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## CLASS 5, THE PROTECTING AND INDEMNITY CLASS

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NOTICE IS HEREBY GIVEN that a SEPARATE MEETING of the MEMBERS OF CLASS 5, THE PROTECTING AND INDEMNITY CLASS, of The London Steam-Ship Owners' Mutual Insurance Association Ltd ("the Association") will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ at 3.30pm on TUESDAY, 29<sup>th</sup> JANUARY 2019, or as soon thereafter as the meeting of the Members' 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 at the Meeting, will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 2019.

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

### RULE 1 INTRODUCTORY

**1.1** In these Rules, unless the context requires otherwise:

**"Brexit Event"** has the meaning given in Rule 1.14

*[Explanation: There are a number of proposed changes throughout these Rules to cover the eventuality of the UK leaving the European Union (Brexit), either with or without a transition agreement.]*

"Fixed Premium Entry" has the meaning given in Rule 4.5**1.6**;

"Member" means an Assured who is a member of ~~the Association~~ **the London Steam-Ship Owners' Mutual Insurance Association Limited (a company limited by guarantee registered in England under number 10341)**, in accordance with the Companies Act 2006 and the Articles; **of Association of such company;**

*[Explanation: The proposed change is to clarify that the term "Member" only refers to membership of the parent company Association, not of the new Cypriot, or any other subsidiary.]*

“Members’ Committee” means the Members’ committee for the time being of the Association;**s group;**  
**[Explanation: The proposed change clarifies that the Members’ Committee has oversight of the group, which includes the Cyprus subsidiary.]**

“Ship” means any ship, boat, hydrofoil, hovercraft or other description of vessel or structure (including a lighter, barge or similar vessel or structure under construction howsoever propelled, but excluding (a) a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil and gas exploration or production, ~~and~~ (b) a fixed platform or fixed rig **and (c) a wing-in ground craft**), used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part thereof or any proportion of the tonnage thereof or any share therein;  
**[Explanation: The proposed change serves to bring the Rules into line with the Pooling Agreement.]**

“Subsidiary” means any subsidiary (within the meaning of section 1159 of the Companies Act 2006) of The London Steam-Ship Owners’ Mutual Insurance Association Limited (a company limited by guarantee registered in England under number 10341) providing insurance in its Protecting and Indemnity Class to Members; and  
**[Explanation: The proposed change introduces the concept of the Association having the new Cyprus subsidiary underwriting in the P&I class.]**

...

- 1.4 All insurance afforded by a Subsidiary within its Protecting and Indemnity Class and all contracts relating thereto shall be deemed to incorporate the provisions of these Rules, save in so far as those provisions are varied as follows:**
- 1.4.1 unless the context requires otherwise, all references in these Rules to “the Articles” shall be to the Articles of Association (or foreign equivalent) of the relevant Subsidiary;**
  - 1.4.2 unless the context requires otherwise, all references in these Rules to “the Association” shall be to that Subsidiary;**
  - 1.4.3 unless the context requires otherwise, all references in these Rules to “the Rules” shall be to these Rules as varied by this Rule 1.4; and**
  - 1.4.4 in Rule 1.2, the final sentence shall be replaced with the following: “Without prejudice to the generality of the foregoing, the provisions of the Articles relating to Assureds and/or to Co-assureds shall be binding on all Assureds and Co-assureds notwithstanding that they are not members of that Subsidiary.**

**[Explanation: The proposed change effectively creates a single common set of P&I class Rules for the Association and the Cyprus subsidiary underwriting in the P&I class. This will ensure that all an Assured’s entries in the Club are insured on the same basis, irrespective of their choice of flag and the group entity which consequently underwrites the entry.]**

...

**1.51.6** Notwithstanding the Articles and these Rules, an Assured may be insured within this Class on special terms that he is liable to pay a fixed premium to the Association (a "Fixed Premium Entry") and/or upon such special terms as to the nature and extent of the risks covered, as to policy terms and conditions and otherwise howsoever as the Board may think fit, and may accept as such entries reinsurance from other insurers.

