

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, 30th JANUARY 2013, 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 2013.

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

RULE 1 INTRODUCTORY

- 1.3** ~~All insurance afforded by the Association within this Class is by way of indemnity and all contracts relating thereto shall be deemed to incorporate the provisions of these Rules, save insofar as those provisions are varied by any special terms which have been agreed pursuant to these Rules or amended pursuant to the powers of the Committee as set out in the Articles or these Rules, and save insofar~~ **All contracts entered into by the Association shall be deemed to incorporate the provisions of these Rules, save insofar as those provisions are varied by any special terms which have been agreed pursuant to these Rules or amended pursuant to the powers of the Committee as set out in the Articles or these Rules, and all insurance afforded by the Association is by way of indemnity save insofar** as the liabilities, costs and expenses of or attributable to an Assured are discharged by the Association whether on behalf of the Assured or in consequence of the direct liability of the Association pursuant to a demand made or liability being established under any guarantee, certificate or undertaking given pursuant to the grant of authority by the Committee from time to time, or any convention, direct action law, statute or regulation;
- and all such contracts and these Rules shall, save as otherwise provided in Rule 43, be governed by English law and shall be subject to the provisions of the Marine Insurance Act 1906 and any statutory modifications thereof.

[Explanation: The proposed amendment reorders the stated principles of the insurance afforded by the Association and the exceptions applicable to each, thereby removing an ambiguity.]

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: It is proposed that Rule 9.4.1.2 be incorporated into a new Rule 16.2.]

9.6 Repatriation and Substitutes:

- 9.6.1** The expense of repatriating a seaman of an entered Ship in unforeseen circumstances and, where applicable, the expense of sending abroad and/or awaiting a substitute to replace him other than under Rule 9.3 or 9.4 where:
- 9.6.1.1** the Assured is under statutory obligation to repatriate him;
- 9.6.1.2** the Assured is obliged to repatriate him under the terms of a crewing agreement, collective agreement or other contract of service or employment previously approved by the Association in writing;
- 9.6.1.3** the seaman's presence is necessarily required to attend his spouse, child or parent who has died or become dangerously ill during the course of the voyage;
- 9.6.1.4** the repatriation and/or substitution is necessary for the safety of the crew, entered Ship or her cargo;
- 9.6.2.1** **PROVIDED that there shall be no recovery under Rule 9.6 in respect of** expenses ~~are not covered under Rule 9.6~~ which arise out of or are the consequence of:
- 9.6.2.1.1** the termination of any agreement, whether the termination is in accordance with the terms of that agreement or by mutual consent of the parties to it; or
- 9.6.2.1.2** breach by the Assured of any agreement or other contract of service or employment; or
- 9.6.2.1.3** sale of the entered Ship; or
- 9.6.2.1.4** any other voluntary disposition by the Assured of the entered Ship.
- 9.6.2.2** **SAVE to the extent they are payable by the Assured under that part of a statutory enactment or provision which gives effect to or is equivalent to Guideline B2.5 of Regulation 2.5 of the 2006 Maritime Labour Convention or any equivalent enactment in which event the Assured shall (subject to the provisions of Rule 16.2.4) be entitled to recovery whether the circumstances were unforeseen or not.**

[Explanation: The proposed amendments to Rule 9.6 and Rule 16 (below) are to assist Assureds in complying with crew repatriation obligations under domestic legislation giving effect to the 2006 Maritime Labour Convention.]

RULE 9.18 Wreck Removal:

- 9.18.1** Costs and expenses reasonably incurred by the Assured **under a contract approved by the Association**, 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.

[Explanation: The proposed amendment requires wreck removal contracts to be approved by the Association.]

RULE 9.19 Cargo:

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 **prior to any such carriage** and any directions made by the Association have been complied with;

[Explanation: The proposed amendment is to achieve consistency with the Pooling Agreement.]

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 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 ~~proviso (a)~~ **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.**

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 onboard 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 onboard a ship who is not a Passenger.

[Explanation: The proposed amendment is to address the risk of total Passenger claims exceeding the limit on cover in respect of liability to Passengers where both certified and non-certified non-war liabilities are involved. The change would give the Association discretion to defer payment of Passengers' claims until all such certified liabilities have been discharged.]

RULE 16 GUARANTEES, 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.
- 16.2** Notwithstanding the provisions of Rule 3.1, the Association shall discharge or pay on the Assured's behalf directly to a seaman or dependent thereof a legal liability which an Assured has failed to discharge to such seaman or dependent:
- (a) to pay damages or compensation for injury, illness or death of the seaman that would have been recoverable by the Assured under Rule 9.3 and/or Rule 9.4;
or
 - (b) to pay the expenses of repatriating the seaman under that part of a statutory enactment or provision which gives effect to or is equivalent to Guideline B2.5 of Regulation 2.5 of the 2006 Maritime Labour Convention or any equivalent enactment ,
PROVIDED ALWAYS that:
- 16.2.1** there shall be no recovery under Rule 16.2 (a) unless the seaman or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated,
 - 16.2.2** 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 16.2.3 below, the amount payable by the Association shall under no circumstances exceed the amount which the Assured would have been able to recover from the Association under the Rules and his terms of entry,

16.2.3 where the Association is under no liability to the Assured by virtue of cesser under Rule 3.1.2 by reason of non payment of amounts due to the Association, the Association shall nevertheless discharge or pay a claim under Rule 16.2 to the extent only that it arises from an event occurring during the period of the contract of insurance,

16.2.4 any discharge or payment by the Association on the Assured's behalf in accordance with Rule 9.6.2.2 and/or Rule 16.2 shall be made as agent only of the Assured, and the Assured shall be liable to reimburse the Association for the full amount of such payment.

[Explanation: As stated above, the proposed amendment is to assist Assureds in complying with crew repatriation obligations under domestic legislation giving effect to the 2006 Maritime Labour Convention.]

RULE 17 EXCLUSION OF RISKS ARISING FROM SALVAGE AND SPECIALIST OPERATIONS, DRILLING VESSELS AND WASTE DISPOSAL AND SUB-SEA ACTIVITIES

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;

17.1.2 arising out of salvage operations (**including wreck removal**) conducted by an entered Ship or provided by the Assured, other than for the purpose of saving or attempting to save life at sea;

[Explanation: The proposed amendment is to clarify that the exclusion of salvage operations extends to wreck removal operations.]

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

14 January 2013