

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 Association will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ at 12 noon on WEDNESDAY, 29th JANUARY 1997, or as soon thereafter as the meeting of the Committee called for that day is finished, for the purpose of altering and adding to the Rules.

The following alterations and additions together with such further alterations and additions, if any, as may be proposed will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 1997.

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

RULE 2 MUTUAL CONTRIBUTION

- 2.1 The funds necessary for the purposes described in Rule 31 shall be determined by the Committee with reference to each successive period of 12 months commencing **at noon GMT on 20th February 1985 each calendar year** and such funds shall be contributed mutually by Members by way of Calls determined by the Committee in accordance with Rules 31 and 32, or as may otherwise have been agreed in writing, *[The date 1985 was inserted in the Rules for that year and has remained in the Rules ever since, apparently owing to an oversight. It should now be removed.]*

RULE 5 APPLICATION FOR INSURANCE AND CONDITIONS

- 5.1 It is a condition of entry of a ship for insurance in this Class ~~for the Policy Year commencing noon GMT on 20th February 1996 (herein referred to as the "Policy Year 1996/97") and (subject as hereinafter provided) for subsequent Policy Years~~ that the person making application for such entry shall agree to become and shall become a Member (or, if already a Member, shall continue as such) of The London Steam-Ship Owners' Mutual Insurance Association (Bermuda) Limited (herein referred to as "LSSO (Bermuda)", a company incorporated in Bermuda without share capital with which the Association ~~intends to reinsure~~ risks of this Class ~~with effect from the start of the Policy Year 1996/97).~~
- 5.2 An application by any person for entry or renewal of entry of a ship in this Class ~~for the Policy Year 1996/97 and any later Policy Year~~ shall incorporate and be treated as comprising an application to become or continue as a Member of LSSO (Bermuda) on the terms of and subject to the incorporating Act and Bye-laws of LSSO (Bermuda), and subject to the Rules of Reinsurance Class I of LSSO (Bermuda), being the Rules applicable to Members of LSSO (Bermuda) who have

entries in this Class of the Association which are reinsured by the Association with LSSO (Bermuda).

5.3 A person by whom or on whose behalf an application has been made and accepted by the Association for insurance in this Class shall be deemed to have agreed to become a Member of LSSO (Bermuda) and to be bound by the terms of the said incorporating Act, Bye-laws and Rules of LSSO (Bermuda) and the Managers of the Association shall be empowered to sign on behalf of such person any documents required to be signed by such person in order to become or continue as a Member of LSSO (Bermuda).

5.4 The condition stated in Rule 5.1 and the provisions stated in Rules 5.2 and 5.3 shall apply for each Policy Year ~~after the Policy Year 1996/97~~ if, but only if, risks of this Class shall be reinsured by LSSO (Bermuda) for the Association for that Policy Year or any part thereof. For this purpose it shall be assumed that any agreement between the Association and LSSO (Bermuda) for reinsurance of risks of this Class by LSSO (Bermuda), which is current when an application for insurance or renewal of insurance in this Class is received by the Association, will remain in force notwithstanding that such agreement may be capable of being terminated at or before the commencement of the next Policy Year provided that this assumption shall not be made if at such time it shall have been agreed that such reinsurance will terminate at or prior to the commencement of the next Policy Year.

[References to Policy Year 1996/97 are not required in the Rules for subsequent Policy Years and now that the reinsurance by LSSO (Bermuda) has been established, there is no need for this Rule to identify specific Policy Years.]

RULE 8 CLASSIFICATION

Amend by inserting the words in bold:

8.2 Any occurrence known or likely to have caused damage **to the entered ship** in respect of which the Classification Society might reasonably be expected to make recommendations as to repairs or other action to be taken, must be promptly called to the attention of the Classification Society.

8.7 Any recommendations as to repair made by any surveyor nominated under Rule 8.6 shall be carried out forthwith or within such period of time as may be specified by the Association and unless the Committee in its sole discretion **shall** otherwise determine there shall be no recovery in respect of any liability, costs or expenses where such recommendations have not been complied with.

[The proposed minor amendments are to clarify these provisions.]

