

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 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 12 noon on WEDNESDAY, 1 FEBRUARY 2023, 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 2023.

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

RULE 1 – INTRODUCTORY

(...)

1.14 This Rule 1.14 shall only apply following ~~applies in connection with~~ the withdrawal from the European Union by the United Kingdom, ~~including where a transition agreement has been effected~~ **(and in connection with any transitional arrangements relating to the performance after such withdrawal of contracts of insurance within any jurisdiction within the European Union or the European Economic Area (such withdrawal from the European Union and the withdrawal or termination of any such transitional arrangements relating to the performance of contracts of insurance being, in each case, a "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.

[Explanation: the proposed amendments update and reflect the application of Brexit to the Rules].

RULE 3 – RIGHT TO RECOVER, ~~AND SUBROGATION AND DEDUCTIBLES~~

(...)

3.2 The Association shall be subrogated to all rights and claims which an Assured may have against any person in relation to any matter and/or claim giving rise to a right of recovery by that Assured against the Association or in relation to any matter and/or claim in respect

of and/or as a result of which the Association incurs or may incur liability under any security the Association provides on behalf of an Assured.

3.2.1 Each Assured shall notify the Association of any such rights or claims immediately upon becoming aware of the same and shall do all such things and execute all such documents as the Association may require in relation to such rights and claims, including the execution of any assignment of such rights or claims in favour of the Association. Until any such assignment, an Assured shall hold all such rights and claims on trust for the benefit of the Association to the extent of any right of recovery by that Assured from the Association from the time of the relevant incident. All of the foregoing provisions of this Rule shall be without limitation of and without prejudice to any right of subrogation which the Association may have by operation of law.

3.2.2 All such recoveries, howsoever and whenever made, are to be paid to the Association including interest and costs, provided that if any such recovery exceeds the amounts paid by the Association, including interest and costs, whether paid to third parties or incurred by the Association, the balance shall be paid to the Assured.

3.3 Any recovery by an Assured from the Association shall be subject to any applicable deductible as set out in the Certificate of Entry.

3.3.1 Where a single incident gives rise to a number of claims with different deductibles, these deductibles shall apply in the aggregate to any recovery by the Assured for these claims.

[Explanation: The proposed amendments confirm the Association's practise regarding the allocation of recoveries from third parties and the application of deductibles when a single incident gives rise to a number of claims with different deductibles].

RULE 5 – APPLICATION FOR INSURANCE, AND FAIR REPRESENTATION OF RISK AND CHANGE OR ALTERATION OF RISK

5.1 Any application of insurance shall be on such form and in such medium as may from time to time be prescribed by the Association and the applicant shall at the time of the application and at all times thereafter provide all material particulars and information and any further particulars and information requested by the Association. The Association shall be entitled to receive and process applications for insurance with are submitted by Electronic Means or by any other means agreed by the Association.

5.2.1 The Assured must make a fair presentation of the risk **covered by** to the Association by providing the Association with all material facts and must ensure that every material representation as to a matter of fact is both complete and accurate and that every material representation as to a matter of expectation is made in good faith. This duty exists not only prior to the conclusion of the contract of insurance but also at the time of any variation thereof and on renewal.

5.2.2 The Assured must disclose to the Association in writing any material change to those facts during the period of this insurance.

5.2.3 Upon such disclosure or failure to disclose, the Association may with effect from ~~the time of disclosure or failure to disclose~~ **the commencement of the Policy Year (or from such other date as the Association in its sole discretion may decide):**

5.2.3.1 terminate the Assured's entry; or

5.2.3.2 amend the Assured's premium rating and/or terms **and conditions of cover** of entry, or

5.2.3.3 exclude cover for any liability, costs or expenses to the extent (as the Association in its sole discretion may decide) such liability, costs or expenses were caused or increased by such material change.

5.2.4 A material fact or a material change to those facts is a fact which may influence an underwriter's judgement in his or her assessment of a risk **covered by the Association**, including its terms and pricing. If the Assured is in any **reasonable** doubt as to whether a fact **(or a material change to such fact)** is material, the Association recommends that the Assured should disclose it.

