



# THE LONDON

STEAM-SHIP OWNERS'  
MUTUAL INSURANCE ASSOCIATION LIMITED

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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 Association will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ at 12 noon on WEDNESDAY, 28th JANUARY 2009, or as soon thereafter as the meeting of the 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 will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 2009.

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

### **RULE 9.3 INJURY AND DEATH - SEAMEN**

**9.3.1** Liability to pay damages or compensation for personal injury or death of any seaman of an entered Ship who is on board or proceeding to or from the Ship, and hospital, medical, funeral and other expenses necessarily incurred in relation to such injury or death, including expenses of repatriating the seaman and sending abroad and/or awaiting a substitute to replace him,

**9.3.1.1** PROVIDED that where the liability arises or the costs or expenses are incurred under the terms of a crewing agreement, collective agreement or other contract of service or employment and would not have arisen but for those terms, such liability is only covered to the extent that those terms shall have been previously approved by the Association in writing.

**9.3.1.2** PROVIDED that, subject to Rule 9.3.1.1, where the liability arises or the costs or expenses are incurred while a seaman is on leave, the seaman shall be deemed to have been serving at the material time on the Ship on which he last served prior to his injury or death.

### **RULE 9.4 ILLNESS - SEAMEN**

**9.4.1** Liability to pay damages or compensation for illness or industrial disease of a seaman of an entered Ship who is on board or proceeding to or from that Ship, and hospital, medical, funeral and other expenses necessarily incurred in relation to such illness or industrial disease including expenses of repatriating the seaman and sending abroad and/or awaiting a substitute to replace him.

**9.4.1.1** The PROVISOS in Rules 9.3.1.1 and 9.3.1.2 shall apply to recovery under Rule 9.4.

**9.4.1.2** **Notwithstanding the provisions of Rule 3.1, where an Assured has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a seaman under Rules 9.3 and 9.4, the Association shall discharge or pay such claim on the Assured's behalf directly to such seaman or dependent thereof,**

**PROVIDED ALWAYS that:**

- 9.4.1.2.1 the seaman or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated,
- 9.4.1.2.2 the amount payable by the Association shall not be subject to set off of any amount due to the Association from the Assured and, subject to Rule 9.4.1.2.3 below, shall under no circumstances exceed the amount which the Assured would have been able to recover from the Association under the Rules and the Assured's terms of entry, but without set-off of amounts due to the Association,
- 9.4.1.2.3 where the Association is under no liability to the Assured in respect of such claim in accordance with Rule 3.1.2 by reason of cancellation for non-payment of amounts due to the Association, the Association shall nevertheless discharge or pay that claim to the extent only that it arises from an event occurring prior to the date of cancellation, but as agent only of the Assured, and the Assured shall be liable to reimburse the Association for the full amount of such claim.

[Explanation: The proposed change to Rule 9.4, and which also impacts by reference upon Rule 9.3, reflects the International Group Managers' agreement not to enforce the "pay to be paid" rule or policy defences in the case of crew claims.]

**RULE 9.7 DIVERSION**

- 9.7.1 Expenses of diversion of an entered Ship to the extent that those expenses:
  - 9.7.1.1 represent the net loss to the Assured (over and above such expenses as would have been incurred but for the diversion) in respect of the cost of bunkers, insurance, wages, stores, provisions and port charges; and
  - 9.7.1.2 are reasonably incurred for the sole purpose of securing treatment for an injured or sick person, or while awaiting a substitute for such person, or for the purpose of landing stowaways, refugees or persons saved at sea, **or for the purposes of attempting to save life at sea.**

[Explanation: The proposed change to 9.7.1.2 clarifies that expenses of diversion will be covered where the entered Ship may attempt to save life at sea but not be successful or not be the ship that picks up such persons and, hence, does not "land ... persons saved at sea".]

**RULE 9.19 CARGO**

- 9.19.2.4 unless the Committee in its sole discretion shall otherwise determine, there shall be no recovery in respect of:
  - ~~9.19.2.4.2 delivery of cargo without production of the relevant bill of lading, waybill or other document containing or evidencing the contract of carriage and/or discharge of cargo at a port or place other than that stated in the contract of carriage;~~
  - 9.19.2.4.2.1 **delivery of cargo without production of the relevant negotiable bill of lading, waybill or other document containing or evidencing the contract of carriage;**
  - 9.19.2.4.2.2 **delivery of cargo without production of the relevant non-negotiable bill of lading, waybill or other document containing or evidencing the contract of carriage where production of such document is required by the express terms of that document or the law to which such document, or the contract of carriage contained in or evidenced by it, is subject, except where the Assured is required by any other law to which he is subject to deliver or relinquish custody or control of the cargo without production of such document;**
  - 9.19.2.4.2.3 **discharge of cargo at a port or place other than that stated in the contract of carriage;**

[Explanation: The proposed change to Rule 9.19.2.4.2 is intended to achieve greater clarity in the distinction between negotiable and non-negotiable bills of lading, Rule 9.19.2.4.2.2 now reflecting the change in the Pooling Agreement, which, in turn, reflects the decision of the House of Lords in the *Rafaela S*, while it is proposed that discharge of cargo at a port or place other than that stated in the contract of carriage should be the subject of a separate Rule, Rule 9.19.2.4.2.3.]

