

## 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, 26th JANUARY 2011, 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 2011.

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

### RULE 9 RISKS COVERED

#### 9.13 Collision with Other Vessels:

**9.13.1** The liabilities set out in Rule 9.13.1.1 - 9.13.1.4 to pay damages to any other person as a consequence of a collision between an entered Ship and any other Ship ~~or vessel~~ to the extent that such liabilities are not covered by the hull policies of the entered Ship or would not be covered under the usual form of Lloyds Policy with the Institute Time Clauses Hulls including the Three-Fourths Collision Liability Clause attached (under which the entered Ship is deemed by Rule 12 to be insured) namely:

**9.13.1.1** One-fourth of the liability arising out of the collision, other than the liabilities set out in Rule 9.13.1.2 hereof which shall be recoverable in full; or where the Association shall have previously agreed in writing (which may include the requirement of **an further increased** Call ~~or premium~~) four-fourths of such liability.

**9.13.1.2** Four-fourths liability arising out of the collision for or relating to:

**9.13.1.2.1** the raising, removal, destruction, lighting or marking of obstructions, wrecks, cargoes or any other thing;

**9.13.1.2.2** any real or personal property except other Ships **with which the entered Ship is in collision** ~~or vessels~~ and property on **such** other Ships ~~or vessels~~;

**9.13.1.2.3** pollution or contamination of any real or personal property, **or the threat thereof**, except other Ships ~~or vessels~~ with which the entered Ship is in collision and property on such other Ships ~~or vessels~~;

**9.13.1.2.4** the cargo or other property on the entered Ship or general average contributions, special charges or salvage paid by the owners of that cargo or property;

**9.13.1.2.5** loss of life, personal injury or illness, repatriation or substitute expenses.

- 9.13.1.3** That part of the Assured's remaining three-fourths liability, which exceeds the greater of three-fourths of the actual insured value in the hull policies of the entered Ship or three-fourths of whatever value the Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12.
- 9.13.1.4** The Assured's liability which exceeds the greater of the actual insured value in the hull policies of the entered Ship or whatever value the Committee in its sole discretion may determine as the appropriate full value for which the entered Ship is deemed to be insured under Rule 12,
- 9.13.1.4.1** PROVIDED that the terms on which the Ship is entered specifically exclude recovery of those liabilities defined in Rule 9.13.1.1;
- 9.13.2** PROVIDED that:
- 9.13.2.1** an Assured shall not be entitled to recover under Rule 9.13 any franchise or deductible borne by him under the hull policies of the entered Ship;
- 9.13.2.2** if the entered Ship shall come into collision with another Ship belonging wholly or in part to the Assured, he shall be entitled to recover the same amounts from the Association, and the Association shall have the same rights, as if such other Ship belonged wholly to a different owner;
- 9.13.2.3** if both the Ships in collision are to blame, then where the liability of either or both becomes limited by law, or is treated by agreement as if so limited, claims under Rule 9.13 shall be settled upon the principle of single liability, but in all other cases claims under Rule 9.13 shall be settled upon the principle of cross liabilities, as if the owner of each Ship had been compelled to pay the owner of the other Ship such proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision.

[Explanation:

*The proposed changes by way of deletion of the references to 'or vessel(s)' are proposed because 'vessel' comes within the definition of 'Ship' in Rule 1.1;*

*The proposed change to Rule 9.13.1.1 reflects the fact that the Association's agreement to cover four-fourths of the collision liability will in most cases be given either upon the entry or renewal of an entered Ship, but that in the event four-fourths cover is requested during the policy year an increased (Annual) Call, rather than a 'further' (Annual) Call, or premium, may be required;*

*The proposed change to 9.13.1.2.2 clarifies that 'any real or personal property' may include a liability which the Assured could potentially incur towards a ship other than that with which the entered Ship is in collision, for example, in the event that the ship with which the entered Ship is in collision subsequently embarrasses the navigation of a third ship, which suffers loss or damage, because that ship might, depending upon the jurisdiction, have a separate right of action against the entered Ship;*

*The proposed change to Rule 9.13.1.2.3 to add the words 'or the threat thereof' reflects the precise wording of the hull policies' Collision Liability Clause exclusions and the Pooling Agreement.]*

