

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, 26th JANUARY 2022, 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 2022.

[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:

<p>....</p> <p>“Declared Communicable Disease”</p> <p>....</p> <p>“Communicable Disease”</p>	<p>....</p> <p>A Communicable Disease which outbreak the World Health Organisation (“WHO”) has determined to be a public health emergency of international concern;</p> <p>....</p> <p>Any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:</p> <p style="margin-left: 20px;">(a) the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and</p> <p style="margin-left: 20px;">(b) the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and</p>
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- (c) the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

[Explanation: The proposed definitions of “Communicable Disease” and “Declared Communicable Disease” adopt the wording introduced by the London (Re) Insurance Market.]

“Knock for Knock” means a provision or provisions stipulating that:

- a) each party to a contract shall be similarly responsible for
 - (i) 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/or**
 - (ii) **liability arising out of the ownership or operation of its own property,** 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.

[Explanation: The amendment reflects a clarification to the “knock for knock” definition in the Pooling Agreement.]

9.2 - LIABILITY TO PERSONS OTHER THAN SEAMEN

9.2.1 Liability to pay damages or compensation for personal injury, illness or death of any person (other than a seaman of an entered Ship, a person engaged to handle the cargo of an entered Ship or a passenger on board an entered Ship) and hospital, medical, funeral and other expenses necessarily incurred in relation to such injury, illness or death,

9.2.2 ~~PERSONS ENGAGED TO HANDLE CARGO~~ Liability to pay damages or compensation for personal injury, illness or death of any person engaged to handle the cargo of an entered Ship,

PROVIDED that:

- 9.2.2.1 (i)** cover under **Rule 9.2.1 and** Rule 9.2.2 is limited to liabilities arising out of a negligent act or omission on board or in relation to an entered Ship or in relation to the handling of her cargo from the time of receipt of that cargo from the shipper or pre-carrier at the port of shipment until

delivery of that cargo to the consignee or onward carrier at the port of discharge;

9.2.2.2(ii) where the liability arises under the terms of any contract or indemnity and would not have arisen but for those terms, such liability is not covered under Rule 9.2 but may be recoverable under Rule 9.16 or 9.17;

9.2.2.3 (iii) where the liability is in respect of a person on another Ship, and arises out of a collision between that Ship and the entered Ship, such liability is not covered under Rule 9.2 but may be recoverable under Rule 9.13.

9.2.3 PASSENGERS (PERSONS HOLDING PASSAGE TICKETS)—Liability to pay damages or compensation **to passengers (persons holding passage tickets):**

(i) for personal injury, illness or death of any passenger and hospital, medical or funeral expenses incurred in relation to such injury, illness or death;

(ii) to or in respect of passengers on board an entered Ship arising as a consequence of a casualty to that Ship, including the cost of forwarding passengers to destination or return to port of embarkation and of maintenance of passengers ashore;

(iii) for loss of or damage to the effects of any passenger;

PROVIDED that:

9.2.3.1 the terms of the passage ticket or other contract between the passenger and the Assured have been approved by the Association in writing and cover for the liabilities set out in this Rule has been agreed between the Assured and the Association in writing on such terms as the Association may require;

9.2.3.2 there shall be no recovery from the Association under this Rule in respect of liabilities for personal injury or death, or loss of or damage to property, delay or any other consequential loss sustained by any passenger by reason of carriage by air, except where such liability occurs either:

(i) during repatriation by air of injured or sick passengers or of passengers following a casualty to the entered Ship; or

(ii) subject always to Rule 9.2.3.3, during an excursion from the entered Ship;

9.2.3.3 there shall be no recovery from the Association in respect of the contractual liability of an Assured to a passenger whilst on an excursion from the entered Ship in circumstances where either:

(i) that contract has been separately entered into by the passenger for the excursion, whether or not with the Assured; or

(ii) the Assured has waived any or all of his rights of recourse against any sub-contractor or other third party in respect of the excursion;

9.2.3.4 in the context of Rule 9.2.3 (ii), “casualty” shall mean an incident involving either (i) a collision, stranding, explosion, fire, or any other cause affecting the physical condition of the entered Ship so as to render it incapable of safe navigation to its intended destination; or (ii) a threat to the life, health or safety of passengers.

