

## 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, 27th JANUARY 2010, 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 2010.

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

### **RULE 8 CLASSIFICATION, INSPECTIONS OF SHIPS AND STATUTORY REQUIREMENTS**

- 8.1** Unless otherwise previously agreed by the Association in writing, every entered Ship shall be fully classed throughout her period of entry with a classification society approved by the Association, regardless of any separate inspections which the Association may have required. The Association shall be given 30 days' notice preceding any proposed change of classification society.
- 8.2.1** 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.
- 8.2.2** **In the event that an entered Ship, whether or not pursuant to the approval of the relevant classification society, performs any voyage, whether under her own power or under tow, when in damaged condition, the Assured shall give the Association sufficient prior notice in writing of the intention to perform such voyage and give the Association reasonable access to the Ship, as well as all relevant information or documentation, and the Association may at its sole discretion agree cover or arrange cover on special terms (which may include the requirement of an additional premium).**
- 8.3** All the rules, recommendations and requirements of the classification society relating to the entered Ship must, within the time or times specified by the classification society, be complied with.
- 8.4** The Association shall have the right to inspect any records or information relating to the classification of an entered Ship during any period of entry and, if required, the Assured ~~concerned~~ shall authorise the classification society to make available all such records and information to the Association.
- 8.5** Without derogation from and in addition to Rules 8.1 - 8.4, the Association may but shall not be obliged to require any Ship to be submitted to inspection of her condition and structure or any part thereof and her safety management (including the Ship's managers and/or operators) by an

inspector nominated by the Association at any time or within any period of time as may be specified by the Association.

- 8.6** Any deficiencies noted and/or any recommendations made as to repair or remedy as a result of any inspection undertaken in accordance with Rule 8.5 shall be corrected and/or carried out forthwith or within such period of time as may be specified by the Association. Notwithstanding anything herein, no action, lack of action or omission by the Association with regard to any inspection, noting of deficiency, recommendation, or lack thereof by the Association or its nominated inspector under this Rule 8 shall constitute an approval, disapproval, warranty, undertaking, certification, or assumption of responsibility of any kind by the Association regarding the Assured, his Ship(s) or management, nor shall any such action, lack of action or omission by the Association relieve the Assured of any of his responsibilities or obligations under the Rules.
- 8.7** The Assured ~~concerned~~ shall ensure compliance with all the statutory requirements of the state of the Ship's flag relating to the construction, adaptation, condition, fitment, equipment, manning, safety management and ship security of the entered Ship and ensure at all times the maintenance of the validity of such statutory certificates as are required to be issued by or on behalf of the state of the Ship's flag.
- 8.8** Save to the extent that the Committee in its sole discretion may otherwise determine, there shall be no recovery in respect of any liability, costs or expenses arising during a period when any of the foregoing requirements have not been fulfilled. However, where the entry of a Ship is in the name of an Assured who is a charterer (other than a demise charterer), the rights of recovery of such charterer shall not be dependent upon fulfilment of the requirements of Rules 8.2, 8.3 and 8.4.
- 8.9** Without prejudice to Rule 8.8, the Association may:
- 8.9.1** immediately terminate any contract of insurance in respect of any Assured's interest in an entered Ship or Ships (together with the entry of that Ship or Ships in respect of that interest) after deficiencies or failures have been noted under Rule 8.6, in which case a pro rata return of ~~Calls premium~~ (other than of Overspill Calls) shall be allowed;
- 8.9.2** exclude cover for any liability, costs or expenses arising out of any accident or occurrence which is caused in whole or in part by any deficiency in or condition of the entered Ship and/or her safety management (including the Ship's managers and/or operators) in respect of which an inspector has made any recommendations under Rule 8.6;
- 8.9.3** from a specified date exclude cover for any liability, costs or expenses arising out of any accident or occurrence, caused in whole or in part by any deficiency in or condition of the entered Ship and/or her safety management (including the Ship's managers and/or operators) in respect of which an inspector has made any recommendations, unless by that date the Assured has submitted the entered Ship for a further inspection and the recommended repairs have been effected to the satisfaction of the Association.

