18 June 1999

TO ALL MEMBERS

Dear Sirs

YEAR 2000

In the Association's Circular No 5:274 dated 26 February 1999, Members were advised of the US Coastguard sponsored meeting which would be held in London on 3 and 4 March 1999. The meeting was also sponsored by the United Kingdom Maritime and Coastguard Agency and representatives from a wide spectrum of marine industry organisations attended, including a team from the International Group. The meeting's initial aim was to share information amongst the various organisations in order to establish common ground and, if possible, agree on means of combating the Year 2000 problem.

However, following two days of intensive debate, the meeting adopted two documents, a *Code of Good Practice* and *Key Elements of Year 2000 Contingency Plans for Ships, Ports and Terminals*. Both documents have been circulated by IMO under circular No:2121 to member governments and affiliated bodies. Copies of these documents should be obtainable from national shipping organisations, or they may be downloaded from the IMO website at **www.imo.org** in the Year 2000 section (www.imo.org/imo/y2k/y2kgps2.htm). A link to that website has been established from the Association's own site, **www.lsso.com**.

Code of Good Practice & Contingency Planning

The *Code of Good Practice* sets out certain precautions which ship operators, port authorities and terminal operators could adopt in order to minimise the risks associated with Y2K equipment failure or system malfunctions. The underlying principles of the Code are simplicity and a common standard, which will avoid unnecessary duplication in questionnaires and approaches to contingency planning. However, the Code will only be effective if it is implemented by as many sides of the industry as possible.

Key Elements of Year 2000 Contingency Plans for Ships, Ports and Terminals is a short guide aimed at assisting those in the maritime transportation industry to understand the elements of Year 2000 contingency planning which may supplement/complement existing emergency response plans.

However, observing the precautions set out in the Code may mean that ship operators could be exposed to claims for deviation and delay; terminal operators and port authorities could also face claims for delay. Thus in order to promote the principles set out in the Code while at the same time wishing to protect ship operators, port authorities and terminal operators from the potential consequences of implementing its recommendations the International Chamber

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of Shipping, in co-operation with other industry bodies, including the International Group, has produced the *Year 2000 Safety Protocol*, a copy of which is attached hereto. A Memorandum which explains the reasoning behind the Protocol has also been prepared, and is available on the Association's website **www.lsso.com**.

It must be stressed that the function of the Protocol is not to provide a defence in respect of accidents or delays caused by Year 2000 equipment failures or system malfunctions. Rather, it seeks to protect the ship operator only from the direct consequences of following the recommendations set out in the relevant paragraphs of the *Code of Good Practice*.

Acceptance of the Protocol by ship operators, charterers and port operators, as well as representative bodies within the industry will mean that they endorse the concept of the *Code of Good Practice* and, in particular, the practices recommended in paragraphs 5, 6 and 7. By subscribing to the Protocol individual commercial organisations will acknowledge that no claim should be made in respect of any loss or liability caused by implementing such practices. Members are encouraged to register as a party to the Protocol.

Incorporation Clause

Where parties wish to give contractual effect to adherence to the *Code of Good Practice* in bills of lading or charterparties, a specific clause, incorporating the terms of the Protocol, will need to be added to such contracts. Such a clause has been drafted by BIMCO with the support and advice of other industry organisations involved with the Protocol project. It reads as follows:

> "It is agreed that the Year 2000 Safety Protocol (dated 14th June 1999) together with the Code of Good Practice contained in IMO circular letter No. 2121 dated 5th March 1999, shall be incorporated into this contract and that any practices implemented in accordance therewith shall not be considered a breach of this contract nor form the basis of any claim in tort and shall be deemed taken in good faith and in the exercise of due diligence."

Practical Guidelines for Year 2000 Contingency Planning

The International Group in association with other representative bodies, including the International Chamber of Shipping and Joint Hull Committee has supported the publication of *Practical guidelines for Year 2000 contingency planning*. The purpose of the guidelines, which come with a CD-Rom containing the full text, is to offer practical assistance to ship operators and others in the industry who are preparing their contingency plans. A copy of these guidelines is being sent to all Members with this Circular.