[Explanation: The amendments clarify and provide consistency in the numbering and sub-headings of Rule 9.2.]

RULE 11 – LIMITATIONS ON COVER

...

11.4 Save as provided in Rule 11.5 and subject thereto,

11.4.1 Unless otherwise limited to a lesser sum, the Association's aggregate liability arising in respect of any one entered ship shall not exceed

(1) in respect of liability to Passengers US\$2,000,000,000 for any one occurrence;
and

(2) in respect of liability to Passengers and Seamen US\$3,000,000,000 for any one occurrence,

~~Provided~~**PROVIDED** always that:

11.4.2 Where a Ship is separately entered by an Assured who is the owner, demise charterer, manager or operator with the Association or any other association, which participates in the Pooling Agreement and/or the Group General Excess Loss Contract,

11.4.2.1 the aggregate of claims in respect of liability to Passengers recoverable from the Association and/or such other insurers shall not exceed US\$2,000,000,000 for any one occurrence and the liability of the Association shall be limited to such proportion of that sum as the claim recoverable by such persons from the Association bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers;

11.4.2.2 the aggregate of all claims in respect of liability to Passengers and Seamen recoverable from the Association and/or such other insurers shall not exceed US\$3,000,000,000 for any one occurrence and the liability of the Association shall be limited:

(i) where claims in respect of liability to Passengers have been limited to US\$2,000,000,000 in accordance with Rule 11.4.2.1 to such proportion of the balance of US\$1,000,000,000 as the claims recoverable by such persons in respect of liability to Seamen bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers; and

(ii) in all other cases, to such proportion of US\$3,000,000,000 as the claims recoverable by such persons in respect of liability to Passengers and Seamen bears to the aggregate of all such claims otherwise recoverable from the Association and all such insurers.

~~**11.4.2.3** Where liabilities to Passengers include liabilities arising under 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 on the liability of carriers of passengers by sea in the event of accidents ("Certified Liabilities") and all liabilities to Passengers exceed or may exceed in the aggregate the limit of cover specified in the provisions of~~

this Rule 11.4:

- ~~(i) The Association may in its sole discretion, until the Certified Liabilities, or such part of the Certified Liabilities as the Association may decide, have been discharged, defer payment of a claim in respect of other liabilities to Passengers or any part thereof; and~~
- ~~(ii) If and to the extent any Certified Liabilities discharged by the Association exceed the said limit any payment by the Association in respect thereof shall be by way of loan and the Assured shall indemnify the Association in respect of such payment.~~

11.4.3 For the purposes of this Rule 11.4 and the provisos thereto, and without prejudice to anything else contained in these Rules, a "Passenger" shall mean a person carried on board a vessel under a contract of carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract for the carriage of goods and a "Seaman" shall mean any other person on board a ship who is not a Passenger.

...

11.6 Where:

11.6.1 the Association has issued any guarantee, undertaking or certificate as referred to in Rule 16 or other bail or security by which it undertakes to directly meet or guarantee any relevant liabilities, (together the "Direct Liabilities"); and

11.6.2 claims in respect of Direct Liabilities alone or in combination with other claims may in the sole opinion of the Association exceed any limit(s) on the cover provided by the Association as set out in the Rules or in the Certificate of Entry;

11.6.3 the Association may in its sole discretion defer payment of any such other claims or any part thereof until the Direct Liabilities, or such parts of the Direct Liabilities as the Association may in its sole discretion decide, have been discharged.