(...)

5.5 Notwithstanding and without prejudice to any other provision of these Rules or the Articles relating to the amendment of these Rules, these Rules may, on such notice as the Board may in its sole discretion decide, be amended at any time (including with effect from any time during the course of any current or future Policy Year) to such extent as the Board may in its sole discretion determine is necessary **where there occurs or may occur a material change in the risks to the Association for any reason whatsoever including** ~~as a result of~~ the implementation of or any change in, or potential or proposed implementation of or any change in, any sanction, prohibition, restriction, legislation, regulation or requirement to obtain any licence, consent, permission or approval, by any government, state,

[Explanation: The proposed amendments to Rule 5.2 clarify the Association's rights in case of a material change in the risks insured for a particular entry during the Policy Year. The proposed amendment to Rule 5.5 enables amendments to the Rules to be made where in the Board's sole discretion there occurs or may occur a material change in the risks to the Association, in addition to those resulting from the implementation of sanctions & other prohibitions by any national, supranational & international bodies].

RULE 6 – CERTIFICATES OF ENTRY AND ENDORSEMENT SLIPS

6.1 After accepting an application for insurance the Association shall issue a Certificate of Entry of the Ship concerned setting out:

6.1.1 the date of commencement of risk;

6.1.2 the Annual Call Rate, or such other basis of contribution as may be applicable;

6.1.3 the gross tonnage, or where not determined gross registered tonnage, of the entered Ship and, if less, the tonnage entered in accordance with Rule 7.1;

6.1.4 the names of all Assureds and their respective interests in the entered Ship;

6.1.5 any special terms of entry, including any ~~special~~ deductibles.

[Explanation: The proposed change removes a superfluous term].

RULE 9 – RISKS COVERED

(...)

9.12 Quarantine and Disinfection

9.12.1 Additional expenses **necessarily and solely** incurred by the Assured as a direct consequence of an outbreak of infectious disease on an entered Ship ~~including quarantine and disinfection expenses in order to comply with quarantine or disinfection orders by public authorities against the entered Ship.~~

9.12.2 ~~and~~ The net loss to the Assured (over and above such **costs and** expenses as would have been incurred but for such outbreak) in respect of bunkers, insurance, wages, stores, provisions and port charges **for the period taken to comply with quarantine or disinfection orders by public authorities against the entered Ship following an outbreak of infectious disease on the entered Ship.**

9.12.3 PROVIDED always that ~~unless the Members' Committee in its sole discretion shall otherwise determine:~~

9.12.3.1 In the case of an entered Ship ~~which is not already under contract~~ being ordered or chartered to proceed to a port where it is known or should be reasonably anticipated that such Ship will, as a result, be subject to quarantine there or elsewhere, there shall be no recovery of expenses arising at, or consequent upon the ship having been at such port.

9.13.3.2 **There shall be no recovery in respect of liabilities, costs, charges, loss or expense for loss of time, loss of use (whether totally or partially), loss of market, revenue or income, delay and any other similar liabilities, costs, charges, loss or expenses arising out of or in connection with an outbreak of infectious disease on an entered Ship.**

9.13.3.3 **There shall be no recovery in respect of liabilities, costs, charges, loss or expenses incurred by the Assured in order to comply with any other measures in respect of safety, security or otherwise which are ordered against the entered Ship following an outbreak of infectious disease on-board.**

9.12.3.4 **There shall be no recovery in respect of liabilities, costs, charges, loss or expenses covered under this Rule 9.12 to the extent that the Assured has a right to recover these from any other person.**

[Explanation: The proposed amendments better align the Association's cover with that of other IG Clubs].

9.14 Property not on board an entered ship

9.14.1 Liability to pay damages or compensation for any loss of or damage to or loss of use of or infringement of rights in connection with any property whether on land or water and whether fixed or movable, PROVIDED that there shall be no recovery under Rule 9.14 in respect of liability:

9.14.1.1 arising under the terms of any contract or indemnity which would not have arisen but for those terms and for which recovery, if any, shall only be under Rule 9.16 or 9.17;

9.14.1.2 against which cover is available (or would have been available but for the operation of any proviso, warranty, condition, exception, deductible or other like term) under Rule 9.11, **9.12**, 9.13, 9.15, 9.18, 9.19 or 9.22.

