



## STEAMSHIP MUTUAL

To the Members

April 2006

Dear Sirs,

### **Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) & Tanker Oil Pollution Indemnification Agreement (TOPIA).**

#### **Background.**

Members are referred to the Club's circular B.422 of February 2005 advising that the Boards of all International Group Clubs had agreed to put in place a binding contractual agreement, known as STOPIA (Small Tanker Oil Pollution Indemnification Agreement), which had the effect of increasing the minimum limit of liability for smaller tankers under the 1992 Civil Liability Convention (CLC 92) to SDR 20 million. STOPIA operated by indemnifying the 1992 Fund for the difference between a tanker's limit of liability under CLC 92 and SDR 20 million. STOPIA took effect on 3<sup>rd</sup> March 2005 in recognition of the additional compensation obligation placed on oil receivers by the Supplementary Fund Protocol 2003 and in order to demonstrate shipowners' support for the successful compensation scheme established by the 1992 CLC and Fund Conventions.

#### **Voluntary Agreements instead of Revision.**

When the 2003 Protocol came into force in March 2005, the Working Group which had been set up by the 1992 Fund Assembly in 2001 in order to examine the possible need for revision of the 1992 Conventions had not been able to reach any clear consensus and the issue was therefore referred back to the Fund Assembly.

The IOPC Fund Assembly met in October 2005 to consider whether or not to proceed with revision of the 1992 Civil Liability and Fund Conventions and made the following decisions:-

That there was insufficient support to continue the revision process which was removed from the Assembly's agenda. The Working Group set up to consider revision will be disbanded.

The proposal authorized by Club Boards shortly before the meeting to put in place a binding contractual scheme in order to share the overall cost of claims 50:50 with oil receivers in the event that revision was abandoned was noted and the Fund Director was instructed to collaborate with the International Group acting on behalf of shipowners and with OCIMF on behalf of oil receivers in order to put forward a package of voluntary agreements for consideration by the Assembly at its next meeting in February 2006.

For many states, the decision to halt revision was made in reliance on the offer made by shipowners to share the overall cost of claims equally with oil receivers.

#### **Latest Initiatives.**

Following the IOPC Fund Assembly meeting in October 2005, a number of meetings took place between the International Group, the Fund Secretariat and OCIMF in order to find an acceptable mechanism to give effect to the offer made by shipowners that the overall cost of claims be shared equally with oil receivers.

In addition, there were regular consultations with ICS and Intertanko in order to ensure that the content of any new agreements was acceptable to as wide a cross section of the shipowning industry as possible.

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These discussions resulted in draft amendments to the original STOPIA agreement, resulting in its proposed replacement with a new draft agreement named STOPIA 2006 (Small Tanker Oil Pollution Indemnification Agreement 2006), and a further new draft agreement named TOPIA (Tanker Oil Pollution Indemnification Agreement). Copies of STOPIA 2006 and TOPIA are attached to this circular as Annexes I and II. A detailed summary of the content of each Agreement is also contained in the attached Explanatory Notes.

#### **STOPIA 2006.**

STOPIA 2006 largely mirrors the current STOPIA contract which has been in force since March 2005 and under which the owners of relevant tankers of 29,548 gt or less agree to indemnify the 1992 Fund for the difference between the vessel's limit of liability under CLC 92 and SDR 20 million. This has the effect of increasing the minimum limit of liability for smaller tankers to SDR20,000,000, as compared to the minimum limit of SDR4,500,000 applicable under CLC92.

STOPIA 2006 differs from the original STOPIA in that it contains a review mechanism whereby the agreement may be adjusted to compensate prospectively if after the first ten years of its operation (and after every subsequent five years) the proportion of claims paid by either shipowners or oil receivers under all three conventions (CLC 92, Fund 92 and Supplementary Fund Protocol 2003) since 20<sup>th</sup> February 2006 is greater than 55%. If that proportion is greater than 60%, the agreements must be adjusted.

In addition, STOPIA 2006 applies to all states party to the 1992 Fund whereas the original STOPIA only applied to such states as were also party to the Supplementary Fund Protocol 2003. Finally, there are also changes to the termination and recourse provisions of the agreement to meet objections raised by various states during discussion at the IOPC Fund meetings.

