

CIRCULAR

OUTLINE

- STOPIA and TOPIA have had their 10 years' period review with participation of ship and oil cargo interests.
- The IG, in conjunction with ICS and Intertanko, has decided not to adjust the financial burden under the two Agreements on this occasion.
- Two changes have been agreed: (i) to address prohibitions of reimbursements by sanctions legislation; (ii) to ensure future reviews are similarly conducted at 10 years' intervals and are based on cumulative data from all review periods.

TO THE MEMBERS

STOPIA 2006 (AS AMENDED 2017) AND TOPIA 2006 (AS AMENDED 2017) – 2017 AMENDMENTS

Background

The Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the Tanker Oil Pollution Indemnification Agreement (TOPIA) were agreed in 2006 to reflect the desire of shipowner entered Members in International Group Clubs to ensure the continuing success of the international oil pollution compensation regime. More particularly, with the 2003 Supplementary Fund Protocol having been recently introduced at that time, there was a desire to ensure that the costs of responding to spills of persistent oil from tankers should be more equitably borne by shipowners and the receivers of oil.

STOPIA 2006 provides for shipowners to make payments to the 1992 Fund which are designed to adjust the financial effect of the limitation of liability provisions contained in the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC) for spills from tankers of less than 29,548 GT. TOPIA 2006 provides for shipowners to indemnify the Supplementary Fund for 50% of the compensation it pays under the 2003 Supplementary Fund Protocol for pollution damage caused by tankers in States Party to the Protocol.

To date, there has been one STOPIA case and no TOPIA cases (on account of the fact that there have been no cases that have engaged the Supplementary Fund).

Both Agreements contain identical review clauses that provide for a review of 1992 CLC and 1992 Fund claims data from the period of 20th February 2006 (when both Agreements became effective) to 20th February 2016.

STOPIA and TOPIA review

The International Group initiated this review at the start of 2016, with the participation of the 1992 Fund Secretariat and the Oil Companies International Marine Forum (OCIMF) (representing the cargo contributors).

The outcome of the review highlighted that the total cost of claims paid by shipowners under the system in this ten year period was significantly higher than the total cost of claims paid by cargo contributors in the same

period. Both Agreements contain clauses to adjust the financial burden where such an imbalance arises. However, following consultation with the relevant shipowner representative bodies (ICS and Intertanko), the International Group decided on this occasion not to implement any of the measures in the Agreements to adjust the financial burden. The International Group recognised that the data collated during the period did not fully reflect the total payments to be made by the 1992 Fund in the “Hebei Spirit” case, which will be covered by the next ten year review. When the expected payments on that case are taken into account the burden is shown to have been more evenly shared. However, the International Group retained the right to consider any such measures if any future review reveals any such imbalances.

STOPIA and TOPIA amendments

During the review, the following changes to the Agreements were agreed that would address both the introduction of future sanctions legislation and the time period and operation of future reviews. These amendments will have the effect of:

- 1) Protecting shipowners and the International Group Clubs in circumstances where, for reasons beyond their control, they are prevented from reimbursing the 1992 Fund and/or the Supplementary Fund, by means of the two Agreements, as a result of legislation that is designed to prevent shipowners and insurers from making payments that would fall within the scope of any applicable sanctions regime;
- 2) Ensuring that future reviews are aligned with the original review period of ten years rather than a future review of claims data over just a five year period (as currently prescribed in the Agreements), and
- 3) Ensuring that the cumulative data collected over all review periods will be considered in future reviews and not just the claims data in that future review period.

The amended Agreements are attached to this circular and have been re-titled STOPIA 2006 (as amended 2017) and TOPIA 2006 (as amended 2017).

All Clubs in the International Group have issued similar circulars.

Yours faithfully

THOMAS MILLER (BERMUDA) LTD

For more information

Members requiring further information should contact Dr. Chao Wu at chao.wu@thomasmiller.com or telephone +44 20 7204 2157