## **RULE 9.16 Towage**

- 9.16.1** Liabilities set out in Rule 9.16.1.1 - 9.16.1.4 subject to the terms of any relevant contract having been previously approved by the Association in writing, and payment by the Assured of whatever ~~further~~ **increased** Call or **additional** premium may be required by the Association, namely:
- 9.16.1.1** liability under the terms of any contract for customary towage of an entered Ship, by which shall be meant towage either:
- 9.16.1.1.1** of any entered Ship for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or
- 9.16.1.1.2** of an entered Ship which is habitually towed or pushed in the ordinary course of trading from port to port or from place to place, and which has been so declared to the Association in writing.

- 9.16.1.2 liability under the terms of a contract for towage of an entered Ship other than customary towage under Rule 9.16.1;
- 9.16.1.3 liability resulting from towage under contract or otherwise by an entered Ship specially designed or converted for the purposes of towage and which has been declared to the Association as intended to be used for towing;
- 9.16.1.4 liability resulting from towage under contract or otherwise by an entered Ship not within Rule 9.16.1.3 but only if the Committee in its sole discretion shall determine that in the particular circumstances of the case it was reasonable to undertake such towage.

*[Explanation: The proposed technical change in the terminology of Rule 9.16.1 reflects more accurately that which happens in practice.]*

#### **RULE 9.17 Indemnities and Contracts for other Services**

- 9.17.1 Liability for loss of life, personal injury or illness, or for loss of or damage to property, arising under the terms of an indemnity or contract relating to facilities or services provided or to be provided to or in connection with an entered Ship, other than under Rule 9.16 and only to the extent that either:
  - 9.17.1.1 the terms have previously been approved by the Association in writing, and subject to payment by the Assured of whatever ~~further~~ **increased** Call or **additional** premium may be required by the Association; or
  - 9.17.1.2 the Committee in its sole discretion may determine that the Assured should be reimbursed.
- 9.17.2 The Proviso in Rule 9.2.3.3 shall apply to recovery under Rule 9.17.

*[Explanation: The proposed technical change in the terminology of Rule 9.17.1.1 reflects more accurately that which happens in practice.]*

#### **9.18 Wreck Removal:**

- 9.18.1 Costs and expenses reasonably incurred by the Assured 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 where such is a hazard or obstruction to navigation or to the extent that such measures are compulsory by law, or if (with the approval of the Association in writing) the Assured has declined to take such measures, his liability to any other person for such costs and expenses.
- 9.18.2 Liability for costs and expenses as in Rule 9.18.1 under the terms of use of port facilities, but only to the extent that such terms shall have previously been approved by the Association in writing, for which the Association may require an **increased** ~~further~~ Call or **additional** premium.
- 9.18.3 Liability resulting from any raising, removal or destruction of the wreck undertaken by the Assured as specified in Rule 9.18.1.
- 9.18.4 Liability resulting from the presence of the wreck, but if measures as specified in Rule 9.18.1 have not been undertaken by the Assured, only to the extent that such inaction has had the approval of the Association in writing,
- 9.18.5 PROVIDED that:
  - 9.18.5.1 subject to the next following provision, all cover under Rule 9.18 shall cease 3 years after termination of the Ship's entry save in respect of costs and expenses incurred prior to that time or claims which are already by then the subject of formally instituted proceedings against the Assured and of which the Assured shall have promptly notified the Association in writing;
  - 9.18.5.2 cover may be continued beyond the cesser of the immediately preceding provision but only if requested by the Assured within the 3 years period referred to therein and agreed by the Association in writing, for which the Association may require an **increased** ~~further~~ Call or **additional** premium;

- 9.18.5.3** from any claim under Rule 9.18.1 - 9.18.3 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 Assured of the value of the wreck and its equipment, including all bunkers, stores and materials saved;
- 9.18.5.4** there shall be no recovery under Rule 9.18 if the Assured, without the consent of the Association in writing, shall have transferred his interest in the wreck prior to the raising, removal, destruction, lighting or marking of the wreck or prior to the incident giving rise to liability; tendering of notice of abandonment to hull underwriters shall not require the Association's consent but prompt advice whether or not the same has been accepted must nonetheless be given by the Assured to the Association.
- 9.18.5.5** **a claim under Rule 9.18.1 - 9.18.4 shall be covered only in circumstances where an entered Ship becomes a wreck as a result of a fortuitous incident caused by collision, stranding, explosion, fire or similar cause, and no claim shall be recoverable in the event that an entered Ship becomes a wreck due to dereliction or neglect of the Assured.**

