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CLASS 5, THE PROTECTING AND INDEMNITY CLASS

NOTICE IS HEREBY GIVEN that a SEPARATE MEETING of the MEMBERS OF CLASS 5, THE PROTECTING AND INDEMNITY CLASS, of The London Steam-Ship Owners' Mutual Insurance Association Ltd ("the Association") will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ and/or via the Zoom video conferencing platform at 12 noon on WEDNESDAY, 27th JANUARY 2021, or as soon thereafter as the meeting of the Members' Committee called for that day is finished, for the purpose of amending the Rules*.

The following amendments together with such further amendments, if any, as may be proposed at the Meeting, will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 2021.

[New wording is in bold. The explanatory notes in italics will not appear in the actual Rules.]

RULE 1 – INTRODUCTORY

1.1 In these Rules, unless the context requires otherwise:

"Assured" means a person whose application for insurance within this Class of any interest in a Ship has been accepted by the Association and includes, for the avoidance of doubt, **a Principal Assured**, a Co-assured, an Other Assured and persons with Fixed Premium Entries;

"Himalaya Clause" means a clause stipulating that the servant, agent, or independent contractor employed by the contracting party shall be entitled to the protection and benefit of every right, exemption, limitation, immunity or defence available to that contracting party and that the contracting party is contracting not only on his own behalf but as agent or trustee for such persons;

"Knock for Knock" means a provision or provisions stipulating that:

(a) each party to a contract shall be similarly responsible for loss of or damage to, and/or death of or injury to, any of its own property

or personnel, and/or the property or personnel of its contractors and/or of its and their subcontractors and/or of other third parties, and that

(b) such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party, and that

(c) each party shall, in respect of those losses, damages or other liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that that party shall incur in relation thereto.

"Other Assured" means a person to whom the benefit of an Assured's insurance is agreed to be extended by the Association pursuant to Rule 23.32;

"Principal Assured" means the Assured who is named as Principal Assured in the Certificate of Entry (or any amendment thereto);

[Explanation: the additional definitions are a result of the changes to Rules 9.16 and 23 set out below.]

9.16 TOWAGE

9.16.1 Liabilities arising out of Ttowage of an entered Ship **PROVIDED that there shall be no right of recovery for liabilities, costs and expenses incurred under or pursuant to the terms of a contract other than:**

9.16.1.1 ~~Liabilities~~ **Liabilities under or pursuant to** the terms of any contract for customary towage of an entered Ship, namely:

- (i) towage of an entered Ship for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or
- (ii) towage of an entered Ship which is habitually towed in the ordinary course of trading from port to port or from place to place, which has been so declared to the Association in writing PROVIDED that such liabilities shall only be covered by the Association to the extent that the Assured is not insured against such liabilities under the hull policies on the entered Ship.

9.16.1.2 ~~Liabilities~~ **Liabilities under or pursuant to** the terms of any other contract for the towage of an entered Ship, PROVIDED that the terms of the towage contract have been previously approved and cover agreed by the **Managers Association** in writing, upon such terms as the **Managers Association** may require.

9.16.1.3 For the purpose of this Rule **9.16.1.2**, the **Managers Association** will approve contracts for towage of an entered Ship on terms not less favourable to the entered Ship than:

- (i) Lloyd's Open Form of Salvage Agreement (whether or not incorporating SCOPIC); or

- (ii) a contract that contains a **Himalaya Clause and an enforceable** term that the parties to the towage contract, and any parties on whose behalf they contract, shall be responsible for any loss of or damage to or wreck removal of their own ship, cargo or property and for loss of life or personal injury thereon, without any recourse whatsoever against the other and will indemnify the other against any such liability.

9.16.2 Towage by an entered Ship:

9.16.2.1 Liabilities arising out of the towage by an entered Ship of another ship or object ~~a vessel or other floating structure~~ PROVIDED that **there shall be no recovery for liability for loss or of damage to or wreck removal of a vessel or other floating structure towed by an entered Ship or the cargo or other property on such tow (together with costs and expenses associated therewith) save insofar as either:**

9.16.2.1 ~~(i)~~ the entered Ship was specially designed or converted for the purposes of towage and was declared to the Association as intended to be used for towing at the time of entry or at the time of conversion; and ~~-(ii)-~~ the terms of the towage contract have been previously approved and cover agreed by the ~~Managers~~ **Association** in writing, upon such terms as the ~~Managers~~ **Association** may require; or

9.16.2.2 ~~(iii)~~ the Members' Committee in its sole discretion shall determine that in the particular circumstances of the case it was reasonable for the entered Ship to undertake such towage.

