



DECEMBER 15, 2016

CIRCULAR NO. 43/16

TO MEMBERS OF THE ASSOCIATION

Dear Member:

### CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2017 POLICY YEAR

Please note that your Board of Directors has approved the following changes to the Club's Rules to take effect from February 20, 2017.

They derive from a continuing review of the language of the existing Rules in light of recent developments, and a desire to maintain good housekeeping in the interests of the clarity and efficacy of the terms on which Members are insured by the Club.

The changes are set out in the order in which current Rules appear in the Rule Book.

#### Class I: Protection and Indemnity Insurance

##### **Risks and Losses Covered (Rule 2) – STOPIA and TOPIA**

The IOPC Funds recently confirmed amendments to the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006, as well as to the Tanker Owners Pollution Indemnification Agreement (TOPIA) 2006, most substantively to address the risk of future sanctions legislation which might affect the ability of International Group clubs to reimburse the 1992 Fund/Supplementary Fund under these agreements.

To ensure that these amendments are fully incorporated in the basic contractual conditions concerning the recoverability of STOPIA or TOPIA claims, the current wording of Class I, Rule 2, Sections 14.5 and 6 will be amended to read as follows, the changes in question being tracked in red.

5. ***Liability, costs and expenses of the Member assumed in respect of an insured vessel which is a "Relevant Ship" as defined in the Small Tanker Owners Pollution Indemnification Agreement 2006 (STOPIA) 2006 (as amended) (~~STOPIA 2006~~). A Member who has insurance in respect of such vessel shall, by virtue of entry with and through the agency of the Association, and unless the managers otherwise agree in writing, become a party to STOPIA 2006 (as amended) for the period of entry of such vessel in the Association. In the event that the Member exercises his rights under STOPIA 2006 (as amended) to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the Directors otherwise determine, there shall be no cover under this Rule 2, Section 14 in respect of such vessel so long as the Member is not a party to STOPIA 2006 (as amended).***
6. ***Liability, costs and expenses of the Member assumed in respect of an insured vessel which is a "Relevant Ship" as defined in the Tanker Owners Pollution Indemnification Agreement (TOPIA) 2006 (as amended). A Member who has insurance in respect of such vessel shall, by virtue of entry with and through the agency of the Association, and unless the managers otherwise agree in writing, become a party to TOPIA 2006 (as***

***amended)*** for the period of entry of such vessel in the Association. In the event that the Member exercises his rights under TOPIA 2006 (as amended) to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the Directors otherwise determine, there shall be no cover under this Rule 2, Section 14 in respect of such vessel so long as the Member is not a party to TOPIA 2006 (as amended).

### **War Risks – certified liabilities**

The proviso to Class I, Rule 3, Section 1.1 requires amendment to take account of the changes in regard to TOPIA and STOPIA to which reference as made above, as well as amplification to take account of Athens Convention/EU PLR and Nairobi ROW Convention certified liabilities. It is therefore proposed to amend the proviso in question to read as follows, the changes being tracked in red.

#### **War Risks**

- 1 *i War, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power or any act of terrorism;*
- ii Capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat;*
- iii Mines, torpedoes, bombs, rockets, shells, explosives or similar weapons or devices, provided that this exclusion shall not apply to any liabilities, costs or expenses which arise solely by reason of*
  - a the transport of any such weapons whether on board the insured vessel or not, or*
  - b the use of any such weapons, either as a result of government order or through compliance with a written direction given by the Association where the reason for such use was the avoidance or mitigation of liabilities, costs or expenses which would otherwise have fallen within the cover given by the Association.*

**AND PROVIDED ALWAYS that the exclusions in this Section 1, Sub-Section 1 shall not apply to any liabilities, costs or expenses insofar only as they are discharged by the Association on behalf of a Member pursuant to a demand made under:**

- a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or**
- a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereto, or**
- ~~**– a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 or any amendments thereto, or**~~
- ~~**– an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006),**~~

- *a non-war certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 and Guidelines for its implementation or Regulation (EC) No. 392/2009 of the European Parliament and of the Council which gives effect thereto, or*
- *a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, or*
- *an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended), or except where such liabilities, costs or expenses arise from or are caused by an act of terrorism, the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 (as amended), or*
- *a certificate issued by the Association in compliance with Article 12 of the International Convention on the Removal of Wrecks, 2007,*

***to the extent that such liabilities, costs and expenses are not recovered by the Member under any other policy of insurance or extension to the cover provided by the Association....***

### **Class II: Freight, Demurrage and Defense Insurance**

The amendments set out in regard to Class I above will also be formally incorporated into, and form an integral part of, the Rules of Class II to the extent that they are consistent with the subject and context of the said Rules of Class II.

### **Class III: Insurance For Charterers' Risks**

The amendments set out in regard to Classes I and II above will also be formally incorporated into, and form an integral part of, the Rules of Class III to the extent that they are consistent with the subject and context of the said Rules of Class III.

There are a few very small typographical errors related to the renumbering of Rule sections and sub-sections in earlier years which will also be corrected in the forthcoming edition of the Rule Book for 2017.

It is hoped that the foregoing changes are clear, but if any Member requires any further explanation or comment, the Managers will be happy to respond.

Yours faithfully,

  
Joseph E.M. Hughes, Chairman & CEO  
Shipowners Claims Bureau, Inc., Managers for  
**THE AMERICAN CLUB**