.

TML:

The Transportable Moisture Limit indicates the maximum proportion of moisture which a cargo can contain, which is defined under the IMSBC code as 90% of the FMP

Who will pay the costs of this?

The UK Club has historically met the costs of condition surveys of nickel ore cargoes, and will continue to do so until further notice, subject to a Member's individual terms of entry, with the costs recorded against the Member's loss record.

What happens if I do not notify the Club?

The circular indicates that Members who fail to comply with the requirements of advance notification may be prejudicing their Club cover. This would not necessarily be an automatic outcome, and any consideration of the consequences of a failure to notify would be on a case by case basis, taking into account the extent to which the failure had put the Club at a disadvantage.

I am a charterer. Do I still have to comply with the circular?

The scope of the circular is directed at all of the Club's Members, including charterers. However it is anticipated that in a majority of circumstances an owner will make separate arrangements to carry out a survey of the cargo, and it will not be necessary to conduct a separate survey on behalf of a charterer.

Do I have to notify the Club in respect of other cargoes?

No. At this time there are no requirements of notification in respect of other IMSBC Code Group A cargoes, such as iron ore loaded out of Brazil or iron ore fines shipped from India.

Why is that?

In recent years there have been numerous comments concerning the dangers of liquefaction in different types of bulk cargoes. However, the problems which have arisen have differing characteristics and it is important to distinguish between cargoes loaded from these different regions.

In Brazil, there have been occasions when iron ore cargoes were declared under the IMSBC code as Group C cargoes, being material not prone to liquefy, but where the cargoes showed the characteristics of Group A cargoes. Consultation with shippers in the region is addressing this apparent disparity.

The loss of two ships off India in 2009 has frequently been attributed to excess moisture levels in cargoes of iron ore fines, although the circumstances of both incidents are the subject of investigations by the Indian authorities. Since that period, there has been an enhanced level of cooperation between the Indian authorities, shippers and surveyors, such that there have been no further ship losses. Upwards of 60 million tonnes of iron ore fines are reported to have been shipped from Indian ports during the course of 2011.

General advice

Bulk cargoes which can liquefy if shipped at a moisture content in excess of their TML are designated as Group A cargoes under the IMSBC code. These cargoes are capable of being carried without concern provided they have been properly tested and certified as being safe for carriage. Procedures laid down in the IMSBC code are designed to assist in determining each consignment's properties.

I have been ordered to load a Group A cargo. What should I do?

Firstly, check the terms of the governing charter-party, as there are clauses which exclude the carriage of some Group A cargoes. On the assumption that no such exclusion prevails, the charterer should be requested to ensure the provision of appropriate documentation from the shipper certifying the FMP and TML of the commodity in question together with the moisture content of the cargo to be loaded. These should be made available in advance of cargo being presented for loading in order to allow sufficient time for independent analysis, if necessary. The FMP must have been tested within the previous six months, and the interval between testing for moisture content and loading should not exceed seven days.

Can I refuse an order to load these cargoes in principle?

Unless there is a specific exclusion in an existing charterparty, it is very unlikely that an order to load these cargoes can be refused. Whilst there have been incidents concerning nickel ore and iron ore fines, it would be wrong to conclude that, as a result, these cargoes are dangerous by their very nature and therefore incapable of being safely carried.

If the shipper produces the appropriate certificates, is the cargo safe to carry?

This will be a question of judgment in each particular case, and much will depend on the origin of the cargo. Many of these cargoes are shipped by large and reputable companies. In India following consultation between the International Group of P&I Clubs and the Indian authorities, it has been possible to work with local laboratories to produce test results that can be relied upon by shipowners and masters. In Brazil queries over the nature of a cargo are often resolved through a process of engagement.

However experiences in Indonesia and in the Philippines do not always generate confidence in the test results offered there. For example tests are sometimes undertaken at a shipper's laboratory where it is not possible to verify their accuracy. Equally, questions can arise concerning whether representative samples have been taken. This crucial procedure cannot be resolved by reference to the Code. In addition, if the cargo has been stored in the open during a rainy period, the test results may not actually reflect the condition of the cargo as a whole.

Prior to loading

It is important to emphasise that issues over the condition of a cargo can be considerably exacerbated once the cargo has been loaded onto the ship. This can be due to customs problems, a lack of storage space on shore or the very high cost and practical difficulties in off-loading cargo in a port only designed to load cargo. The Club strongly advises Members to resolve any concerns they have over the condition of a cargo before loading commences. This can occasionally lead to delays, however such delays are likely to be significantly shorter than those which will ensue once a problematic cargo is on board.

I have concerns about the shipper's certificates. What should I do?

The first step will be to instruct local correspondents, if these have not already been retained, who can advise whether local surveyors should be instructed. In some jurisdictions certain surveyors are seen as not being impartial. In order to avoid delays, it is preferable to appoint surveyors who are acceptable to all parties.

Should I appoint expert consultants to assist?

In many cases it will be appropriate to use local surveyors recommended by the Club's correspondent. The use of overseas consultants will only be appropriate if local surveyors are unable to assist, or if there is a significant dispute over the tests that have taken place. Because of disputes in the past, some expert consultants are not viewed as acceptable to many shippers and charterers. Disagreements over the nomination of surveyors can lead to delays to ships.

The cargo is marginally above the TML but well below the FMP, is it safe to carry?

The Code is inflexible in this regard. If the cargo is above the TML, it cannot be carried without breaching the Code. In such circumstances, it may be appropriate to propose re-testing. Again, it is important to emphasise that in all cases, any concerns over the condition of the cargo should be resolved before such cargo is loaded.

What is the Club's role in these matters?

The Club's role in cases involving any cargo where liquefaction is a risk is to assist Members with any queries they may have over these cargoes, be that loss prevention advice or the appointment of correspondents and surveyors in the event that further testing of the cargo is warranted. It is not the function of the Club to set a standard, or to "approve" or "reject" cargoes. The responsibility to show that the cargo is safe is that of the shipper.

What action can be taken if a cargo is loaded which is subsequently determined to be unsafe?

Once again, if there are any doubts as to the safety of a cargo, Members are strongly recommended to resolve these before any cargo is loaded on board. There will doubtless be pressure from shippers and charterers to have cargoes loaded, but it is in the interests of all parties to exclude cargo which cannot be carried in accordance with the Code.

If, however, the cargo is already on board the ship, then it will be imprudent to proceed on the carrying voyage without at least further analysis. If the ship is already underway, the Club will be able to advise appropriate risk mitigation measures.

I am a charterer. Should my approach be any different?

The same considerations of safe practice apply to charterers. If a serious incident was to occur, a charterer could face liabilities to an owner for loading a dangerous cargo. The difference from a charterer's perspective is that commercial pressures may assume a greater significance. Charterers may wish to avoid delays caused by further testing or, in extreme cases, an owner's refusal to load. However, it will never be appropriate to by-pass the guidance of the IMSBC Code which is aimed solely at safe practice.

Provided the correct testing procedures have been followed in advance of a cargo being presented for loading it should be possible to achieve the correct balance between the competing demands of safety and the avoidance of delays. The Club has an overriding duty to assist and protect the interests of both owner and charterer Members.

I'm still unsure. What shall I do?

If you have any further queries, please call or e mail your usual Club contact.