RULE 9 RISKS COVERED

9.2 Injury, illness and death Liability to Persons other than Seamen:

[Rule 9.2 has been amended to deal separately and distinctly with liability to persons engaged to handle cargo and liability to passengers, including liability to passengers under passage tickets or other contracts, which were previously dealt with separately under Rule 9.18.]

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,

PROVIDED that:

9.2.1.1 there shall be no recovery in respect of any person (other than those employed for marine purposes) on board the entered ship (being an accommodation

ship) employed by someone other than the Member unless there has been a contractual allocation of risks as between the Member and the employer of any such person which has been previously approved by the Association in writing.

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 cover under 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 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 ~~or 9.18~~;

9.2.2.3 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:

(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 Member have been approved by the Association in writing and cover for the liabilities set out in this Rule has been agreed between the Member 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 a Member to a passenger whilst on an excursion from the entered ship in circumstances where either:

(i) a separate contract has been entered into by the passenger for the excursion, whether or not with the Member, or

(ii) the Member 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 There shall be no recovery in respect of hotel, restaurant, bar or other guests or visitors on board the entered ship when moored and open to the public as a hotel, restaurant, bar or other place of entertainment.

9.5 Wages and Shipwreck Unemployment Indemnity:

9.5.2 Liability to compensate a seaman who is on board or proceeding to or from an entered ship for the loss of his employment caused by the **actual or constructive total loss or wreck** of that ship.

[This amendment clarifies the Association's practice of paying claims for compensation when a ship's trading is brought to an end by a casualty rendering her a constructive total loss as well as an actual total loss.]

9.9 Stowaways, Deserters and Refugees:

9.9.2 The cost of employing shore watchmen approved by the Association, or the cost of maintaining crew members, stowaways or refugees ashore in safe custody, in circumstances where a detention notice is served by the appropriate Authorities ~~in the United States of America;~~

[Reference to the United States of America has been deleted as detention notices are also served by the Authorities and are legally enforceable in Canada and some other countries.]

9.10 Life Salvage:

9.10.2 Such sums as a Member shall have paid to other vessels which have stood-by or in any way assisted an entered ship or persons on that ship, and as shall be determined by the Committee in its sole discretion to have been reasonable; the Committee in its sole discretion may also allow recovery of expenses incurred by a sister-ship **in assisting an entered ship** in these same circumstances.

[The additional words have been inserted to clarify the final provision.]

9.15 Pollution:

9.15.1.2 Liability of a Member as a party to ~~TOVALOP or any other~~ agreement previously approved by the Association in writing, and the costs and expenses incurred by a Member in performing his obligations under such agreements.

[Since the TOVALOP Standing Agreement will end with effect from 20th February 1997, it is appropriate to delete reference to it but to maintain flexibility to allow claims under any new agreement which Tanker Owners might enter into.]

9.18 ~~Passengers:~~

9.18.1 ~~Liabilities to or in respect of passengers on board an entered ship (other than under Rule 9.2 and 9.11) which arise under the terms of a passage contract previously approved by the Association in writing;~~

~~PROVIDED that there shall be no recovery for:~~

9.18.1.1 ~~the costs of forwarding or return to port of embarkation of passengers ashore consequent upon a casualty to an entered ship unless cover for the same has been previously agreed by the Association in writing on special terms including payment by the Member of whatever additional Call or premium may be required by the Association;~~

9.18.1.2 ~~liability or fines arising from breach of immigration regulations in respect of passengers;~~

9.18.1.3 ~~liability or fines arising from the carriage of passengers in excess of the number for which the entered ship is licensed under the International Convention on Safety of Life at Sea;~~

~~9.18.1.4 the contractual liability of a Member to a passenger whilst on an excursion from the entered ship in circumstances where either: (i) a separate contract has been entered into by the passenger for the excursion, whether or not with the Member or (ii) the Member has waived any or all of his rights of recourse against any subcontractor or other third party in respect of the excursion.~~

[This Rule is being deleted, as it is being incorporated into Rule 9.2 dealing with Liability to persons other than Seamen, apart from 9.18.1.2 and 9.18.1.3 dealing with liability or fines arising from breach of immigration regulations in respect of passengers and from the carriage of passengers in excess of the number for which the entered ship is licensed under SOLAS, which will now be covered by Rule 9.24, the Fines Rule, and Rule 9.29, the Omnibus Rule.]

