

17 March 2009

**INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA**

**GUIDELINES CONCERNING THE POSTING OF A BOND
OR OTHER FINANCIAL SECURITY WITH THE REGISTRAR**



GUIDELINES CONCERNING THE POSTING OF A BOND OR OTHER FINANCIAL SECURITY WITH THE REGISTRAR

Issued by the International Tribunal for the Law of the Sea
on 17 March 2009

The Tribunal,

Acting pursuant to article 50 of the Rules of the Tribunal,

Issues the following Guidelines:

I. Scope of application

1. These Guidelines apply to the posting of a bond or other financial security with the Registrar in accordance with articles 113, paragraph 3, and 114 of the Rules of the Tribunal.

II. Use of terms

2. For the purposes of these Guidelines:

(a) “account party” means the party at whose request the bond or other financial security is issued, including, *inter alia*, the owner or the operator of the vessel;

(b) “beneficiary” means the party in whose favour the bond or other financial security is issued, namely, the competent authority of the detaining State;

(c) “guarantor” means the banking institution or Protection and Indemnity Club (P&I Club) issuing the bond or other financial security;

(d) “posting party” means the competent authority of the flag State or any person or institution authorized in writing to act on behalf of the flag State;

(e) “representative of the detaining State” means the competent authority of the detaining State or any person authorized in writing to act on its behalf.

III. General provisions

Form of the bond or other financial security

3. Subject to the judgment of the Tribunal, a bond or other financial security may be posted with the Registrar in one of the following forms:

- (a) bank transfer;
- (b) bank guarantee;
- (c) P&I Club Letter of Undertaking.

Posting of bond or other financial security

4. A bond or other financial security should be posted with the Registrar by the posting party.

Communications and official languages

5. All communications from the Registrar will be sent to the posting party and the representative of the detaining State.

6. When a communication or document annexed thereto is not in one of the official languages of the Tribunal, it should be accompanied by a translation into one of these languages certified as accurate by the party submitting it.

7. If the bond or other financial security is not in one of the official languages of the Tribunal, it should be accompanied by a translation into one of the official languages certified as accurate by the posting party.

Terms and conditions

8. The posting party should ensure that the bond or other financial security is in conformity with the requirements contained in the judgment of the Tribunal and that its terms and conditions indicate:

- (a) the name of the vessel;
- (b) the port or place of registration;
- (c) the name and address of the account party;
- (d) the name and address of the beneficiary;
- (e) the name and address of the guarantor and the name and address of its representative;
- (f) a statement to the effect that the bond or other financial security is issued in consideration of the detaining State releasing from detention the vessel and its crew in accordance with the judgment delivered by the Tribunal in relation to the incident that occurred with respect to the vessel and its crew;

- (g) the maximum amount payable according to the judgment of the Tribunal;
- (h) the need for the production of a final judgment, award or decision of the competent authority of the detaining State as a condition for demanding payment.

9. Where the bond or other financial security does not satisfy the requirements or the terms and conditions specified in paragraph 8, the Registrar will return it to the posting party for rectification.

10. The Registrar will give effect to any agreement between the parties concluded after the judgment of the Tribunal as to the terms and conditions of the bond or other financial security, provided that such terms and conditions are in conformity with the requirements contained in the judgment. The parties should either jointly or severally notify the Registrar of the agreement. If the notification is not a joint one, the Registrar will forthwith transmit a certified copy thereof to the other party. In each case the notification should be accompanied by a certified copy of the agreement.

Notification

11. In order to post the bond or other financial security pursuant to the judgment of the Tribunal, the posting party should transmit a communication to that effect to the Registrar. Upon receipt of the bond or other financial security, the Registrar will forthwith notify the representative of the detaining State thereof.

Reimbursement of costs

12. In the communication referred to in paragraph 11, the posting party should undertake to reimburse the Tribunal for any financial costs the Tribunal may incur in relation to the posting of the bond or other financial security.

13. The posting party should bear all costs relating to the transmittal of the bond or other financial security to the detaining State. The Registrar, after fixing the amount payable, will request the posting party to reimburse the Tribunal for such amount as a condition for the transmittal of the bond or other financial security to the detaining State.

IV. Specific provisions for a bank transfer

14. A bond or other financial security posted in the form of a bank transfer should be deposited by the posting party in a special, interest-bearing bank account of the Tribunal with a reputable bank designated by the Registrar.

15. While making the bank transfer, the posting party should transmit to the Registrar a document on compliance with the terms and conditions indicated in paragraphs 8 and 12.

16. Upon receipt of the bank transfer, the Registrar will furnish a receipt to the posting party.
17. Upon receipt of a written demand signed by the representative of the detaining State, the Registrar will promptly transmit the bond or other financial security to the detaining State to the extent that it is required to satisfy the final judgment, award or decision of the competent authority of the detaining State. The written demand should be accompanied by a certified copy of the final judgment, award or decision. The Registrar will forthwith transmit a copy of the written demand to the posting party.
18. The Registrar will transmit the bond or other financial security to the detaining State in accordance with these Guidelines and rule 108.5 of the Financial Rules of the Tribunal. Where appropriate, all costs and charges relating to the transmittal of the bond or other financial security will be paid from the accrued interest of the special account referred to in paragraph 14.
19. The Registrar will transmit any cash surplus, to the extent that it is not required to satisfy the final judgment, award or decision, to the account party. If the account party is not an authority of the flag State, the Registrar will notify the flag State and the posting party of the refund of such surplus.

V. Specific provisions for a bank guarantee or P&I Club Letter of Undertaking

20. A bond or other financial security in the form of a bank guarantee or a P&I Club Letter of Undertaking should be posted with the Registrar.
21. Upon receipt of the bank guarantee or P&I Club Letter of Undertaking, the Registrar will furnish a receipt to the posting party. The bank guarantee or P&I Club Letter of Undertaking will be kept by the Registrar.
22. Upon receipt of a written demand signed by the representative of the detaining State, the Registrar will promptly transmit the bank guarantee or P&I Club Letter of Undertaking to the representative of the detaining State together with a statement indicating the amount required to satisfy the final judgment, award or decision of the competent authority of the detaining State. The Registrar will forthwith transmit a copy of the written demand and the statement to the posting party and the guarantor.
23. The written demand should be accompanied by a certified copy of the final judgment, award or decision. The demand should also indicate the amount required to satisfy the final judgment, award or decision of the competent authority of the detaining State.
24. The Registrar will transmit the bank guarantee or P&I Club Letter of Undertaking to the representative of detaining State, who will be requested to acknowledge receipt thereof.

VI. Final provision

25. In the absence of specific provisions in these Guidelines, the Registrar will apply, *mutatis mutandis*, the provisions of the Rules of the Tribunal.

(signed)
José Luís JESUS,
President

(signed)
Philippe GAUTIER,
Registrar