[Explanation: The proposed amendment aligns the cover afforded under Rule 9.14 with the proposed amendment to the cover afforded under Rule 9.12].

9.16 Towing

9.16.1 Liabilities arising out of towing of an entered Ship PROVIDED that there shall be no right of recovery for liabilities, costs and expenses incurred under or pursuant to the terms of a contract other than:

9.16.1.1 under or pursuant to the terms of any contract for customary towing of an entered Ship, namely:

(i) towing of an entered Ship for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or

- (ii) towage of an entered Ship which is habitually towed in the ordinary course of trading from port to port or from place to place, which has been so declared to the Association in writing PROVIDED that such liabilities shall only be covered by the Association to the extent that the Assured is not insured against such liabilities under the hull policies on the entered Ship.

9.16.1.2 under or pursuant to 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 Association in writing, upon such terms as the Association may require.

9.16.1.3 For the purpose of 9.16.1.2, the Association 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 (whether or not incorporating SCOPIC); or
- (ii) a contract that contains a Himalaya Clause and an enforceable term that the parties to the towage contract, and any parties on whose behalf they contract, shall be responsible for any loss of or damage to or wreck removal of their own ship, cargo or property ~~and for loss of life or personal injury thereon~~, without any recourse whatsoever against the other and will indemnify the other against any such liability.

9.16.2 Liabilities arising out of the towage by an entered Ship of a vessel or other floating structure PROVIDED that there shall be no recovery for liability for loss or of damage to or wreck removal of a vessel or other floating structure towed by an entered Ship or the cargo or other property on such tow (together with costs and expenses associated therewith) save insofar as either:

9.16.2.1 the entered Ship was specially designed or converted for the purposes of towage and was declared to the Association as intended to be used for towing at the time of entry or at the time of conversion; and the terms of the towage contract have been previously approved and cover agreed by the Association in writing, upon such terms as the Association may require; or

9.16.2.2 the Members' Committee in its sole discretion shall determine that in the particular circumstances of the case it was reasonable for the entered Ship to undertake such towage.

9.16.2.3 For the purposes of 9.16.2.1, the following contracts are approved:

- (i) the United Kingdom, Netherlands, Scandinavian and German standard towage conditions; or
- (ii) 'Towcon' and 'Towhire'; or
- (iii) Lloyd's Standard Form of Salvage Agreement (whether or not incorporating SCOPIC).

(iv) Supplytime

9.16.2.4 For the purposes of 9.16.2.1, the following contracts may be approved from time to time by the Association:

- (i) contracts incorporating a Himalaya Clause and an enforceable term as between the owner of the entered Ship on the one part, and the owner of the tow and the owners of any cargo or other property on board the tow on the other part, that each shall be responsible for any loss or damage to his own ship, cargo or other property ~~and for loss of life or personal~~

~~injury on his own ship~~, without any recourse whatsoever against the other,
or

- (ii) other contracts where a term or terms of the contract complying with (i) above is or is likely to be unenforceable in whole or in part, where the contract does not impose on the owners of the entered Ship any liability to any person arising out of any act, neglect or default of the owner of the tow or any other person; and the contract limits the liability of the owner of the entered Ship under the contract or otherwise to the maximum extent possible by law.

9.16.3 There shall be no recovery in respect of liabilities, costs and expenses arising out of towage of or by an entered Ship otherwise than in accordance with this Rule 9.16 and cover hereunder is in any event limited to the risks covered under Rule 9 (excluding this Rule 9.16) to the extent that such risks are applicable to the Assured's entry in the Association.

(...)

