

# CIRCULAR

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CIRCULAR NO. 27/04

TO MEMBERS OF THE ASSOCIATION

Dear Member:

## CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2005 POLICY YEAR

Please note that your Board of Directors recently approved the following changes to the Club's Rules to take effect from February 20, 2005.

As in previous years, they derive from a continuing review of the language of the existing Rules, amendments to the cover wordings of all clubs initiated at International Group level, and a desire to maintain good housekeeping in the interests of the clarity and efficacy of the terms under which Members are insured by the Club.

### Class I: Protection and Indemnity Insurance

#### Vessel Surveys and Operational Audits

In order to provide the Managers with the broadest capabilities in maintaining oversight of membership quality, and in the process ensuring that their powers conform to those held elsewhere in the industry, your Board felt that it would be helpful to expand their range of explicit controls to include the audit of management and other systems bearing upon vessel operation both ashore and afloat.

Accordingly, in Class I, Rule 1, Section 4, the current group of Sub-Sections dealing with surveys of vessels (numbers 39 to 41 inclusive) will be re-entitled ***Vessel Surveys and Operational Audits*** and incorporate a new and additional Sub-Section 42 to read as follows:

**42     *The Managers may at any time in their absolute discretion:***

- a. Appoint representatives to visit the Member's offices or those of any party or parties having operational control of an insured vessel entered on behalf of that Member and/or attend on board such vessel at such time specified by the Managers to audit the Member's management systems, including, but not limited to, interviewing all relevant personnel and reviewing all relevant documentation. The Member shall be under a duty to ensure full cooperation with such representatives, making all requested personnel, information and documentation available, and unless otherwise agreed in writing by the Managers, shall pay for the reasonable costs of such audits; and***
- b. Make recommendations as to the rectification of any deficiencies as may have been identified during the course of such a review either forthwith or within such time as may be specified by the Managers.***



***The Member shall inform the Managers immediately on completion of the implementation of any recommendations which the Managers shall have made and provide them with such evidence as the Managers deem fit as to the rectification of any deficiencies they shall have identified, provided always however that the Managers shall have the right to carry out re-audits at whatever time and in whatever circumstances they deem appropriate to verify the same.***

***In the event of any non-compliance with any of the provisions of this Section 4, Sub-Section 42, the Managers shall be empowered in their absolute discretion to:***

- ***terminate the entry of any or all insured vessels entered by the Member from a time and date specified by notice in writing to the Member; or***
- ***determine that there shall be no right to recover from the Association in respect of any liability, cost or expense during a period commencing from the time and date at which the Member ceases to be in compliance, or such other date as is specified in writing, until the Managers are satisfied that compliance has been achieved; or***
- ***exclude cover for claims arising out of or contributed to by such non-compliance; or***
- ***reduce any recovery from the Association to the extent that a claim has been contributed to by such non-compliance; or***
- ***vary the terms and conditions of entry including, but not limited to, the terms of any or all insured vessels' premium rating.***

***PROVIDED ALWAYS that the Directors shall have power in their absolute discretion to admit in whole or in part any claim which may be excluded by reason of the foregoing. The exercise of their discretion by the Directors shall be final and conclusive for all purposes.***

***PROVIDED FURTHER that nothing in this Section 4, Sub-Section 42, or any action taken by the Association hereunder shall relieve the Member of his obligations with regard to those requirements in regard to classification and statutory regulation of the insured vessel as set out in Rule 1, Section 4, Sub-Section 14 of these Rules, or in regard to the maintenance and/or condition of the ship generally.***

The remaining Sub-Sections of Section 4 of Rule 1 will be required to be renumbered accordingly, so that the current Sub-Section 42 becomes Sub-Section 43 and so on.

### **Cover for loss of life, injury and illness**

A typographical error contained in Class I, Rule 2, Section 1 gives the impression that the general exclusion of claims relating to cash, negotiable instruments, precious or rare metals or stones etc. is intended merely to apply to passenger claims and not to those concerning crew and other third parties.

Accordingly, in order to clarify the position, the current proviso **d** will be eliminated and in its place a further, concluding proviso will be added, as follows:



**AND FURTHER PROVIDED that:**

***In the case of each and every head of cover, A, B, C and D as set out above in this Section 1, unless and to the extent that special cover has been agreed in writing by the Managers, there shall be no recovery from the Association in respect of claims relating to cash, negotiable instruments, precious or rare metals or stones, valuables or objects of a rare or precious nature.***

**Small Tanker Owners Pollution Indemnification Agreement (STOPIA)**

This new agreement will apply to dirty oil tankers of less than about 30,000 gross tons trading to countries which have adopted the new "third tier" compensation regime to supplement recompense available under the Civil Liability Convention (CLC) and the International Oil Pollution Compensation Fund (IOPCF). This is likely to come into effect early in 2005.