**1.61.7** On acceptance by the Association of an application from any person for insurance within this Class of any interest in a Ship, that Ship shall thereupon be entered in this Class in respect of the interest of such person who (if not already) shall become a Member in this Class (and any such application shall constitute such person's agreement to so become or continue as a Member in accordance with the provisions of the Companies Act 2006), and shall so continue until such time as all entries of Ships by that Assured for insurance within this Class **(or the corresponding class of a Subsidiary)** of any interest in them shall have terminated under these Rules **(or the rules of the corresponding class of a Subsidiary)**,

***[Explanation: The proposed change clarifies that membership continues until such time as all entries are terminated, whether through the Association or the Cyprus subsidiary.]***

**1.6.11.7.1** PROVIDED that a person whose only interest in a Ship is insurance or reinsurance which he has afforded in respect of the same and which the Association has agreed wholly or partly to reinsure within this Class, shall not thereby become a Member in this Class nor shall such Ship be entered unless the premium payable to the Association for such reinsurance shall be by way of Calls determined by the Board in accordance with Rules 32 and 33; and

**1.6.21.7.2** PROVIDED that no person shall by virtue of being an Other Assured be entitled to be a Member and no more than one Co-assured in respect of such entry shall be entitled to be a Member and the Association shall have the right to designate one Co-assured in respect of an entry as a Member in this Class;

**1.6.31.7.3** PROVIDED that no person shall by virtue of being an Assured with a Fixed Premium Entry be entitled to be a Member.; **and**

**1.7.4** **PROVIDED that no person shall become a member of a Subsidiary following the acceptance by the Association or a Subsidiary of an application made by or on behalf of such person for insurance of that person's insurable interest in any Ship.**

***[Explanation: The proposed change clarifies that the entry of a Ship in the Association or the Cyprus subsidiary does not give an entitlement to membership of the Cyprus subsidiary, which will be wholly owned by the parent Association.]***

...

**1.111.12** The business of this Class shall, subject to the Articles, be conducted according to these Rules and shall be managed by the Board which may, subject to the Articles, exercise all powers of the Association and do on behalf of the Association all acts as may be exercised and done by the Association. The Board may delegate any of its powers to sub-committees consisting of such member or members of the Board or such other persons in each case as it thinks fit.

**1.121.13** Without prejudice to the generality of Rule 1.14 **1.12**, the Board may from time to time appoint any person, firm or corporation to be the Manager or Managers of the Association for such period and upon such terms as it thinks fit, and may vest in such

Manager or Managers such of the powers vested in the Board as it may think fit, and such powers may be exercisable for such period and upon such conditions and subject to such restrictions and generally upon such terms as the Board may determine. The Board may make such arrangements as it thinks fit for the management of the Association's affairs in the United Kingdom or abroad, and may for this purpose appoint local boards, attorneys and agents, and delegate to them such powers as it may deem requisite or expedient.

**1.14 This Rule 1.14 shall only apply following the withdrawal from the European Union by the United Kingdom, including where a transition agreement has been effected ("Brexit Event").**

**1.14.1 Subject to Rule 1.14.2 and to the extent that the Association as a consequence of a Brexit Event is:**

**1.14.1.1 not permitted by applicable law or regulation to perform any contract of insurance (including in respect of this or any other prior Policy Year) within this Class (or any part thereof); and/or**

**1.14.1.2 would become exposed to any legal or regulatory sanction as a consequence of performing such a contract (or any part thereof),**

**such contract or such part that cannot be performed (per Rules 1.14.1.1 or 1.14.1.2) may instead be performed by a Subsidiary.**

**1.14.2 If and from such time as Rule 1.14.1 applies:**

**1.14.2.1 The Association shall no longer be obliged to perform the contract or such part that cannot be performed (per Rules 1.14.1.1 or 1.14.1.2) and which is instead performed by a Subsidiary and shall have no liability whatsoever for such non-performance.**

**1.14.2.2 The Subsidiary will only perform the contract to the extent to which the Association would have been obliged to do so.**

**1.14.2.3 Accordingly, the contract will be performed as if only one of the Association and such Subsidiary were a party to it, including (but not limited to) the following respects:**

**1.14.2.3.1 All limits of cover and insurance, aggregate limits of cover and insurance (including the overall aggregate limit) and excesses; and**

**1.14.2.3.2 The Assured's obligations in respect of Calls and premiums and otherwise will be discharged by making payment to the Association or such Subsidiary, as the Association directs.**

***[Explanation: In the event of the UK leaving the EU, either with or without a transition agreement, this proposed rule provides that any current or prior year policy in respect of an EU flagged risk, may instead be performed by the new Cyprus subsidiary, to the extent that the Association is prevented from doing so.]***

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## **RULE 9 RISKS COVERED**

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### **9.2 Liability to Persons other than Seamen**

**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 Assured unless there has been a contractual allocation of risks as between the Assured and the employer of any such person which has been previously approved by the Association in writing.~~

***[Explanation: The deleted exclusion has been reinstated, as amended, at Rule 17.1.6.1.1.]***

...