[Explanation: The proposed amendments incorporate recent clarifications in the Pooling Agreement concerning:

- (i) the deeming of BIMCO Supplytime as an approved contract for the purpose of towage, and;*
- (ii) the minimum requirements for a towage contract to be on knock for knock terms].*

9.24 Confiscation

9.24.1 Loss of the entered Ship following ~~confiscation of an entered Ship by a legally empowered court, tribunal or authority for breach~~ **resulting from any infringement of** any customs law or regulation, PROVIDED that:

9.24.1.1 recovery under Rule 9.24.1 shall be to such extent as the Members' Committee in its sole discretion shall decide but shall in any event be limited to the market value of the ~~vessel~~ **entered Ship**, ~~free of commitment~~, at the time of confiscation; **and**

9.24.1.2 ~~no claim shall be considered by the Members' Committee in respect of any recovery~~ **the Assured has in the sole discretion of the Members' Committee been permanently deprived of his interest in the entered Ship**, ~~no claim shall be considered by the Members' Committee in respect of any confiscation which has not remained in effect for a continuous period of 183 days from such time as the Assured shall have notified the Association in writing of the confiscation~~ **and**

9.24.1.3 ~~if at any time before or after the expiry of the said period terms become available for the return of the vessel on payment of a monetary penalty, the Members' Committee may require the Assured to accept such terms and make the necessary payment which alone shall then be the subject of recovery from the Association~~

9.24.1.3 the Assured has satisfied the Members' Committee that he took such steps as appear to the Members' Committee to have been reasonable to prevent the event giving rise to the confiscation.

(...)

[Explanation: The proposed amendment aligns the Association's cover with Pooling Agreement requirements in respect of claims involving a breach of customs law and resulting fines or other measures taken against the entered Ship].

RULE 17 – EXCLUSION OF CERTAIN SPECIALIST RISKS

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:

(...)

17.1.3 incurred by an Assured during the course of performing dredging, blasting, pile-driving, well intervention, cable or pipelaying, construction, installation or maintenance work, core sampling, **mining**, depositing of spoil, power generation, decommissioning 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;

[Explanation: The proposed addition of mining to the list of excluded specialist operations brings the Association's Rule into line with a recent amendment to the Pooling Agreement].

RULE 23 – COVER FOR CO-ASSURED AND OTHER ASSURED

23.3 In relation to Co-assureds and Other Assureds:

(...)

23.3.3 the cover afforded shall always be subject to: ~~23.3.3.4~~ the provisos in Rule 9.1 and ~~23.3.3.2~~ the limitations on recoveries in Rule 11; **and these limitations shall apply to all claims made by the Principal Assured and all Co-Assureds and Other Assureds in the aggregate for any one occurrence as if the Ship had been entered by the Principal Assured only.**

[Explanation: The proposed amendment clarifies the limits on cover available where an incident gives rise to a number of claims by a number of Assureds insured on the same entry].

RULE 36 – RELEASE CALLS

(...)

36.5 Whether or not any request shall have been made in accordance with Rule 36.4, and notwithstanding the acceptance or otherwise by the Assured pursuant to that Rule, upon or at any time after the termination of entry of any Ship, a Release Call in respect of any Supplementary Call in the relevant amounts chargeable in accordance with Rule 36.2 for all open Policy Years during which such Ship shall have been entered may be imposed by the Association upon any Assured who would otherwise be liable to pay any such Call.

Debit notes for such Release Calls may be rendered without previous notice and shall be due and payable immediately.

36.5.1 PROVIDED that such debit notes (and the imposition of a Release Call thereby effected) shall be cancelled if within 30 days from the date of the debited Release Call (unless otherwise agreed by the Association in writing) the Association shall have received a **cash deposit or a** bank guarantee which will pay on the written demand of the Association any future Supplementary Call in respect of the Ship concerned, for which the Assured shall remain liable in full. Such bank guarantee shall be:

36.5.1.1 enforceable in London;

36.5.1.2 acceptable to the Association; and

36.5.1.3 for an amount equal to the debited Release Call.

[Explanation: The proposed amendment clarifies the existing practise that security for any future Supplementary Call can be provided by way of a cash deposit].

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

10 January 2023

*If you have any questions about arrangements for the meeting please contact Genine Hubbarde (genine.hubbarde@londonpandi.com).