11.6.4 To the extent that any claims or liabilities (including any Direct Liabilities) discharged by the Association exceed the said limit(s), any payment by the Association in respect thereof shall be by way of loan and the Assured shall indemnify the Association promptly upon demand in respect of such payment and shall assign to the Association to the extent and on the terms that the Association determines in its discretion to be practicable all the rights of the Assured under any other insurance and against any third party.

11.6.7 Consortium Claims

...

11.7 8 Any Overspill Claim incurred by the Association shall not be recoverable from the Association in excess of the amounts specified in Rule 33.2.

[Explanation: The amendment provides a mechanism by which the Association is able to prioritise certificated claims and other direct liabilities over non-certified claims where an

incident gives rise to liabilities where the aggregate of certificated and non-certificated claims has the potential to exceed the limits of cover for which the Association has reinsurance.]

RULE 13 – EXCLUSION OF DAMAGE TO ENTERED SHIP, LOSS OF HIRE, SANCTIONS, ETC.

13.3 There shall be no recovery by an Assured in respect of any Ship entered by him for any liability, loss, damage, cost or expense where the provision of cover or any payment in respect thereof exposes or may expose the Association or the Managers to ~~being or becoming or to the risk of~~ **violating applicable law, including but not limited to, the prohibitions and requirements of any economic, financial, or trade sanctions administered by any state, international or supranational organisation or other authority; or to the risk of** being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international **or supranational** organisation or other authority which sanction, prohibition or adverse action the Members' Committee in its sole discretion determines may materially affect the Association in any way whatsoever.

[Explanation: The proposed amendments reflect updated legal advice to clarify and protect the Association's position in respect of both primary and secondary sanctions.]

RULE 17 – EXCLUSION OF CERTAIN SPECIALIST RISKS

17.1 Unless previously agreed in writing by a special agreement between the Assured and the Association there shall be no recovery in respect of liabilities, costs and expenses:

17.1.1 arising from the operation of a semi-submersible heavy lift Ship or other Ship designed exclusively for the carriage of heavy lift cargo where the claim arises in connection with the cargo or, notwithstanding Rule 9.18.1, the wreck removal of that cargo, **save to the extent such cargo is being carried under the terms of a contract on Heavycon terms.**

[Explanation: The amendment clarifies that (in line with the position under the Pooling Agreement) cover is available for heavy lift vessels if the cargo carriage is on Heavycon terms.]

...

17.1.5 incurred by an Assured in connection with any claim arising out of:

17.1.5.1 waste incineration or disposal operations carried out by the entered Ship (other than any such operations carried out as an incidental part of other commercial activities, not being specialist operations); or

17.1.5.2 the operation by the Assured of submarines, mini-submarines ~~or~~ diving bells, **or remotely operated underwater vehicles;** or

17.1.5.3 the activities of professional or commercial divers where the Assured is responsible for such activities, other than:

17.1.5.3.1 activities arising out of salvage operations being conducted by an entered Ship where the divers form part of the crew of that entered Ship (or of diving bells or other similar equipment or craft operating from the entered Ship) and where the Assured, the owner of that entered Ship, is responsible for the activities of such divers; and

17.1.5.3.2 incidental diving operations carried out in relation to the inspection, repair or maintenance of the entered Ship or in relation to damage caused by the entered Ship; and

17.1.5.3.3 recreational diving activities;

17.1.6 in respect of any of the following persons:

17.1.6.1 personnel (other than marine crew) on board the entered Ship (~~being an accommodation Ship~~) employed otherwise than by the Assured **where the entered Ship is providing accommodation to such personnel in relation to their engagement on or about an oil or gas exploration or production facility, unless a contractual allocation of such risk has been approved by the Association. A contractual allocation of risk may be approved by the Association where it is on terms no less favourable to the Assured than Knock for Knock.** ~~where either (i) such Ship is moored or anchored within 500 metres from any oil or gas production or exploration facility; or (ii) there has not been a contractual allocation of risks as between the Assured and the employer of any such personnel which has been previously approved by the Association in writing.;~~

[Explanation: The amendments clarify that in line with the Pooling Agreement:

- i) cover for claims arising out of the operation of remotely operated underwater vehicles is expressly excluded, and***
- ii) cover in respect of personnel on board accommodation units depends solely on whether there has been an acceptable contractual division of liability with the employer of such personnel and that such division is no less favourable than Knock for Knock.]***

RULE 23 – COVER FOR CO-ASSUREDS AND OTHER ASSUREDS

...