### **9.2.3 Passengers (persons holding passage tickets):**

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**9.2.3.3** there shall be no recovery from the Association in respect of the contractual liability of an Assured to a passenger whilst on an excursion from the entered Ship in circumstances where either:

- (i) ~~that a separate~~ contract has been **separately** entered into by the passenger for the excursion, whether or not with the Assured; or
- (ii) the Assured 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;~~

**9.2.3.54** in the context of Rule 9.2.3 (ii), "casualty" shall mean an incident involving either (i) a collision, stranding, explosion, fire, or any other cause affecting the physical condition of the entered Ship so as to render it incapable of safe navigation to its intended destination; or (ii) a threat to the life, health or safety of passengers.

***[Explanation: The deleted exclusion has been reinstated, as amended, at Rule 17.1.6.1.2.]***

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### **9.15 Pollution:**

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**9.15.1.4** liability of an Assured to pay special compensation to a salvor of an entered Ship in respect of work done or measures taken to prevent or minimise damage to the environment, but only to the extent that such liability is imposed on the Assured pursuant to Article 14 of the International Convention on Salvage 1989, or is assumed by the Assured under the terms of a standard form of salvage agreement approved by the Association, or the Lloyd's **Open** ~~standard~~ Form of Salvage Agreement. (LOF 1995) and subsequent amendments thereto.

***[Explanation: The proposed change brings consistency to the way in which the Rules refer to LOF (and replicates the terminology of the Pooling Agreement).]***

...

**9.15.1.5.1** in respect of any liabilities, costs and expenses which but for the terms of a charter or contract of employment entered into for the employment of the entered Ship would have been allowable in general average adjusted on terms no less favourable than under the **unamended** York-Antwerp Rules 1994 or the York Antwerp Rules 2016 and would have been recoverable from other parties to the contract;

**[Explanation: The proposed change serves to achieve consistency between the Rules and the Pooling Agreement.]**

...

**9.15.1.6** An Assured insured in respect of a Ship which is a 'Relevant Ship' as defined in the Small Tanker Oil Pollution Indemnification Agreement 2006, (as amended **2017**) ("STOPIA" 2006) shall, by virtue of entry with and through the agency of the Association, and unless the Association otherwise agrees in writing, become a party to STOPIA 2006 for the period of entry of that Ship in the Association. In the event that an Assured exercises his rights under STOPIA 2006 to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the Members' Committee in its sole discretion otherwise determines, there shall be no cover under Rule 9.15 in respect of such Ship so long as that Assured is not a party to STOPIA 2006.

**9.15.1.7** An Assured insured in respect of a Ship which is a 'Relevant Ship' as defined in the Tanker Oil Pollution Indemnification Agreement 2006, (as amended **2017**) ("TOPIA" 2006) shall, by virtue of entry with and through the agency of the Association, and unless the Association otherwise agrees in writing, become a party to TOPIA 2006 for the period of entry of that Ship in the Association. In the event that an Assured exercises his rights under TOPIA 2006 to withdraw from that agreement, and unless the Managers have agreed in writing, or unless the Members' Committee in its sole discretion otherwise determines, there shall be no cover under Rule 9.15 in respect of such Ship so long as that Assured is not a party to TOPIA 2006.

**[Explanation: The proposed changes reflect the amendments and renewal of STOPIA and TOPIA in 2017 and serve to introduce the same defined terms for these agreements in the Rules as exists in the Pooling Agreement.]**

## **9.16 Towage**

**9.16.1** Towage of an entered Ship:

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**9.16.1.2** Liabilities under the terms of any other contract for the towage of an entered Ship, PROVIDED that the terms of the towage contract have been previously approved and cover agreed by the Managers in writing, upon such terms as the Managers may require. For the purpose of this Rule, the Managers will approve contracts for towage of an entered Ship on terms not less favourable to the entered Ship than:  
(i) Lloyd's Open Form of Salvage Agreement (1980,1990,1995,2000 or 2011, whether or not incorporating SCOPIC); or

**[Explanation: The proposed change brings consistency to the way in which the Rules refer to LOF (and replicates the terminology of the Pooling Agreement).]**

## 9.19 Cargo:

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~~9.19.2.5~~ except where the Association shall have previously agreed in writing, there shall be no recovery in respect of perishable cargo carried in insulated or refrigerating chambers or containers unless:

~~9.19.2.5.1~~ in the event that the space, apparatus and the means used for the carriage and safe custody of the perishable cargo have been provided by the Assured, such have been certified and approved before the commencement of each voyage, by a competent expert; and

~~9.19.2.5.2~~ in the event that the space, apparatus and the means used for the carriage and safe custody of perishable cargo have been provided by a third party, the Assured has taken all reasonable steps to ensure or require that such have been certified and approved before the commencement of each voyage by a competent expert; and