*[Explanation: The proposed technical change in the terminology of Rules 9.18.2 and 9.18.5.2 reflects more accurately that which happens in practice, while the purpose of the proposed introduction of the new Rule 9.18.5.5 is to avoid situations where the Association could potentially face wreck removal liability claims, for example, in a jurisdiction that has direct action laws, where a vessel has become a wreck because an Assured is not able to sell a ship for scrap but finds himself required to pay for its disposal, or where the vessel becomes a wreck due to dereliction or neglect of the Assured.]*

## **9.19 Cargo**

- 9.19.1** Liabilities, costs and expenses set out in Rule 9.19.1.1 - 9.19.1.4 in respect of cargo intended to be or being or having been carried in an entered Ship, extending from the time of receipt for shipment on quay or wharf until final delivery from quay or wharf, namely:
- 9.19.1.1** liability (other than in respect of a contract of through carriage entered into by the Assured) for loss, shortage, damage or other responsibility;
- 9.19.1.2** the additional costs (over and above those which would have been incurred in any event under the contract of carriage) incurred by the Assured in discharging or disposing of damaged or worthless cargo, originally loaded in sound condition, but only to the extent that the Assured both has to incur such costs to enable the entered Ship to complete discharge and continue trading and has no right to recover such costs from any other person;
- 9.19.1.3** the costs of discharging, re-loading and re-stowing cargo necessarily incurred to continue the safe prosecution of the voyage but only to the extent that the Assured has no right to recover such costs from any other person by way of general average or otherwise;
- 9.19.1.4** liability for loss, shortage, damage or other responsibility in respect of any contract of through carriage of cargo partly to be performed by the entered Ship and including transit by land, water or air to or from the entered Ship and intermediate storage necessary to perform such contract, but only to the extent that the terms of such contract shall have previously been approved by the Association in writing, for which the Association may require **an increased** ~~further~~ **Call or premium**;
- 9.19.2** PROVIDED that:
- 9.19.2.1** unless the Association shall have previously agreed or arranged cover on special terms (which may include the requirement of **an further increased** ~~further~~ **Call or additional** premium) or unless the Committee in its sole discretion shall otherwise determine, there shall be no recovery in respect of liabilities, costs or expenses which would not have been incurred by the Assured if the contract of carriage had been subject to the

Hague Rules or the Hague Visby Rules, except and to the extent that such are overridden by other rules, conventions or provisions of national or international law which may mandatorily apply;

- 9.19.2.2** if any means of transport or other facilities are used in connection with carriage, storage or handling of cargo outside the dock area where the entered Ship is to load or has discharged, there shall be no recovery of any amounts recoverable by the Assured from the owners or operators of such other means of transport or other facilities or which would have been recoverable if all available rights of recourse had been maintained by the Assured against such owners or operators;
- 9.19.2.3** there shall be no recovery in the case of deviation from the contractually agreed voyage if as a result of such deviation the Assured is denied any defences or rights of limitation which would otherwise have been available to him to exclude or reduce liability unless either:
- 9.19.2.3.1** the Assured has notified the Association of the deviation before it occurs or immediately upon receiving information that it has occurred and the Association has agreed or arranged cover on special terms (which may include the requirement of an ~~further Call or~~ **additional** premium), or:
- 9.19.2.3.2** the Committee in its sole discretion shall determine that the Assured had reasonable grounds for believing that no deviation was being or had been made or that the deviation was permitted under the terms of the contract of carriage;
- 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, in which a unit value of more than US\$2,500 (or the equivalent in any other currency) is declared and/or inserted by reference to a unit, piece, or package or by reference to an overall or aggregated value or otherwise where the effect of such a declaration and/or insertion is to deprive the Member of any right or rights of limitation to which he would otherwise have been entitled and which causes him to incur a greater liability than he would have done but for such declaration and/or insertion to the extent that such liability thereby exceeds US\$2,500 (or the equivalent in any other currency) in respect of any such unit, piece or package,~~ 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 that an additional premium be paid;