Finally, Members are reminded of Rule 4 - Unreasonable Conduct - and in particular Rule 4.2, which requires Members to behave as prudent uninsureds in relation to millennium and similar date-related problems. If a Member has not so acted, the Committee has the power to reject or reduce claims arising from failure to observe that requirement.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)

Elements of the Code of Good Practice
(extract from IMO Circular 2121 dated 5 March 1999)

5 The Code recommends measures whereby those responsible for ship, port and terminal operations can reduce the risks associated with the possible malfunction of equipment incorporating "embedded systems", as well as computer equipment, which may be dependent on electronic date recognition. It stresses the importance of:

- the shipmaster's freedom to use his professional judgement in accordance with SOLAS regulation V/10-1 *
- the shipowner's master's, port authority's and terminal operator's respective responsibilities for safety and the environment;
- compliance with rules and recommendations covering such matters as passage planning, maintaining appropriate margins of safety in case of breakdown, and prompt reporting when so required;
- the exchange of information between involved parties so as to ensure that all concerned are fully informed and that the measures that have been taken are appropriate to the circumstances; and
- the provision of suitable additional training, where appropriate.

6 The Code is not intended to preclude the adoption of other measures by individual shipping companies, port authorities and terminal operators, nor does it relieve those responsible of their duty to use their discretion in light of the many factors which contribute to safety and pollution prevention.

7 It is recommended that, for the duration of any period when there may be date induced uncertainty as to the performance or functionality of computer systems, electronic and electro-mechanical or similar equipment, the following precautions should be adopted:

.1 Sufficient competent personnel should be available on ships and within ports and terminals to monitor and maintain extra vigilance on critical systems and operations, and respond immediately to equipment failures during the Year 2000 critical periods. Furthermore, if it is planned to introduce operational contingency plans in excess of normal practice, it is important that staff are fully trained and exercised in the implementation of such plans.

.2 Prior to entering confined or congested waters and areas where hazards to navigation exist, the master, taking into account the prevailing circumstances and any advice or instructions received, should decide on the appropriate action to be taken to ensure the continued safety of his ship, crew, passengers and cargo, bearing in mind that not only the ship, but other ships in the vicinity, could lose power, steering or the use of electronic navigation equipment. If the master deems that the safety of the ship is at risk, the master should consider measures to minimize the risk by such means as reducing speed, delaying entry to the port or steering an alternative course.

.3 The port or terminal may obtain information in advance from ship operators in accordance with the questionnaire in Appendix 1. Prior to arrival in or departure from a port or terminal, or before entering port limits, information from authorized personnel should be

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* **SOLAS Chapter V (Safety of Navigation), regulation 10-1:**
Master's discretion for safe navigation
The master shall not be constrained by the shipowner, charterer or any other person from taking any decision which, in the professional judgement of the master, is necessary for safe navigation, in particular in severe weather and in heavy seas.

exchanged by appropriate means between the ship and the port or terminal, as provided for in the questionnaires in Appendices 2 and 3.

.4 Prior to a ship entering or navigating within a port, the port authority or terminal operator should advise the ship of any additional conditions or constraints on navigation or cargo handling that the port authority or terminal operator has decided are necessary in order to minimize the risks associated with any Year 2000 equipment malfunction. Such measures might include minimum separation between ships, speed constraints, the use of tugs, loading/discharge restrictions, etc.

.5 If, after exchanging information, and prior to commencing cargo handling or bunkering operations, there is doubt whether the planned operation can be conducted safely, and without hazard to the environment, property or personnel, the master, port authority or terminal operator should within their respective scope of responsibility, postpone or suspend the operation until the risk of Year 2000 equipment malfunction has passed.

.6 Following a Year 2000 critical period, all equipment not used during that period, and potentially affected by electronic date recognition problems, should be tested to ensure that its performance has not been adversely affected.