9.16.2.3 For the purposes of 9.16.2.1, the following contracts are approved:

- (i) **the United Kingdom, Netherlands, Scandinavian and German standard towage conditions; or**
- (ii) **'Towcon' and 'Towhire'; or**
- (iii) **Lloyd's Standard Form of Salvage Agreement (whether or not incorporating SCOPIC).**

9.16.2.4 For the purposes of 9.16.2.1, the following contracts may be approved from time to time by the Association:

- (i) **Contracts incorporating a Himalaya Clause and an enforceable term as between the owner of the entered ship on the one part, and the owner of the tow and the owners of any cargo or other property on board the tow on the other part, that each shall be responsible for any loss or damage to his own ship, cargo or other property and for loss of life or personal injury on his own ship, without any recourse whatsoever against the other, or**
- (ii) **Other contracts where a term or terms of the contract complying with (i) above is or is likely to be unenforceable in whole or in part, where the contract does not impose on the owners of the entered ship any liability to any person arising out of any act, neglect or default of the owner of the tow or any other person; and the contract limits the liability of the owner of the entered ship under the contract or otherwise to the maximum extent possible by law.**

9.16.3 There shall be no recovery in respect of liabilities, costs and expenses arising out of towage of or by an entered Ship otherwise than in accordance with this Rule 9.16 and cover hereunder is in any event limited to the risks covered under Rule 9 (excluding this Rule 9.16) to the extent that such risks are applicable to the Assured's' entry in the Association.

[Explanation: The changes serve to align the Rules more fully with Pooling Agreement provisions in respect of Towage risks.]

RULE 9.23 FINES

9.23.1 Fines imposed by any court, tribunal or authority upon the Assured (or upon a third party whom the Assured is legally obliged to reimburse) in respect of an entered Ship for or in respect of the following:

9.23.1.1 breach of any immigration law or regulations relating to crew members or their spouses and children or stowaways, PROVIDED that there shall be no recovery from the Association unless the Assured can satisfy the Association that proper steps were taken to guard against desertion and landing without permission of the proper authority;

~~**9.23.1.2** smuggling or any infringement of any customs law or regulation other than in relation to cargo carried on the entered Ship, provided that the Assured upon becoming aware of the alleged offence immediately notifies the Association;~~

~~**9.23.1.2.3**~~ short-delivery or over-delivery of cargo or failure to comply with any law or regulation relating to declaration or documentation of cargo (**other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat**), but only when the entered Ship is covered for cargo risks under Rule 9.19 in which case such fines shall be aggregated with cargo claims for the purposes of applying the cargo deductible to the same, and fines under Rule 9.23.1.2~~3~~ shall not be subject to any other deductible;

~~**9.23.1.3**~~ the accidental discharge or escape of oil or any polluting substance or threat thereof, but as regards oil only where the entered Ship is covered for pollution risks under Rule 9.15;

9.23.2 All other fines shall be recoverable only to such extent as the Members' Committee in its sole discretion may determine and provided that:

9.23.2.1 the Assured has satisfied the Members' Committee that he took such steps as appear to the Members' Committee to have been reasonable to avoid the event giving rise to the fine or penalty; and

9.23.2.2 any fine imposed not on an Assured but on the master or crew members of the entered Ship or on any other servant or agent of the Assured shall only be recoverable in circumstances either where the Assured has been compelled by law to pay or reimburse such fine or where the Members' Committee shall determine that it was reasonable for the Assured to have paid or reimbursed the same.

[Explanation: The change brings the Rule into line with the now discretionary nature of cover for smuggling fines in the Pooling Agreement.]

RULE 9.27 SUE AND LABOUR AND LEGAL COSTS

9.27.2 Legal costs and expenses **arising solely from** ~~relating to~~ any liabilities, costs or expenses against which **and during such time** the Assured is insured within this Class, but only to the extent either that such legal costs and expenses have been incurred with the **written** approval of the Association or that the Members' Committee in its sole discretion shall determine that the same should be recovered.

9.27.3 PROVIDED that:

...

9.27.3.2 losses, costs and expenses relating to ransom shall not be recoverable unless and to the extent that the Members' Committee in its discretion shall otherwise decide.

[Explanation: The changes clarify the scope of cover under Rule 9.27.2 and provide that cover for ransom is on a discretionary basis.]