*[Explanation: The proposed technical change in the terminology of Rules 9.19.1.4, 9.19.2.1 and 9.19.2.3.1 reflects more accurately that which happens in practice. The purpose of the proposed change to Rule 9.19.2.6 is to bring the Rule in line with the latest amendment to the Pooling Agreement. The amendments are intended to clarify that (i) the exclusion applies where there is a general declaration of value of the cargo as well as a declaration per unit, piece or package, so as to bring the Rule in line with the Hague and Hague/Visby Rules; and (ii) the restriction on recovery shall only apply where there is a causal connection between the insertion of a value for the cargo in the contract of carriage and the carrier's loss of rights of limitation.]*

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

- 13.1** There shall be no recovery by an Assured in respect of any Ship entered by him for:
- 13.1.1** loss of or damage to such Ship, her stores or fuel, or to any equipment, containers, pallets or trailers which are used in connection with such Ship and which are owned or leased by the Assured or by any company associated with or under the same management as the Assured, save only as may be recoverable under Rule 9.24;
- 13.1.2** freight, demurrage, hire or detention except by way of the Assured's liability towards a third party for loss of or damage to cargo;
- 13.1.3** salvage or services in the nature of salvage (other than under Rule 9.10 and 9.15.1.4);
- 13.1.4** cancellation or wrongful termination of a charter or other engagement;

- 13.1.5 bad debts or other losses arising out of the insolvency of any person, including insolvency of agents;
- 13.1.6 loss, damage or expense in whole or in part arising out of or occasioned by the failure, inability or unwillingness of the Assured on financial grounds to pay and/or settle all or any financial obligations and demands and/or to discharge all or any items of expenditure whatsoever in connection with the proper prosecution and/or completion of a voyage;
- 13.1.7 interest on any claim or part thereof that he may make or bring against the Association under or in connection with these Rules, including any claim brought by way of legal or arbitration proceedings;
- 13.2 PROVIDED that any recovery which would otherwise be excluded under Rules 13.1.1 to 13.1.7 may be allowed if the relevant matters shall have been the direct result either of compliance by the Assured with a special direction of the Committee in accordance with Rule 9.26 or of suing and labouring undertaken by the Assured with the approval of the Association in accordance with Rule 9.27.1;
- 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 the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international organisation or other competent authority which the Committee in its sole discretion determines may materially affect the Association in any way whatsoever.**

*[Explanation: The proposed change to Rule 13.2 makes clear that the said Rule's proviso is only applicable to the stated Rules. The introduction of the new Rule 13.3 mirrors the changes which all International Group Clubs are introducing to protect the Clubs from the actual or potential impact of the recently introduced and/or amended sanctions laws and regulations.]*

## **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 an **increased** ~~further~~ Call or **additional** 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;
  - 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;
  - 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;

**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 there-under) as cargo in an insured Ship.

**15.2** 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.

*[Explanation: The proposed technical change in the terminology of Rule 15.1 reflects more accurately that which would happen in practice.]*

## **RULE 31 REINSURANCES**

**31.1** The Association may:

**31.1.1** accept reinsurance of risks insured by any other insurer or reinsurer to the extent that such risks might have been directly insured by the Association for the same persons and in respect of the same interests in the Ships concerned as by the original insurer;

**31.1.2** effect reinsurances of any risks insured or reinsured by the Association;

**31.1.3** towards either or both of the aforesaid purposes, continue to be a party to the Pooling Agreement dated 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.

**31.2** **The Assured shall not be entitled to recovery in respect of that part of any liabilities, costs and expenses 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 sanction, prohibition or adverse action against them by a state, international organisation or other competent authority or the risk thereof 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 other competent authority.**

*[Explanation: The introduction of the new Rule 31.2 is a corollary to the introduction of the new Rule 13.3 (above) and which protects the Association from the actual or potential impact which the recently introduced and/or amended sanctions laws and regulations may have upon the ability of other Clubs within the International Group or reinsurers to make payments under the Pooling Agreement, the Group General Excess Loss Contract or other reinsurances.]*

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

14 January 2011