*[Explanation: The purpose of the proposed introduction of the new Rule 8.2.2 is to expressly provide the Association with the option to arrange reinsurance, at the cost of the Assured, in the event that it perceives such a voyage to involve an unacceptably heightened, and therefore non mutual, risk, while the proposed change to Rule 8.9.1 simply corrects the terminology.]*

## **9.19 CARGO**

- 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 that~~ **an additional premium be paid;**
- 9.19.2.7** there shall be no recovery in respect of cash, **bullion, bonds**, negotiable instruments, **plate**, valuables or objects of a rare or precious nature including rare or precious metals or stones, **whether carried as cargo or as passengers' baggage or as crew's effects and whether the value is declared or not**, unless the spaces, apparatus and means used for the carriage and the instructions given for the safe custody thereof have been approved by the Association in writing **and any directions made by the Association have been complied with;**

*[Explanation: The proposed change to Rule 9.19.2.6 reflects the fact that only an additional premium would be appropriate in such circumstances, while the proposed changes to Rule 9.19.2.7 make such consistent with the wording of the Pooling Agreement.]*

## **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;

**9.23.1.3** short-delivery or over-delivery of cargo or failure to comply with any law or regulation relating to declaration or documentation of cargo, 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 9.23.1.3 shall not be subject to any other deductible;

**9.23.1.4** 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 Committee in its sole discretion may determine and provided that:

**9.23.2.1** the Assured has satisfied the Committee that he took such steps as appear to the 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 Committee shall determine that it was reasonable for the Assured to have paid or reimbursed the same.

*[Explanation: The proposed change to Rule 9.23.1 makes such consistent with the wording of the Pooling Agreement.]*

## **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, except where such liabilities, costs and expenses arise from or are caused by an act of terrorism, the Tanker Oil Pollution Indemnification Agreement (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, 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: The proposed change to Rule 16.1.3 reflects the advice received from the International Group's lawyers that the poolability of recoverable claims arising pursuant to TOPIA and the related undertakings given by the Clubs should be explicitly provided for within the Clubs' Rules..]*

## **RULE 18 OBLIGATION OF THE ASSURED IN RESPECT OF CLAIMS**

**18.1** An Assured must promptly:

- 18.1.1** notify the Association of every casualty, event and claim against him which threatens to give rise to any liability, costs or expenses for which he is insured, **or would have been insured but for the existence of any deductible, other insurance or retention**, of all material developments in respect thereof, and of every survey or opportunity for survey (including survey of the condition of the entered Ship) in connection therewith;
- 18.1.2** disclose and produce all information, documents, reports or legal advices in or coming into his or his agents' (including lawyers') possession, power or knowledge relevant to any such casualty, event or claim either available at the time of notification or at any time.
- 18.2** An Assured must neither settle nor make any admission nor grant any waiver in respect of liabilities, costs or expenses for which he is insured without prior consent from the Association in writing.
- 18.3** If an Assured commits any breach of his obligations under Rule 18 the Committee may in its sole discretion reject or reduce any recovery to which such breach may appear to the Committee to be relevant or require the Assured to repay to the Association any amounts in respect of liabilities, costs or expenses which the Association may have incurred or paid or undertaken to pay in connection therewith.