RULE 16 – GUARANTEES, CERTIFICATES AND UNDERTAKINGS

16.1 Notwithstanding the exclusions in Rule 15 and the provisos in Rule 9.1, the Association will discharge on behalf of the Assured liabilities, costs, and expenses arising under a demand made pursuant to the issue by the Association on behalf of the Assured of:

16.1.1 a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or

16.1.2 a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or

16.1.3 an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) ("STOPIA"), or, except where such liabilities, costs and expenses arise from or are caused by an act of terrorism, the Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) ("TOPIA"), or

16.1.4 a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, or

16.1.5 a certificate issued by the Association in compliance with Article 12 of the International Convention on the Removal of Wrecks 2007, or

16.1.6 a non-war certificate issued by the Association in compliance with either Article IV bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol thereto of 2002 or regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 giving effect thereto, or

16.1.7 a certificate issued by the Association in respect of the requirements under Regulation 2.5.2, Standard A2.5.2 and Regulation 4.2, Standard A4.2.1 Paragraph 1(b) of the Maritime Labour Convention 2006, as amended.

PROVIDED ALWAYS that:

16.1.8 The Assured shall indemnify the Association to the extent that any payment under any such guarantee, certificate or undertaking in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Assured **entered into such policies of insurance and** complied with the terms and conditions thereof.

[Explanation: The proposed change brings the wording into line with the Pooling Agreement.]

RULE 23 – COVER FOR CO-ASSUREDS AND OTHER ASSUREDS

THE RULE HAS BEEN UPDATED AND REPLACED BY THE FOLLOWING:

23.1 The Association may accept an application for insurance as a Co-assured of other interests in the same Ship than the interest of the Principal Assured PROVIDED that:

23.1.1 The cover afforded to such Co-assureds shall extend only to risks, liabilities and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners and which are within the scope of the cover afforded by the Rules and any special terms set out in the Certificate of Entry.

23.1.2 Each Co-assured shall have an independent right of recovery from the Association although the Association may in its sole discretion reject or reduce any multiple recovery by Co-assureds in respect of the same loss.

23.1.3 The Principal Assured and all Co-Assureds and Other Assureds under the same entry each warrant that the Co-assured is in relation to the entered Ship:

23.1.3.1 interested in its operation, management or manning; or

23.1.3.2 the holding company or the beneficial owner of the Principal Assured or any person insured as Co-assured and interested in its operation, management or manning; or

23.1.3.3 a mortgagee of the ship or a financial institution (or its subsidiary or affiliate) as the owner leasing the entered Ship to the Principal Assured; or

23.1.3.4 not a charterer of the ship other than as a bareboat charterer under Rule 23.1.3.1.

23.1.4 Co-assureds shall be jointly and severally liable with the Principal Assured to pay all amounts due to the Association whether pursuant to these Rules, the Articles or otherwise.

23.2 The Association may accept an application for insurance as an Other Assured as follows:

23.2.1. a contractor (including a charterer) who has entered into a contract with the Principal Assured for the provision of services by or to the entered Ship, and any subcontractor of the contractor PROVIDED that:

23.2.1.1. the contract has been approved by the Association; and

- 23.2.1.2 the contract includes a Knock for Knock agreement; and
- 23.2.1.3. the Other Assured shall only be covered for liabilities, costs and expenses which are to be borne by the Principal Assured under the terms of the contract and would, if borne by that Assured, be recoverable by that Assured from the Association.

23.2.2 a charterer affiliated to or associated with the Principal Assured PROVIDED that:

- 23.2.2.1 such charterer shall only be covered for the risks, liabilities, costs and expenses for which that Assured has cover;
- 23.2.2.2 for the purposes of this Rule 23.2.2 a charterer shall only be affiliated to or associated with that Assured if:
 - 23.2.2.2.1 both that Assured and the charterer have the same parent or
 - 23.2.2.2.2 one of that Assured and charterer is the parent of the other and
 - 23.2.2.2.3 a parent is a company which owns at least 50% of the shares in and voting rights of another or owns a minority of the shares in the other and the ability to procure that it is managed and operated in accordance with its wishes.

23.2.3 other persons or companies (for misdirected arrow claims) PROVIDED that:

- 23.2.3.1 the cover afforded to the Other Assured shall extend insofar only as that Other Assured may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Principal Assured .
- 23.2.3.2 nothing in the cover afforded hereunder shall be construed as extending cover in respect of any amount which would not have been recoverable from the Association by the Principal Assured had the claim in respect of such loss or damage been made or enforced against him.
- 23.2.3.3 once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Principal Assured in respect of that loss or damage.
- 23.2.3.4 the Principal Assured and all Co-assureds and Other Assureds under the same entry each warrant that it is not a charterer of the whole or any part of the entered Ship.

