

No. 16 - Small Tanker Oil Pollution Indemnification Agreement (STOPIA)

February 2005

Dear Sirs

Small Tanker Oil Pollution Indemnification Agreement (STOPIA)

On the 3rd March 2005 the Supplementary Fund Protocol 2003 will come into force in Denmark, Finland, France, Germany, Ireland, Japan, Norway and Spain. A number of other States are expected to ratify the Protocol shortly.

The Protocol provides an additional layer of compensation in respect of oil pollution damage to which the 1992 Civil Liability Convention (CLC 92) and/or 1992 Fund Convention (1992 Fund) apply. The maximum amount of compensation available in States where the Protocol is in force will be SDR 750 million (approximately US\$1.15 billion). This figure is inclusive of the compensation payable under the 1992 Fund (up to SDR 203 million) which is, in turn, inclusive of any compensation payable under CLC 92 (between SDR 4.51 million and SDR 89.77 million depending upon vessel tonnage).

In 2001, at the time when the Supplementary Fund Protocol was being drawn up, the Boards of all International Group Clubs agreed to put in place a mechanism for increasing the minimum limit of shipowner liability under CLC 92 in order to:-

- Demonstrate the support of shipowners for the compensation scheme established by CLC 92/1992 Fund.
- Demonstrate the commitment of shipowners to the notion of sharing and in recognition of the potential increased burden for contributing oil receivers under the proposal to introduce a third tier of compensation through the Supplementary Fund Protocol.
- Avoid the necessity to amend the Conventions.

Following the adoption of the draft Protocol at the IMO two agreements were drawn up in order to implement the scheme approved by Club Boards.

The first agreement, known as Small Tanker Oil Pollution Indemnification Agreement (STOPIA) has the effect of substituting the limit of liability under CLC 92 of SDR 4.51 million (approximately US\$ 6.7 million) for a tanker not exceeding 5,000gt with a limit of SDR 20 million (approximately US\$30 million) for a tanker not exceeding 29,548gt.

STOPIA is an agreement between the owners of tankers of 29,548 gt or less to indemnify the 1992 Fund in respect of the Fund's liability for the difference between the shipowner's limit of liability under CLC 92 and SDR 20 million. The indemnity will only apply in the event of tanker spills affecting a State in which the Supplementary Fund Protocol is in force and when liability is imposed on the ship owner under CLC 92. Neither the flag of the vessel nor the ownership of the cargo are relevant. Provided that the amount of compensation payable exceeds the shipowner's limit under CLC 92, the scheme will operate even if there is no claim upon the Supplementary Fund. Because the indemnity is payable to the 1992 Fund, all contributors to the 1992 Fund will benefit when STOPIA applies. The scheme is based upon the liability and compensation system established by the 1992 Conventions and shipowners and their Clubs reserve the right to withdraw the scheme if and when any material change to the provisions regarding tanker owners' liability is made. Although the 1992 Fund is not a

party to STOPIA, legally enforceable rights of indemnification are created for the benefit of the 1992 Fund.

The second agreement (currently awaiting the approval of the 1992 Fund Assembly) takes the form of additional provisions to be inserted into the Memorandum of Understanding (MOU) which has been in existence between the 1992 Fund and the International Group of P&I Clubs for many years. Under these new provisions, the Clubs undertake to provide cover against the liabilities incurred by their Members to indemnify the 1992 Fund in accordance with STOPIA and to give the 1992 Fund the right of direct action against the insuring Club in respect of those liabilities. The Clubs also undertake to provide for automatic entry of relevant vessels in STOPIA as a condition of pollution cover and to advise the Fund of the names of all such vessels.

Therefore with effect from the 3rd March, Rule 2 s.11 proviso (d) of the Club Rules will have the effect of entering fully mutual members who are owners of tankers of 29,548 gt or less, and which may carry persistent oil in bulk as cargo, in the STOPIA scheme. A Member's liability to indemnify the 1992 Fund under STOPIA will be insured by the Club in accordance with the Rules and the Member's terms of entry.

A copy of STOPIA, plus a more detailed explanatory note is attached to this circular as Annex 1 (99KB)

A copy of the MOU amendment is attached to this circular as Annex 2 (15KB).

Charterparty Clause

It is likely that charterers will require relevant tanker owners to warrant their participation in STOPIA under the terms of charterparties. A recommended clause for inserting into charterparties is attached as Annex 3 (11KB).

Yours faithfully

West of England Insurance Services (Luxembourg) S.A.
(As Managers)

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Director