

No. 9 2018/2019 - New charterparty clause promoting the use of the Inter-Club New York Produce Exchange Agreement 1996, as amended September 2011

IG Circular October 2018

Reference is made to Notice to Members No. 19 2011/2012 referring Members to the Inter-Club New York Produce Exchange Agreement 1996 (the "ICA"), as amended in September 2011, that provides a mechanism whereby liability for cargo claims arising under the New York Produce Exchange Form (NYPE) or Asbatime charterparties and/or contracts of carriage authorised under such charterparties can be swiftly and fairly apportioned between owners and charterers.

In order to promote the application and incorporation of the 2011 Agreement into all NYPE/Asbatime charterparties, Notice to Members No. 6 2016/2017 referred Members to a recommended charterparty clause drafted by the International Group of P&I Clubs.

However, a recent London arbitration finding has given the International Group cause for concern, with the tribunal finding that the charterparty clause only incorporated the liability provisions of the ICA and not the requirement to provide security as contained in clause 9 of the 2011 Agreement.

As a result, the International Group has amended the recommended Charterparty clause wording issued in 2016 in order to take account of this recent finding and to encompass the 2011 Agreement requirement for security to be provided. The amended clause for recommendation is as follows:

"Cargo claims as between Owners and the Charterers shall be governed by, secured, apportioned and settled fully in accordance with the provisions of the Inter-Club New York Produce Exchange Agreement 1996 (as amended 2011), or any subsequent modification or replacement thereof. This clause shall take precedence over any other clause or clauses in this charterparty purporting to incorporate any other version of the Inter-Club New York Produce Exchange Agreement into this charterparty".

All member Clubs of the International Group have issued a similar circular.

Yours faithfully

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

A. Paulson
Director