- 9.19.2.4.9 ~~any liability, costs or expenses whatsoever or howsoever arising, whether directly or indirectly, out of or in consequence of:~~
  - ~~(a) the Assured's participation in or use of any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping~~

- ~~and/or international trade with electronic messages (any such system or arrangement being referred to in this Rule as a “paperless system”); or~~  
~~(b) a document which is created or transmitted under a paperless system, which document contains or evidences a contract of carriage; or~~  
~~(c) the carriage of cargo pursuant to such a contract,~~

~~save to the extent that the Committee may determine that such liability, costs or expenses would have arisen and would have been covered by the Association if the Assured had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document. In the context of this Rule, a “document” shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information;~~

**any liabilities, losses, costs and expenses arising from the use of any electronic trading system, other than an electronic trading system approved by the Association, to the extent that such liabilities, losses, costs and expenses would not (save insofar as the Association in its sole discretion otherwise determines) have arisen under a paper trading system.**

**For the purposes of this Rule 9.19.2.4.9,**

- (a) an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which:**
- (i) are documents of title, or**
  - (ii) entitle the holder to delivery or possession of the goods referred to in such documents, or**
  - (iii) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.**
- (b) a “document” shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.**

*[Explanation: The proposed change to Rule 9.19.2.4.9 reflects the fact that the wording of Appendix V paragraph 28 of the Pooling Agreement has been replaced by this new wording and, hence, achieves consistency.]*

**9.19.2.6** there shall be no recovery in excess of US\$2,500 per unit, piece or package where an ad valorem bill of lading, **waybill or other document containing or evidencing the contract of carriage** has been issued stating (in whatever currency) a larger value, unless this has been promptly notified to the Association by the Assured and the Association has agreed or arranged cover on special terms, which may include the requirement of a further Call or premium;

*[Explanation: The proposed change to 9.19.2.6 is self-explanatory.]*

## **RULE 9.28 OMNIBUS**

**9.28.1** Liabilities, losses, costs and expenses incidental to the business of owning, operating or managing Ships which **and to such extent as** the Committee in its sole discretion shall consider fall within the scope of this Class,

**9.28.1.1** PROVIDED there shall be no recovery which is expressly excluded by other provisions of these Rules, save to the extent that those members of the Committee present when the claim is being considered are unanimous that such exclusion should be over-ridden in the particular circumstances of the case.

*[Explanation: The proposed change to 9.28.1 to incorporate the wording ‘and to such extent as’ serves to make the scope of the Committee’s discretion under the Omnibus Rule consistent with that under the Fines Rule, Rule 9.23.2.]*

## **RULE 15 LIABILITY EXCLUDED FOR WAR RISKS AND NUCLEAR RISKS**

**15.1** Unless the Association shall have previously agreed or arranged cover in writing on special terms (which may include the requirement of a further Call or premium), there shall be no recovery in respect of any liabilities, costs or expenses (whether or not a contributory cause of the same being incurred was any neglect on the part of the Assured or the Assured’s servants or agents) when the

loss or damage, injury, illness or death or other accident in respect of which such liability arises or costs or expenses are incurred, shall have been caused, **whether directly or indirectly**, by:

- 15.1.1 war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism,
- 15.1.1.1 PROVIDED that in the event of any dispute as to whether or not any act constitutes an act of terrorism the decision of the Committee shall be final;
- 15.1.2 capture, seizure, arrest, restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat;
- 15.1.3 mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war, PROVIDED that the exclusion in Rule 15.1.3 shall not apply to:
  - 15.1.3.1 liabilities, costs or expenses which arise solely by reason of the transport of any such weapons whether on board the entered Ship or not;
  - 15.1.3.2 the use of any such weapons, either as a result of government order or with the agreement of the Association in writing, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise be recoverable under Rule 9.
- 15.1.4.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; [previously Rule 16.1.1]
- 15.1.4.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; [previously Rule 16.1.2]
- 15.1.4.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; [previously Rule 16.1.3]
- 15.1.4.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter,

other than liabilities, costs and expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an insured Ship. [previously Rule 16.1.4 and thereunder]