#### **TOPIA.**

TOPIA is similar to STOPIA 2006, but has two substantial differences. Firstly, under TOPIA, tanker owners undertake to indemnify the Supplementary Fund in respect of 50% of the amount of any claim falling on the Supplementary Fund.

Secondly, TOPIA applies to all relevant tankers regardless of size. TOPIA contains identical review and adjustment provisions to those set out in STOPIA 2006 so that any imbalance in the proportion of claims borne by shipowners or oil receivers may be adjusted prospectively by amending TOPIA or STOPIA or both.

Following approval of these two draft agreements by International Group Club Boards, they were submitted to the IOPC Fund Assembly meeting at the end of February 2006. At that meeting, all the proposals developed as a result of the aforementioned discussions were agreed with the following exception. At the express request of certain key states which were supportive of using the shipowners' revised offer as a means of halting revision, it had been proposed that the offer should be made to extend the benefits of STOPIA to all states party to CLC 92. Because STOPIA 2006 operates by indemnifying the 1992 Fund rather than by paying claimants directly, a different contractual mechanism would have been required to extend a similar benefit to the small handful of states which are party to CLC 92 but not the 1992 Fund. However, at the IOPC Fund Assembly meeting it was agreed that this offer should not be extended to non-Fund states, given that it would act as a disincentive to them becoming signatories to the 1992 Fund.

#### **The Effect of the New Agreements.**

STOPIA 2006 and TOPIA are intended to have the effect, over time, of ensuring that the total cost of oil pollution claims falling within the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol are shared equally between shipowners and the oil receivers who contribute to the 1992 Fund.

The IOPC Fund carried out a statistical review of the cost of pollution claims falling under the Civil Liability and Fund Conventions between 1978 and 2003. The result of that study showed that whilst there were large variations in the proportion of the claims cost borne by oil receivers and shipowners in any one year, over the longer term the cost had been shared approximately equally.

The IOPC Fund secretariat has recently carried out a further analysis of the same statistical database which has shown that if the claims figures for the period from 1978 to 2003 are adjusted as if the current Convention limits had applied together with STOPIA and TOPIA as currently proposed, shipowners would have paid 51% and oil receivers 49% if the figures are inflated to 2002 values. This split is reversed if the claims figures are inflated to projected 2012 values. Whilst this equitable result for the past may not necessarily be repeated in the future, especially over the shorter term, it does provide justification for proceeding with STOPIA 2006 and TOPIA as proposed. Although there may well be considerable volatility in the apportionment of cost from year to year, especially if very large claims occur, the adjustment mechanisms will provide a means for progressively correcting any significant imbalance.

#### **Implementation.**

Following the acceptance of both agreements by the IOPC Fund Assembly in February 2006; STOPIA 2006 and TOPIA will take effect retrospectively from 20<sup>th</sup> February 2006 and 3 month's notice of termination of the original STOPIA was served on the 1992 Fund on that date. The implementation of STOPIA 2006 and TOPIA will be reflected in changes to the Memorandum of Understanding ( MOU) which is currently in force between the IOPC Funds and the International Group in order to give effect to the Clubs' undertakings to provide automatic entry in STOPIA 2006 and TOPIA and to provide cover for the liabilities arising thereunder. In addition the MOU gives the 1992 and Supplementary Funds the right of direct action against the Clubs in respect of those liabilities.

#### **Cover for STOPIA 2006/TOPIA liabilities.**

The 2006 Club Rules have been amended to take into account the greater liabilities faced by Members as a result of the introduction of these new agreements. Therefore, with effect from 20th February 2006, proviso (iii) of Rule 25.vi. of the Club Rules will have the effect of entering fully mutual Members who are owners of tankers of 29,548gt or less, and which may carry persistent oil in bulk as cargo, in STOPIA 2006. Similarly, proviso (iv) of the same rule will have the effect of entering fully mutual Members who are owners of any tanker which may carry persistent oil in bulk as cargo in TOPIA. A Member's liability to indemnify the 1992 Fund under STOPIA 2006 and to indemnify the Supplementary Fund under TOPIA will be insured by the Club in accordance with the Rules and the Member's terms of entry.

It is likely that charterers will require relevant tanker owners to warrant their participation in STOPIA 2006 and TOPIA under the terms of charter parties. A recommended clause for inserting into charter parties is attached to this circular as Annex III.

Yours faithfully,

THE STEAMSHIP MUTUAL UNDERWRITING  
ASSOCIATION LIMITED