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## **TO ALL MEMBERS**

Dear Sirs

### **International Group of P&I Clubs Review by the European Commission**

Members may be aware, as a result of reports in the shipping media, of the fact that the European Commission has decided, following the expiry of the exemption from competition laws of the International Group Agreement (IGA), to undertake a review of three aspects of the Group's arrangements as follows:

1. Insurance premium quotation procedures that are part of the IGA.
2. Provisions in the IGA concerning release calls.
3. Access by commercial insurers to reinsurances arranged by the International Group.

It is understood that the review has not been prompted by any particular complaint.

This focus on these particular aspects of the arrangements suggests the Commission has concerns about them, although the precise nature of those concerns is presently unclear. The Group is currently in the process of giving the Commission explanations and some preliminary views and a dialogue is continuing. Nevertheless, Members might be interested to know more of the issues over these areas of review:

#### **The Quotation Procedures**

The IGA contains limitations on Clubs quoting for each others' business which are considered by the Group to be a necessary "light restraint" required to ensure fairness of rating between Members and are therefore indispensable to the operation of mutuality. The limitations are designed to deter the quotation of discriminatory rates that favour one Member at the expense of others, in order to attract or to retain business. This is achieved by a requirement that a new Club being asked to quote respects the experience of the existing Club when setting a rate and requires the new Club to charge not less than the existing Club's rate for a year after the ship is taken on. Without the quotation procedures, the Group believes that ratings will be "shaved", as holding Clubs attempt to retain business and maintain their spread of risk, whilst others endeavour to increase theirs, so destroying fairness between Members because it would



become impossible for underwriters to follow a general practice of assessing rates on a proper, mutual underwriting basis. This process might ultimately cause the mutuality of the Clubs' arrangements to break down. The Group believes that the restraint is necessary to provide confidence in the fairness of the system that Shipowners and Clubs require and which encourages them to participate in the Pool. Although it could not be said that the Pool would be absolutely certain to collapse in the absence of that confidence, the Group nevertheless believes such a collapse would be likely to happen. Accordingly, the absence of the quotation procedures would give rise to a very serious risk of loss of the benefits of the Pool. The Group considers that the loss of the Pool would be extremely detrimental to Shipowners and to third party interests who benefit from the compensation provided by Clubs and that any serious risk of such loss must be avoided. That is a view which was shared by Shipowners and Shipowner Associations who supported the quotation procedures when they were reviewed by the Commission in the past.

The Commission appears to accept that rating must be undertaken fairly and its focus seems to be on whether the quotation restrictions are the optimum means of achieving the objective. It has been suggested by the Commission that the provision of information to the new Club with a simple request to rate fairly might be sufficient.

The quotation procedures were also the main focus of the Commission's investigations into the Group's arrangements in 1985 and 1999, following which, on each occasion, exemptions were granted. Indeed, in 1985 the Commission acknowledged explicitly the serious risk of the break-up of the Pool, in their absence, concluding that there was a "strong likelihood" that this would happen. The Group believes that the law does not permit the Commission to reach a different conclusion at this juncture, in the absence of any material change in relevant circumstances.

### **Release Calls**

The Commission is focusing on two aspects of the release call system. Firstly it is questioning how release calls are calculated and suggesting that in some cases they do not accurately reflect the likely run-off of claims. However, there are aspects of the calculation of release calls that are not capable of being reduced to a mathematical calculation and Club Boards may very well each wish to take different approaches. For example, this Association's Committee would be reluctant to accept a change that could result in a loss of fairness between Members remaining in the Club and others who might choose to leave; and in any event there is no obligation to pay release calls, because the option is always available to pay supplementary calls as and when they come due, so long as such payment is guaranteed by the Member leaving.

It is notable that this is not an aspect of the Group's arrangements that involves any cooperation, with Club Boards being entirely free to approach the setting of release calls at rates appropriate for their own Clubs. Indeed, this is a part of the business over which there is no restraint on competition whatsoever. This is in the process of being explained to the Commission.

The Commission's second area of focus is a requirement in the IGA for Clubs to accept bank guarantees (of payment of supplementary calls) in lieu of release calls when a Shipowner moves from one Club to another. The Commission is questioning whether that same requirement applies when a ship leaves a Club and is then insured by a commercial P&I underwriter. This Association does not discriminate in that respect and,

as the Commission has been informed by the Group, it is understood that other Clubs currently follow the same policy.

**Reinsurance**

The Commission seems to have a concern that the Group's own reinsurance contract for claims in excess of the Pool may in some way or another limit the availability of reinsurance to other P&I insurers and there is a suggestion that the Group might grant them access to its own programme. Market evidence as to availability of reinsurance capacity does not, however, support the concern and again the Commission is being so informed.

In the event that the Commission's concerns persist, then hopefully they will in due course become clearer and Members will be kept informed of the continuing dialogue. In the meantime it appears that some Members have received questionnaires from the Commission, focusing on the matters described above, and others may do so in future. One of the issues arising over the questionnaires is that they contain short deadlines for responses to be issued. It is understood, however, that details of the Commission's case team are included and they can be contacted in the event that Members concerned have difficulty meeting the deadlines. It is anticipated that the Commission should be receptive to properly explained and legitimate needs for extensions of time, combined with suggestions as to alternative deadlines

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)