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~~ **person in the contractor's group**, PROVIDED that:

23.2.1.1 the contract has been approved by the Association; and

23.2.1.2 **the contractor and, if so requested by the contractor, any person in the contractor's group is named in the Certificate of Entry; and**

23.2.1.2 the contract includes a Knock for Knock agreement **in respect of any and all persons in the contractor's group;** 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 **or an affiliated or associated charterer as defined in Rule 23.2.2;**

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, **or as appropriate an affiliated or associated charterer as defined in Rule 23.2.2,** 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 **or an affiliated or associated charterer as defined in ruled 23.2.2** in respect of that loss or damage; and

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.

[Explanation: The amendments incorporate two recent amendments to the Pooling Agreement in respect of cover available to additional assureds on the same Entry. Namely:

- i) The cover as defined in rule 23.2.1 is available not only to a subcontractor of that contractor but any person in that contractor's group.***
- ii) The cover as defined in rule 23.2.3 is available not only to persons or companies entered as additional assured to the Principal Assured but also to those entered as additional assured to an associated or affiliated charterer of the Principal Assured.]***

RULE 31 – REINSURANCES

31.2 The Assured shall not be entitled to recovery in respect of that part of any liability, loss, damage, cost or expense which is not recovered by the Association under the Pooling Agreement, Group General Excess Loss Contract or any reinsurance(s) arranged by the Association because of a shortfall in recovery from such parties or reinsurers thereunder by reason of **a potential violation of applicable law, including, but not limited to, the prohibitions and requirements of any economic, financial, or trade sanctions—**~~a sanction, prohibition or adverse action against them~~ **administered** by a state,

international organisation or **supranational organisation** or other authority (or the risk thereof) **or the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international or supranational organisation or other authority** if payment were to be made by such parties or reinsurers. For the purposes of this Rule 31.2, "shortfall" includes any failure or delay in recovery by the Association by reason of such parties or reinsurers making payment into a designated account in compliance with the requirements of any state, international organisation or **supranational organisation** or other authority. The provisions of this Rule 31.2 shall cease to apply in respect of any shortfall to the extent the same is subsequently recovered by the Association under the Pooling Agreement, Group General Excess Loss Contract or any reinsurance(s) arranged by the Association.

[Explanation: The amendments reflect updated legal advice to clarify the Association's position in respect of reinsurance shortfalls where payment by reinsurer(s) could result in a violation of applicable law.]

RULE 37 – LAID-UP RETURNS

37.1 Subject to any special terms or conditions which may have been agreed, an entered Ship safely laid up and so maintained in any safe port or place without cargo on board for 30 or more consecutive days computed from the day of finally being laid up there to the day of departure, one only being included, shall be allowed a pro rata return of Calls (other than of Overspill Calls) for such period at the following rates after deduction of such allowance for pool contributions, reinsurance, costs and expenses as the Association may from time to time determine:

37.1.1 if the entered Ship so remains with crew on board, at the rate of 50 per cent of the Calls payable in respect of such entered Ship;

37.1.2 if the entered Ship so remains without crew on board (other than for security or for maintenance necessary for the safety of the Ship), at the rate of 75 per cent of such Calls.

PROVIDED always that for the purpose of this Rule the term laid up shall not apply to an entered Ship which remains in any port or place for the purpose of carrying out repairs or awaiting orders for 30 or more consecutive days.

[Explanation: The proposed amendment clarifies the existing conditions for an entered ship to be treated as laid up and does not affect the calculation of laid up returns or the scope of the Rule.]

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

13 January 2022

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

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