



# THE JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION

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Our Ref.....

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## TO THE MEMBERS

Circular No.96-006

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Dear Sirs,

### HNS Convention

A Diplomatic Conference held by IMO adopted on 3 May 1996 a Draft Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (the "HNS Convention").

The HNS Convention was introduced to ensure that adequate, prompt and effective compensation is available to people who suffer damage caused by incidents in connection with carriage by sea of hazardous and noxious substances.

One of the main principles of the HNS Convention is the sharing of liability for compensation to victims of HNS incidents between the ship and cargo. The HNS Convention will consist of two tiers - the first is the liability of the ship owner and the second the contributing cargo. It follows the concept of the 1969 Civil Liability Convention and the 1971 Fund Convention.

The outline of the HNS Convention is as follows:

#### *HNS Cargo*

The HNS Convention covers damage caused by hazardous and noxious substance cargo (the "HNS substances"). The HNS substances are defined as any substances carried on board a ship as cargo referred to in (a) to (g) below and as residues from the previous carriage of those substances except (d):

- (a) oils carried in bulk listed in appendix I of Annex I to MARPOL 73/78.
- (b) noxious liquid substances carried in bulk referred to in appendix II of Annex II to MARPOL 73/78.
- (c) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

- (d) dangerous, hazardous and harmful substances in packaged form covered by the IMDG Code.
- (e) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk.
- (f) liquid substances carried in bulk with flashpoint not exceeding 60°C (measured by a closed cup test)
- (g) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes to the extent that these substances are also subject to the provisions of the IMDG Code when carried in packaged form.

#### *HNS Damage*

The HNS Convention applies to the following damage caused by the HNS substances carried by a ship as cargo:

- (a) loss of life or personal injury on board or outside the ship.
- (b) loss of or damage to property outside the ship.
- (c) loss or damage by contamination of the environment.
- (d) the costs of preventive measures and further loss or damage caused by preventive measures.

#### *Geographical Scope of Application*

The HNS Convention applies to:

- (a) any damage caused in the territory of a State Party
- (b) damage by contamination of the environment caused in the exclusive economic zone (EEZ) of a State Party
- (c) damage, other than damage by contamination of the environment, caused outside the territory of any State if this damage has been caused by a substance carried on board a ship registered in a State Party.

#### *Scope of Application*

This Convention does not apply to oil pollution damage covered by the Civil Liability Convention or to damage caused by radioactive materials. Further, it does not apply to claims arising out of any contract for the carriage of goods and passengers.

A State may declare that this Convention does not apply to ships which do not exceed 200 gross ton and which carry the HNS substances only in packaged form when engaged on voyages solely between ports or facilities of that State.

#### *Limitation of Liability*

The ship owner at the time of an incident shall be strictly liable for damage caused by the HNS substances in connection with their carriage on board the ship. However, the owner of the ship is entitled to limit his liability under the Convention up to an aggregate amount calculated as follows:

- (a) 10,000,000 SDR for a ship not exceeding 2,000 gross ton; and
- (b) for a ship with a gross ton in excess thereof, the following amount in addition to that mentioned in (a)
  - for each gross ton from 2,001 to 50,000 gross ton 1,500 SDR
  - for each gross ton in excess of 50,000 gross ton 360 SDR

This aggregate amount shall not in any event exceed 100 million SDR.

#### *Compensation by the HNS Fund*

The owner of a ship actually carrying the HNS substances must maintain insurance or other financial security satisfying the limit of liability required under this Convention. The owner must carry the compulsory insurance certificate on board the ship issued by an appropriate authority.

#### *Compulsory Insurance*

A separate fund will be established by cargo owners to provide compensation for damage to the extent that the compensation which may be available by ship owner is inadequate. The second tier will top up liability cover to 250 million SDR (including the ship owners' fund).

#### *Entry into force*

The Convention enters into force 18 months after the date on which the following conditions are fulfilled:

- (a) ratification by at least 12 States, including 4 States each with not less than 2 million gross ton, and

- (b) those States which have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account (HNS substances except LNG, LPG and Oil).

The International Group of P&I Clubs is pleased that the new Convention has the principle of ship owners' right to limit liability with additional compensation, where required, being funded by cargo interest. However, the levels of limitation of ship owners' liability are disappointed to many ship owners. It is felt the limit of ship owners liability is so high that the cargo fund will never be called upon except in the event of a catastrophe and it can not be considered to be sharing responsibility.

It is thought at this time that the HNS Convention will come into force within 10 years.

Yours faithfully,

The Japan Ship Owners' Mutual protection & Indemnity Association