Marsh awaits input from governments

Marsh is not finalising the mechanism to guarantee that terrorist attacks on passengerships will be covered until governments define exactly what is required. However, it is ready to facilitate the establishment of a special-purpose company, which is the most likely outcome.

This would be a venture similar to Shipowners Insurance & Guaranty Co (Sigco) and Shoreline Mutual, which was established in Bermuda a decade ago to provide the Certificates of Financial Responsibility (Cofr) guarantees mandated under US pollution-compensation legislation.

Lightly regulated Bermuda would again be the first choice for the location of the new guarantee operation but European governments and the European Commission, which are the driving force behind the Athens protocol, might well press for a closer-to-home solution, with Dublin the first fallback choice or failing that, Guernsey or Luxembourg.

But a new special-purpose company to facilitate shipowners obtaining the Blue Cards they will need to carry passengers is not the only possibility.

The guarantees could come from Sigco, Shoreline or directly from the Lloyd's of London market, or the P&I clubs could be offered back-to-back security allowing them to issue a single guarantee that would also include the terrorism element, although there are doubts this would be acceptable to the P&I clubs.

But whatever happens, Marsh has given an undertaking that it can deliver on the terrorist-cover sticking point.

What is in it for Marsh is that there will be reinsurance brokerage from the terrorism-cover scheme, however it is structured, although there is no guarantee that some other broker might try to put a similar scheme together.

The underlying cover will come from a panel of Lloyd's syndicates supported by Bermuda companies with which Marsh has already negotiated a commitment and full wording. The underwriters' names are not being disclosed for the time being but they are recognised war-risks leaders.

A key concern is what would happen if there was a 9/11-type attack with multiple passengerships the target. The $500m-per-ship limit could mean an ultimate payout running into billions. Would cover continue to be available or would the insurers and reinsurers be burnt and no longer willing to be involved?

Ultimately, no one knows what would happen until such an incident occurs but Marsh argues that the insurance market is much more resilient than many give it credit for, whether responding to the World Trade Center attack, multiple aircraft losses during Iraq's invasion of Kuwait or in Sri Lanka, or natural disasters such as Katrina and the other hurricanes of last year.

The war-risks market is, however, volatile and costs go up and down as underwriters respond to particular situations. Although a loss would have to be paid for, Marsh argues that once this happened, premium levels would fall back to normal levels again.

WHAT THE ATHENS PROTOCOL PROVIDES:

•• Guaranteed cover for passenger claims arising from death or injury (loss of baggage and vehicles are also covered)
•• Strict liability so claims will be met regardless of the defences that might otherwise be available to shipowners or their insurers.
•• Direct action so passengers or their dependents can sue the protection-and-indemnity (P&I) clubs and other insurers rather than having to make a claim on a shipowner that might be bankrupted by a catastrophe.

Compensation:
•• A per-passenger limit of SDR 250,000 ($371,000) for claims arising from no-fault shipping incidents with compulsory insurance cover required up to this figure.
•• Liability rises to SDR 400,000 where there has been fault or negligence by the carrier.

Terrorism:
•• Cover for up to SDR 250,000 per passenger for terrorist incidents with an overall per-ship per-incident limit of $500m. (This would provide full cover for up to 1,350 passengers receiving the maximum payout. If the per-ship limit were exceeded, individual passenger claims would be scaled back proportionately.)

Excluded:
•• Claims arising from war between the so-called five powers (that is, the US, Russia, China, the UK and France).
•• Claims arising from radioactive, chemical or biological contamination, or cyber attack.

Athens Convention 1974
In contrast, cover under the current convention, which entered into force in 1987, is almost derisory.
•• The limit for passenger death or injury is SDR 46,666 ($69,360) but there is also a per-ship limit of SDR 25m ($37m) with the claims of individual passengers scaled back if this figure is exceeded.

Cargoship owners fear huge liabilities

The Marsh scheme has removed a key obstacle to implementing the Athens protocol but there is still considerable disquiet among owners.

The concern is over the huge liabilities that the protection-and-indemnity (P&I) clubs and the wider insurance market are facing and the risk that the insurance of boxships, tankers and bulk carriers could be badly disrupted and become much more expensive following a passenger-shipping catastrophe.

Greek owners are among the most vociferous but there are also worries elsewhere with a behind-the-scenes debate going on over whether the P&I clubs should limit passenger liability cover to maybe $1bn or $2bn.

There is a precedent for this as despite tankers being a large and crucial part of the shipping industry, cover for oil spills is limited to $1bn.

In contrast, passenger shipping amounts to as little as 3% of the market and it could be argued that all cargoship owners are putting the long-term security of their own insurance cover on the line to meet the requirements of a specialist sector that has more in common with the tourism industry than mainstream shipping.

Clubs such as the Britannia and London, which have little or no involvement in passenger shipping, are sympathetic to these owner concerns but there are other clubs such as the UK, Gard, Steamship Mutual and West of England for which passengerships account for a significant premium income.

There are sufficient clubs with an interest in passenger shipping to block changes being pushed through without a huge battle, or maybe the issue becoming caught up in the fraught question of whether the European Commission should revisit the competition exemption that currently allows the clubs in the International Group P&I cartel to restrict price competition.

If cover was limited to a lot less than the passenger-shipping industry needs, there would be winners and losers.

A specialist cruise-shipping mutual might emerge and various excess-cover schemes develop that would provide a good premium income and brokerage for those who stepped in to fill the gap.

Passengership owners would no doubt pay more for cover but cargoship owners would have a reduced risk of meltdown in their insurance cover.