23.3 In relation to Co-assureds and Other Assureds:

- 23.3.1 each Co-assured and each Other Assured shall be named as such together with its interest in relation to the entered Ship in the relevant Certificate of Entry or by endorsement thereto;
- 23.3.2 the benefit of the insurance of the Principal Assured shall not be extended to third party persons or companies which are not referred to in the

- relevant Certificate of Entry or by endorsement thereto, whether by name, class, description or otherwise, notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999;
- 23.3.3 the cover afforded shall always be subject to:
- 23.3.3.1 the provisos in Rule 9.1, and
- 23.3.3.2 the limitations on recoveries in Rule 11;
- 23.3.4 there shall be no waiver of subrogation and any contractual or other legal liability of any Assured, Co-assured or Other Assured to each other shall not be excluded or discharged by reason of being insured under the same Entry. Any payment by the Association to any Assured, Co-assured or Other Assured in respect to any liabilities, losses and expenses shall operate only as satisfaction not exclusion or discharge of the liability of any Assured, Co-assured or Other Assured to each other;
- 23.3.5 the Association shall not be bound to issue any Certificate of Entry or any Endorsement Slip to more than one Assured delivery of which to whom shall be sufficient delivery to all;
- 23.3.6 payment to any one Assured of any sums payable by the Association shall be a sufficient discharge of the Association for the same;
- 23.3.7 failure by one Assured to provide particulars and information within his knowledge (or which could with reasonable diligence be ascertained by him) shall be deemed to have been the failure of all;
- 23.3.8 conduct of one Assured which is sufficient to bar that Assured's right under this policy shall bar the rights of recovery of all and the knowledge (including deemed knowledge) of one Assured shall be deemed to be the knowledge (including deemed knowledge) of all;
- 23.3.9 any provision of these Rules which would entitle the Association to reject or reduce recovery in respect of one Assured shall be deemed to apply to all;
- 23.3.10 any communication from the Association to one Co-assured or Other Assured shall be deemed to have been communicated to all its other Co-assureds and Other Assureds and any communication from the Association to the Principal Assured shall be deemed to have been communicated to all of its Co-assureds and Other Assureds;
- 23.3.11 any communication from one Assured to the Association shall be deemed to have been made with the full approval and authority of all;
- 23.3.12 the Association shall be entitled to pay all sums to one Assured on behalf of all Co-assureds and Other Assureds; and
- 23.3.13 no Assured shall be entitled to recover from the Association in respect of any dispute or claim arising with any other Assured in respect of an entry.

[Explanation: The changes serve to align the Rule with the Pooling Agreement as summarised below:

- *By the introduction of the term Principal Assured to further differentiate the types of Assured to whom cover can be afforded under the same entry;*
- *Clarification of the nature and conditions of the cover afforded to Co-assureds and Other Assureds;*

- ***Inclusion of knock for knock contractors and affiliated charterers as potential categories of Other Assureds;***
- ***Subjectivities applicable to both Co-assureds and Other Assureds now grouped together for ease of reference under rule 23.3; and***
- ***Inclusion of a Pooling Agreement clarification that insurance of parties on the same entry does not constitute a waiver of subrogation.]***

RULE 24 – COVER FOR AFFILIATES AND ASSOCIATES NOT NAMED IN THE CERTIFICATE OF ENTRY

- 24.1** Should a claim in respect whereof an ~~Assured~~ **the Principal Assured** is insured by the Association be made or enforced through a person or company (other than a Co-assured or Other Assured in relation to that Assured) affiliated or associated with such Assured , the Association may if so requested by the ~~Assured~~ **Principal Assured** indemnify such person or company against any loss which as a consequence thereof such person or company shall have incurred in that capacity provided always that nothing herein contained shall be construed as extending to any amount which would not have been recoverable from the Association by the ~~Assured~~ **Principal Assured** had such claim been made or enforced against him. Once the Association has made such indemnification it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Principal Assured, in respect of that claim.
- 24.2** Conduct of ~~one Assured~~ **the Principal Assured** or affiliate or associate hereunder **or any Co-assured or Other Assured** which would entitle the Association to reject or reduce recovery shall be deemed to have been the conduct of all **and shall bar the rights of recovery of all of said insured.**

[Explanation: The changes reflect the changes in terminology introduced by the revisions to Rule 23 and clarify the misdirected arrow cover that may be available to parties other than Other Assureds named in a Certificate of Entry.]

By Order of the Committee,
A. BILBROUGH & CO. LTD.
(Managers)

18 January 2021

*If you have any questions about arrangements for the meeting please contact Genine Barker (genine.barker@londonpandi.com).