9.19 Wreck Removal:

9.19.1 Costs and expenses reasonably incurred by the Member in the raising, removal, destruction, lighting or marking of the wreck of an entered ship **or any cargo, equipment or other property which is or was carried on board an entered ship** to the extent that such measures are compulsory by law, or if (with the approval of the Association in writing) the Member has declined to take such measures, his liability to any other person for such costs and expenses.

9.19.5 PROVIDED that:

9.19.5.1 subject to the next following provision, all cover under Rule 9.19 shall cease 3 years after termination of the ship's entry save in respect of costs and expenses ~~already~~ incurred **prior to** ~~at~~ that time or claims which are already by then the subject of formally instituted proceedings against the Member and of which the Member shall have promptly notified the Association in writing;

9.19.5.3 from any claim under Rule 9.19.1 - 9.19.3 there shall be deducted the value of the wreck **and its equipment** including all bunkers, stores and materials saved **and if the Association shall have reimbursed, advanced or incurred a liability to any other party whatsoever for the costs and expenses of raising and removal of the wreck and/or its equipment including bunkers, stores and materials, then the Association shall be entitled to reimbursement by the Member of the value of the wreck and its equipment, including all bunkers, stores and materials saved;**

[The addition in 9.19.1 widens the cover to include the costs of raising and removal of ship's equipment (such as anchors) and cargo, which had been lost from an entered ship which is not a wreck.

The amendment to 9.19.5.1 is to clarify this proviso.

The addition to 9.19.5.3 is to make it clear that the Association may recover the value of the wreck and its equipment where it has paid the costs of raising and removal directly.]

9.20 Cargo:

9.20.2.8 where cargo on board the entered ship is the property of the Member he shall nevertheless be entitled to recovery under Rule 9.20 **of the amount** corresponding with the liability which he would have incurred if such property had belonged to another person, but not for any amount recoverable by the Member under any other insurance on the said cargo.

[The additional words are intended to clarify this provision.]

In view of the deletion of Rule 9.18 the subsequent Rules 9.19 - 9.30 will be renumbered 9.18 - 9.29 respectively.

RULE 10 LIMITATIONS ON COVER

10.4 Recovery by a Member, whose interest in an entered ship is that of a Time, **Voyage, Space or Slot** Charterer other than a co-assured joint entry, shall be limited as follows:

10.4.2.1 PROVIDED that where a ship is separately entered for ~~Time~~ Charterers' risks by more than one Time, **Voyage, Space or Slot** Charterer with the Association ...

[These amendments clarify the position for Charterers other than Time Charterers.]

RULE 30 REINSURANCES

30.1.3 towards either or both of the aforesaid purposes, continue to be a party to the Pooling Agreement dated ~~8th February 1989~~ **17th November 1992** or any amendment thereof in which the group known as the International Group of Protection and Indemnity Associations currently participate, or to any other agreement of a similar nature or purpose.

[This amendment is required to refer to the latest version of the Pooling Agreement.]

RULE 42 ARBITRATION

42.2 Save for the matters referred to in Rule 42.1 and subject to Rule 32.4, if any difference or dispute shall arise between a Member and the Association out of or in connection with these Rules, or out of any contract between the Member and the Association, or as to the rights or obligations of the Association or the Member thereunder, or in connection therewith, or as to any other matter whatsoever, such difference or dispute shall be referred to Arbitration in London before a sole legal Arbitrator and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Acts 1950, **1979 and 1996** and any Statutory modification or re-enactment thereof, and to English Law. In any such Arbitration, any matter decided or stated in any Judgment or Arbitration Award (or in any Reasons given by an Arbitrator or Umpire for making any Award) relating to proceedings between the Member and any third party shall be admissible in evidence. No Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any such difference or dispute unless he has first obtained an Arbitration Award in accordance with this Rule.

[Amendment is made to refer to the Arbitration Acts of 1979 and 1996. The 1996 Act came into force on 1st January 1997 and is a consolidating act bringing together existing provisions of English statute law - such as the Arbitration Acts of 1950 and 1979.]

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

17th January 1997