**15.2** ~~PROVIDED ALWAYS that:~~

- ~~15.2.1 the exclusions in Rule 15.1 shall not apply to liabilities, costs and expenses of an Assured insofar only as they are discharged by the Association on behalf of the Assured pursuant to a demand made under:
  - ~~15.2.1.1 a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777; or~~
  - ~~15.2.1.2 a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 and 1992 or any amendments thereof;~~
  - ~~15.2.1.3 the undertaking contained within the Memorandum of Understanding between the International Group of P&I Clubs and the 1992 International Oil Pollution Compensation Fund with respect to the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) to the extent that such liabilities, costs and expenses are not recovered by the Assured under any other policy of insurance or any extension to the cover, provided by the Association; and~~~~
- ~~15.2.2 where any such guarantee, undertaking or certificate is provided by the Association on behalf of the Assured as guarantor or otherwise, the Assured agrees that any payment by the Association thereunder in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other policy of insurance or extension to the cover, provided by the Association, be by way of loan and that there shall be assigned to the Association all the rights of the Assured under any other insurance and against any third party.~~

The Association may provide special cover to the Assureds against any or all of the risks set out in Rule 9 notwithstanding that those liabilities, costs or expenses would otherwise be excluded by this Rule 15, subject to such limits and to such terms and conditions as the Association may from time to time determine. [previously Rule 15.3]

- ~~15.3 The Association may provide special cover to the Assureds against any or all of the risks set out in Rule 9 notwithstanding that those liabilities, costs or expenses would otherwise be excluded by this Rule 15, subject to such limits and to such terms and conditions as the Association may from time to time determine.~~

**RULE 16 — LIABILITY EXCLUDED FOR CERTAIN NUCLEAR RISKS**

- ~~16.1~~ There shall be no recovery in respect of any liabilities, costs and expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Assured or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liabilities arise or costs or expenses are incurred was directly or indirectly caused by or contributed to by or arise from:
- ~~16.1.1~~ ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - ~~16.1.2~~ the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - ~~16.1.3~~ any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
  - ~~16.1.4~~ the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter,  
other than liabilities, costs and expenses arising out of carriage of “excepted matter” (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made there under) as cargo in an insured Ship.

**RULE 16 GUARANTIES, CERTIFICATES AND UNDERTAKINGS**

- 16.1 Notwithstanding the exclusions in Rule 15.1, 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 (STOPIA), 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, PROVIDED ALWAYS that:**
  - 16.1.5 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 complied with the terms and conditions thereof, and**
  - 16.1.6 The Assured agrees that:**
    - 16.1.6.1 any payment by the Association under any such guarantee, certificate or undertaking in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any policy of insurance or extension to the cover provided by the Association, be by way of loan; and**
    - 16.1.6.2 there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Assured under any other insurance and against any third party.**

*[Explanation: This model wording has been proposed to all Clubs by the International Group’s lawyers and which makes express provision for the payment by Clubs of liabilities under specified guarantees, certificates and undertakings both in respect of war and nuclear risks.]*

**RULE 27 PERIOD OF INSURANCE, AND TERMINATION BY CONTRACTUAL NOTICE AND NOVATION**

- 27.1** Unless otherwise agreed by the Association in writing or unless terminated earlier in accordance with these Rules, any contract of insurance in respect of any Assured’s interest in an entered Ship (together with the entry of that Ship in respect of that interest) shall commence at the time stated in the Certificate of Entry relating to such contract and shall continue until the expiry of the then current Policy Year and thereafter from Policy Year to Policy Year.

- 27.2** Any contract of insurance in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) may be terminated:
- 27.2.1** by the Assured concerned only at noon GMT on 20th February of any year with not less than 30 days' written notice to the Association;
- 27.2.2** by the Association at any time with not less than 7 days' written notice to the Assured concerned.
- 27.3** **In the event of any sale, disposal or transfer by the Association of the whole or any part of the undertaking, property, assets or liabilities of the Association to any third party carrying on the whole or any part of the business of the Association in succession to the Association (the "Transferee"), any contract of insurance in respect of any Assured's interest in an entered Ship (together with the entry of that Ship in respect of that interest) may, subject to the approval of the Committee (provided such approval was decided upon at a meeting of the Committee at which not less than two thirds of the Committee members present and entitled to vote voted in favour of the resolution to give such approval, or is the subject of a written resolution signed by all members of the Committee), be:**
- 27.3.1** novated, in whole or in part, to the Transferee on such terms as the Committee may in its absolute discretion deem necessary for the purpose of implementing or giving effect to any such sale, disposal or transfer; and/or
- 27.3.2** terminated by the Association in accordance with Rule 27.2.2 and replaced with a new contract of insurance between each Assured and the Transferee on the same terms mutatis mutandis as that Assured's original contract of insurance with the Association.

**For the purpose of giving effect to this Rule 27.3, the Assured hereby consents to any novation, termination and entry into a replacement contract of insurance as referred to in Rules 27.3.1 and 27.3.2 and appoints the Association (acting through one or more members of the Committee or the Managers) as agent for and on its behalf and in its name to enter into and execute any such novation, termination and replacement contract of insurance.**

*[Explanation: The proposed additions to Rule 27 are intended to give the Committee the powers and flexibility, in exceptional circumstances, to implement a change of corporate domicile or other restructuring of the Association, at short notice, should they decide that such is in the best interests of the membership, perhaps for tax or regulatory reasons.]*

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

15 January 2009