~~9.19.2.5.3~~ the relevant contract of carriage contains appropriate protective clauses and appropriate instructions have been given to those on board the Ship for the safe carriage of perishable cargo;

***[Explanation: The proposed change updates this part of the Cargo Rule and brings it into line with market practice.]***

## **RULE 16 GUARANTEES, CERTIFICATES AND UNDERTAKINGS**

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**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 **2006 (as amended 2017)** ("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 **2006 (as amended 2017)** ("TOPIA"), or

***[Explanation: The proposed changes reflect the amendments and renewal of STOPIA and TOPIA in 2017 and serve to introduce the same defined terms for these agreements in the Rules as exists in the Pooling Agreement.]***

## **RULE 17 EXCLUSION OF CERTAIN SPECIALIST 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;

**17.1.3** incurred by an Assured during the course of performing specialist operations including but not limited to dredging, blasting, pile-driving, well stimulation **intervention**, cable or pipelaying, construction, installation or maintenance work,

core sampling, depositing of spoil, ~~power generation professional oil spill response or professional oil spill response training, or tank cleaning of a Ship other than the entered Ship~~ **and such other operations as the Association may from time to time determine in writing** to the extent that such liabilities, costs and expenses arise as a consequence of:

- 17.1.3.1** claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations;
- 17.1.3.2** the failure to perform such specialist operations by the Assured or the fitness for purpose and quality of the Assured's work, products or services, including any deficiency in the Assured's work, products or services;
- 17.1.3.3** any loss of or damage to the contract work;
- 17.1.3.4** PROVIDED that this exclusion shall not apply to liabilities, costs and expenses incurred by an Assured in respect of loss of life, injury or illness of crew and other personnel on board the entered Ship, and the removal of the wreck of the entered Ship, the discharge or escape of oil from the entered Ship **or the threat thereof**; but only to the extent that such liabilities, costs and expenses are covered elsewhere in accordance with these Rules;
- 17.1.4** incurred in respect of a drilling vessel or barge or any other vessel or barge employed to carry out drilling or production operations in connection with oil or gas exploration or production, ~~including any accommodation unit moored or positioned on site as an integral part of any such operations~~, to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations;
  - 17.1.4.1** for the purposes of Rule 17.1.4, a vessel shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either:
    - 17.1.4.2** the oil is transferred directly from a producing well to the storage vessel; or
    - 17.1.4.3** the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting;
  - 17.1.5** incurred by an Assured in connection with any claim arising out of:
    - 17.1.5.1** waste incineration or disposal operations carried out by the entered Ship (other than any such operations carried out as an incidental part of other commercial activities, not being specialist operations); or
    - 17.1.5.2** the operation by the Assured of submarines, mini-submarines or diving bells; or
    - 17.1.5.3** the activities of professional or commercial divers where the Assured is responsible for such activities, other than:
      - 17.1.5.3.1** activities arising out of salvage operations being conducted by an entered Ship where the divers form part of the crew of that entered Ship (or of diving bells or other similar equipment or craft operating from the entered Ship) and where the Assured, the owner of that entered Ship, is responsible for the activities of such divers; and
      - 17.1.5.3.2** incidental diving operations carried out in relation to the inspection, repair or maintenance of the entered Ship or in relation to damage caused by the entered Ship; and
      - 17.1.5.3.3** recreational diving activities;;
- 17.1.6** **in respect of any of the following persons:**
  - 17.1.6.1** **personnel (other than marine crew) on board the entered Ship (being an accommodation Ship) employed otherwise than by the Assured unless (i)**



such Ship is moored or anchored more than 500 metres from any oil or gas production or exploration facility; and (ii) there has been a contractual allocation of risks as between the Assured and the employer of such personnel which has been previously approved by the Association in writing; and

17.1.6.2 hotel and restaurant guests and other visitors and catering crew of the entered Ship when the entered Ship is moored (otherwise than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment

*[Explanation: The proposed change serves to achieve consistency with the Pooling Agreement.]*

## **RULE 33      OVERSPILL CLAIMS/CALLS**

### **33.1 Interpretation**

**33.1.1** In these Rules the following words and expressions shall have the following meanings, unless the context requires otherwise:

“Convention Limit”      in respect of a Ship, the limit of liability of the owner of that Ship for claims (other than claims for loss of life or personal injury) at the Overspill Claim Date, calculated in accordance with Article 6 paragraph 1(b) **(but applying 334 Units of Account to each ton up to 500 tons)** of the International Convention on Limitation of Liability for Maritime Claims 1976 (the “Convention”).;

*[Explanation: The proposed change ensures consistency between the Rules and the Pooling Agreement.]*

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

21 January 2019