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**CIRCULAR LETTER 59/2002**  
**28 November 2002**

### **LIABILITY FOR IHO STANDARDS**

**Ref: IHB Circular Letter 54/2002, dated 18 November 2002**

Dear Hydrographer,

Circular Letter 54/2002 provided details on the outcome of the 14<sup>th</sup> CHRIS Meeting (Shanghai, China on 15-17 August 2002) and included a section on the potential liability of Hydrographic Offices due to adherence to IHO standards. Annex F of that CL included a paper from Australia on this issue. It was mentioned that the IHB was awaiting a consolidated response from the IHO Legal Advisory Committee. This has now been received from Ms Denise WEBSTER, Chair of LAC, and a copy of her letter summarizing the views of the LAC Members from Australia, Canada, Monaco and USA is reproduced in Annex A.

Individual responses from the above LAC Members are provided on the CHRIS page of the IHO website<sup>1</sup> ([www.iho.shom.fr/general/ecdis/ecdisnew1.html](http://www.iho.shom.fr/general/ecdis/ecdisnew1.html)).

You are kindly requested to take note of this information.

On behalf of the Directing Committee  
Yours sincerely,

*(original signed)*

Rear Admiral Kenneth BARBOR  
Director

Annex A Letter from Ms Denise WEBSTER (USA), Chair of the IHO Legal Advisory Committee.

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<sup>1</sup> However, digital and/or paper copies of these documents will be available on request to the IHB ([info@ihb.mc](mailto:info@ihb.mc)).

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HYDROGRAPHIC  
ORGANIZATION**



**ORGANISATION  
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25 November 2002

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Dear Admiral Barbor:

On July 31, 2002 Admiral Neil Guy on behalf of an IHO Technical Working Group requested advice from the LAC regarding the Legal Personality of the IHO.

I have received formal responses from the LAC Members from Australia, Canada, the Principality of Monaco, the United States, and an informal response from Norway. The responses from Australia, Canada, the Principality of Monaco, and the United States are attached to this correspondence. These responses should be referred to for the Members' comprehensive treatment of the issues. A summary of the conclusions of these responses is as follows.

1. Does the IHO have a "legal personality"? Would individual Member States carry liability for the actions of the IHO if the IHO were found liable?

Whether or not the IHO has a Legal Personality will vary from state to state, depending upon a state's domestic laws. However, it is highly unlikely that the IHO could be sued or found liable for an error in a standard in any forum (international or domestic). Nor is it likely that Member States would be sued or found liable for the activities of the IHO.

At least in Monaco, the IHO has a Legal Personality to conduct

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its day-to-day business as per Article 1 of the Agreement between the IHO and the Government of the H.S.H. the Prince of Monaco Concerning The Headquarters of the Organization and Its Privileges and Immunities on the Territory of the Principality, signed 10 August 1978.

2. Does compliance with minimum standards developed by the IHO remove the requirement of "due diligence" by the user?

Compliance with minimum standards developed by the IHO does not remove the requirement of due diligence by the Member States. Member States could be held liable for negligence depending upon the domestic law applicable to the claim.

Under the domestic law of some Member States the concept of duty of care is more relevant than the concept of due diligence. Compliance with minimum standards developed by the IHO will also not remove a requirement to satisfy a duty of care. However, such compliance may be particularly persuasive in evaluating whether a Member State has taken all reasonable measures to satisfy such a duty.

3. What privileges and immunities does the IHO enjoy?

The exact nature of immunities and privileges enjoyed by the IHO within the territory of a particular State depends upon the domestic law of that State. However, the IHO will likely be immune from any claims in most Member States.

Within Monaco, immunities and privileges of the IHO, employees of the IHO, and representatives of Member States, are addressed in the Agreement between the IHO and the Government of H.S.H. the Prince of Monaco (referenced above).

If the LAC can be of further assistance to you, please contact me. My contact information is as follows:

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Best Regards,

Denise Webster

Chair, IHO Legal Advisory Committee