

27 January 2011

## **TO ALL MEMBERS**

Dear Sirs

### **Charterparty Clause – Financial Security in Respect of Pollution**

In 1990, in response to prospective oil pollution legislation in the United States of America, a recommended pollution charterparty clause was circulated to Members recommending that owners should not warrant in charterparties that they would comply with future unforeseen requirements regarding certificates of financial responsibility for oil pollution.

An amended clause for inclusion in charterparties of tankers was circulated in 1996 to reflect the 1992 Protocol to the Civil Liability Convention and the requirements concerning certification in the US Oil Pollution Act of 1990 (OPA '90). These clauses were updated again and combined in a new single charterparty clause in 2008 to reflect the entry into force of the Bunker Convention.

The clause has now been further updated to remove any uncertainties that may have arisen with regard to the scope of charterers' indemnity under the clause, in particular with regard to the consequences of non-compliance with financial security requirements and also the rights and liabilities of the parties in the event of the owner agreeing to meet them.

The updated clause also addresses prospective enforcement of the recent amendment to the financial responsibility provisions of OPA '90 by means of the US Coast Guard Authorization Act of 2010. The US Coast Guard Authorization Act of 2010, which was signed into law on 15 October 2010, extends the financial responsibility provisions of OPA '90 to "any tank vessel over 100 gross tons using any place subject to the jurisdiction of the United States". Currently, these requirements apply only to vessels over 300 gross tons using any place subject to the jurisdiction of the US (except non-self-propelled vessels that do not carry oil as cargo or fuel) and vessels using the exclusive economic zone to tranship or lighter oil destined for a place subject to the jurisdiction of the United States.

The International Group has been informed by the US National Pollution Funds Center (NPFC) (an agency of the United States Coast Guard) that a further implementing Regulation is necessary before the US will require compliance with these extended financial responsibility provisions, and that this is likely to be issued in the coming months. The enforcement of the extended financial responsibility provisions of OPA '90 at a future date is addressed in the wording of the updated clause contained in the Annex to this circular.

The International Group will continue to engage with the NPFC and will provide a further update to Members as soon as the Regulation is issued and the enforcement date is known.

While the updated clause does not add to the current obligations in relation to certification, Members should continue to make sure that their vessels carry on board such certificates as are required under paragraph I of the clause.

Members should start using the clause in all new charterparties.

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)

All Clubs in the International Group have issued similar circulars.

## **Financial Security In Respect Of Pollution**

- (1) Owners warrant that throughout the currency of this charter they will provide the vessel with the following certificates:
  - (a) If the vessel is over 1,000 gross tons and is registered in, or is required to enter a port or offshore facility in the territorial sea of, a State Party to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, a Certificate issued pursuant to Article 7 of that Convention.
  - (b) If the vessel is constructed or adapted for the carriage of persistent oil in bulk as cargo and is carrying more than 2,000 tons of such cargo, a Certificate issued pursuant to Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992, as applicable.
  - (c) If the vessel is over 300 gross tons (or as might otherwise be required by US Federal Statutes and Regulations) and is required to enter US navigable waters or any port or place in the US, a Certificate issued pursuant to Section 1016 (a) of the Oil Pollution Act 1990, and Section 108 (a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended, in accordance with US Coast Guard Regulations, 33 CFR Part 138.
- (2) Notwithstanding anything whether printed or typed herein to the contrary,
  - (a) Save as required for compliance with paragraph (1) hereof, owners shall not be required to establish or maintain financial security in respect of oil or other pollution damage to enable the vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this charter.
  - (b) Charterers shall indemnify owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the costs of any delay incurred by the vessel as a result of any failure by the charterers promptly to give alternative voyage orders) which owners may sustain due to non-compliance with any demand or requirement to establish or maintain financial security in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (1) hereof.
  - (c) Without prejudice to paragraphs 2(a) and 2(b), if owners establish or maintain financial security other than to the extent provided in paragraph (1) hereof (in order to enable the vessel lawfully to enter, remain in or leave any port, place or waters), charterers shall, unless otherwise expressly agreed, indemnify owners and hold them harmless in respect of any costs or delay incurred in establishing or maintaining such security.
  - (d) Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which charterers and/or the holders of any bill of lading issued pursuant to this charter may sustain by reason of any requirement to establish or maintain financial security in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (1) hereof.
- (3) Charterers warrant that the terms of this clause will be incorporated effectively into any bill of lading issued pursuant to this charter.