*[Explanation: The proposed change to Rule 18.1.1 is intended to cure a perceived gap in the Assured's obligations under the Rules, which must be effectively provided for if the Association is not to be at risk of losing the right to pool claims under the Pooling Agreement, namely, to give the stated notification to the Association even in circumstances where a potentially substantial deductible, other insurance or retention is involved.]*

## **RULE 21 POWERS OF THE ASSOCIATION RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS**

**21.1** The Association shall at all times have the right to:

- 21.1.1** appoint and employ on an Assured's behalf lawyers, surveyors or other persons to co-operate with the Assured in investigating or dealing with (including commencing or defending legal or other proceedings) any matter which may result in liability, costs or expenses for which the Assured is or may be insured by the Association, **or would have been insured but for the existence of any deductible, other insurance or retention**, or in respect of which the Association has provided security;
- 21.1.2** direct the conduct of any claim or legal or other proceedings against an Assured relating to any potential liability for which an Assured is or may be insured by the Association in whole or in part, **or would have been insured but for the existence of any deductible, other insurance or retention**, or in respect of which the Association has provided security, including direction that such claim or proceedings should be settled, compromised, or otherwise disposed of in such manner and upon such terms as the Association may require.
- 21.2** If an Assured fails to co-operate or to comply with any requirement or direction as aforesaid, the Committee may in its sole discretion reject or reduce any recovery to which such failure may appear to the Committee to be relevant.

*[Explanation: The proposed changes to Rules 21.1.1 and 21.1.2 are intended to cure a perceived gap in the Association's powers under the Rules, which must be effectively provided for if the Association is not to be at risk of losing the right to pool claims under the Pooling Agreement, namely, to, inter alia, appoint lawyers and direct the conduct of claims or proceedings even in circumstances where a potentially substantial deductible, other insurance or retention is involved.]*

## **RULE 27 PERIOD OF INSURANCE, 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~~ **or, in the event that the Assured declares or manifests an intention not to pay Calls to the Association, whether such Calls be then currently due and payable or payable in the future, with immediate effect upon written notice to the Assured.**

**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 purpose of the proposed change to Rule 27.2.2 is to empower the Association with the option of taking early action to terminate an entry and thereby more immediately crystallise the amount of the debt due to the Association, inclusive of Release Calls, so that, in turn, more immediate action can be taken to recover such debt. In this regard, reference is made to Rules 35.1 and 36.5.]*

## **RULE 37 LAID-UP RETURNS**

**37.1** Subject to any special terms or conditions which may have been agreed, an entered A 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** ~~mooring~~ 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 administrative expenses as the Association may from time to time determine:

**37.1.1** if the **entered** Ship so remains with crew on board, **but less than 50% of the number of crew required under the entered Ship's Minimum Safe Manning Certificate**, 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 ~~95~~ **75** per cent of such Calls.

**37.2** The Association shall be entitled to reject any claim for a return of Calls made under this Rule **in the event that the Assured does not give the Association prior notice of the intention to lay up an entered Ship, together with details of the port or place at which the entered Ship is to be laid up, and in the event that** ~~unless the Assured shall have~~ **has not** given the Association notice in writing of such ~~any~~ claim within ~~12~~ **3** months of the **entered Ship ceasing to be laid up** ~~commencement of such period~~.

**37.3** If an entered Ship commences or recommences trading after having been **laid up** in any safe port or place in circumstances qualifying for a return of Calls under Rule 37.1.2 for a period exceeding

four consecutive months, the Assured must notify the Association in writing prior to such commencement or recommencement so that the Association may be ~~satisfied~~ **satisfy itself** as to the **entered** Ship's condition by ~~survey~~ **inspection** or otherwise, and if such notification is not given the Committee may in its sole discretion reject or reduce any recovery to which such failure may appear to the Committee to be relevant.

- 37.4 While the Assured shall be responsible for ensuring that an entered Ship is safely laid up, the Association shall have sole discretion in deciding whether the port or place involved is in fact a safe port or place for the purposes of the lay up of the entered Ship within the meaning of this Rule, and the Association shall be entitled when exercising its sole discretion to take into account, inter alia, whether the entered Ship presents a net reduced risk of producing a claim, liability, costs or expenses with the potential to fall within the scope of the cover provided by this Class.**

*[Explanation: The proposed changes to Rule 37 are intended to improve and up-date the Rule generally, to recognise to some extent the increased exposure in respect of wreck removal liabilities, and to reflect similar positions being adopted by other IG Clubs.]*

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

18 January 2010