

CIRCULAR REF: 2011/006

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS
ATTENTION INSURANCE DEPARTMENT**

**28 JANUARY 2011
CGT/PO**

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 Bunkers Convention.

The clause has 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 transship 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

CIRCULAR

NORTH OF ENGLAND P&I ASSOCIATION LIMITED 100 The Quayside, Newcastle upon Tyne, UK, NE1 3DU
Telephone: +44 (0) 191 2325221 Fax: +44 (0) 191 2610540 www.nepia.com

The North of England Protecting and Indemnity Association Limited. Registered in England No. 505456. Registered Office above
Hong Kong: Room 2503, COSCO Tower, 183 Queen's Road, Central, Hong Kong Telephone: +852 25446813 Fax: +852 25424424
Greece: 5-7 Aghiou Nikolaou, GR 185 37 Piraeus, Greece Telephone: +30 210 4283038 Fax: +30 210 4280920.
Singapore: 80 Anson Road, #26-04 Fuji Xerox Towers, Singapore 079907 Telephone: +65 64110160 Fax: +65 62240160.
Tokyo: Akiyoshi Kyobashi Building, 8th Floor, 1-17-2 Kyobashi, Chuo-ku, Tokyo, Japan 104-0031 Tel: +81 (3) 5159 5373 Fax: +81 (3) 5250 0003
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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 1 of the clause.

Members should start using the clause in all new charterparties.

All Clubs in the International Group have issued similar circulars.

COLIN TRAPPE
DIRECTOR - North Insurance Management Limited
As Managers on behalf of the North of England P&I Association Limited