The effect of STOPIA is to raise the minimum compensation potentially payable by tanker owners in relevant countries to approximately \$30 million – a figure which corresponds to the previous limit for a tanker of approximately 29,500 gross tons. Thus, all tankers of less than this tonnage will have a potentially increased exposure under the STOPIA agreement – a contractual arrangement similar in concept to the old TOVALOP scheme.

STOPIA has been developed in order to maintain a balance between compensation by shipowners and that by oil companies for pollution damage in those countries which, as mentioned above, have adopted the new "third tier" compensation regime which is being financed solely by oil receivers.

In order to reduce administrative burdens and ensure that all relevant tankers entered in the Club participate in STOPIA automatically, the addition of a new Sub-Section 5 to Class I, Rule 2, Section 13 as set out below will have the effect of appointing the Club as the agent of the Member for this purpose.

- 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 (STOPIA). 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 for the period of entry of such vessel in the Association. In the event that the Member exercises his rights under STOPIA 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 13 in respect of such vessel so long as the Member is not a party to STOPIA.***

**War Risks and Nuclear Risks – "dirty bombs" etc.**

In conformity with other clubs, there will be a change of language so as to ensure that nuclear "devices" which may not technically be "weapons" – such as "dirty bombs" in the hands of terrorists – are brought within the war and nuclear risks exclusions.

Accordingly, the wording of Class I, Rule 3, Sections 1 and 2 ("***weapon(s) of war***") will be changed to read "***weapon(s) or device(s)***" without any further amendment to the text to achieve the desired result.

**War Risks – Inclusion of risks certified under CLC etc.**



The introduction of a "cyber" exclusion clause by market underwriters, excluding cover for liabilities caused by any chemical, bio-chemical or electromagnetic weapon or computer virus, recently drew the International Group's attention to an anomaly in Members' war risks cover. This required attention.

For example, while the Pooling Agreement specifically excluded liability for pollution and other losses caused by chemical / biological weapons as a result of an act or omission by a third party, the Civil Liability Convention (CLC) and certain US legislation at best limited the right of exclusion. In view of this, the Group agreed (with the consent, where relevant, of its reinsuring underwriters) that cover which would otherwise be excluded should still apply, in circumstances where liability might attach by reason of the Club having issued certification in pursuance of such provisions, should nonetheless apply. The same principles will apply to payments made under STOPIA which fall within the risks certified under the CLC, but which would otherwise be excluded under the war risks exclusion.

In order to regularize these circumstances, the following additional language will be inserted as a new first proviso after the main text of the (now slightly amended as above) Class I, Rule 3, Section 1, Sub-Section 1:

***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***
- ***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),***

***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. Where any such guarantee, undertaking or certificate is provided by the Association on behalf of a Member as guarantor or otherwise, the Member agrees that any payment by the Association thereunder in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other policy of insurance or extension to the cover provided by the Association, be deemed to be by way of loan and that there shall be assigned to the Association all the rights of the Member under any such other insurance and against any third party.***

The current proviso in the Rule will follow as final proviso to the Rule with an amended introduction:

***AND FURTHER PROVIDED ALWAYS THAT:***

***The Directors may resolve that special cover....etc.***

#### **Treatment of mutual premium in relation to policy year results**

In order to regularize the position the Club has taken since it became a member of the International Group of P&I clubs as of February 20, 1989 and thereby a participant in the International Group's Pooling Agreement, it has been decided to make explicit in the Rules the Club's ability to subvent closed years' deficits out of open years' funds.



Accordingly, a new Section 6 to Class I, Rule 4 will take effect as follows from February 20, 2005, the current Section 6 *et seq.* to be renumbered as required:

6. ***Subject always to the provisions of Rule 4, Section 14 concerning Overspill Claims / Calls, if at any time or times after a policy year has been closed, such year being a policy year which shall have commenced no earlier than February 20, 1989, it shall appear to the Directors that the costs, expenses and outgoings arising in respect of that policy year exceed or are likely to exceed the premium and other receipts in respect of such policy year (and of all transfers from reserves and provisions made for the credit of or in respect of such policy year) then the Directors may decide to provide for such a deficiency in any one or more of the following ways:***

- (i) by transferring funds from the reserves of the Association;***
- (ii) by transferring funds standing to the credit of any different closed policy year;***
- (iii) by levying such interim or final supplementary premium in respect of an open policy year or years with the intention of applying either the whole or a part thereof to meet any such deficiency.***

7. ***Premium to Release***

***Upon or at any time....etc.***

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


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

It is hoped that the foregoing changes are clear, but if any Member requires and 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**