

No. 7 2007/2008 - Class 1 - Rule Changes for 2008

November 2007

Notice to All Class 1 Members

NOTICE is hereby given that an Extraordinary General Meeting of the Members of Class 1 of the Association will be held at 1030 hours on Wednesday 5 December 2007 in the Fairmont Hotel Vier Jahreszeiten, Neuer Jungfernstieg 9 – 14, 20354 Hamburg, Germany for the purpose of considering and, if thought fit, passing the following SPECIAL Resolution:

SPECIAL RESOLUTION

THAT alterations to certain Rules of Class 1 (as hereafter set out with commentary) be made to take effect from noon GMT on 20 February 2008:-

1. It is proposed that the standard deductible for Class 1 claims should be modified so that Members will bear the first US\$5,000 in respect of all claims arising from one incident, other than cargo claims and claims in respect of cargo's proportion of general average where this deductible will apply per cargo voyage.

The text of Rule 6 would be amended as follows:

RULE 6 – Deductibles

Unless otherwise agreed in writing between a Member and the Managers as part of the terms upon which a vessel is entered in the Association, the Member's recovery from the Association shall be subject to the following deductibles:-

(1) Cargo claims and cargo's proportion of General Average

In respect of liabilities, costs and expenses referred to in Rule 2 Sections 16 and 17 and any costs and expenses incurred in connection therewith under Rule 2 Section 24 the first US\$5,000 in respect of one insured vessel in respect of each cargo voyage.

(2) All other Claims

In respect of the liabilities costs and expenses referred to in Rule 2 Sections 1 to 14 inclusive and 18 to 23 inclusive and any costs and expenses incurred in connection therewith under Rule 2 Section 24 the first US\$5,000 in respect of one insured vessel in respect of each incident.

PROVIDED THAT:-

Where two or more claims on the Association have arisen out of the same incident and are subject to more than one deductible by reason of this Rule or by reason of any special terms agreed with the Member, the Member's recovery shall

be subject to the highest only of such deductibles.

2. It is proposed to replace Rule 7 in its entirety with the following new Rule which aligns the Club Rules with the terms of the Pooling Agreement relating to limits of Club cover which are already incorporated in Members terms of entry for 2007 and which will continue to apply in the Pooling Agreement for 2008.

RULE 7 - LIMITS OF THE ASSOCIATION'S LIABILITY OTHER THAN IN RESPECT OF OVERSPILL

(1) Definitions

For the purpose of this Rule 7 and the provisos thereto, and without prejudice to anything elsewhere contained in these Rules:

- a) the "limitation amount" means the amount to which the Member could have limited liability in the relevant circumstances if he had sought and not been denied the right to limit;
- b) a "claim in respect of oil pollution" means a liability, cost, loss or expense, howsoever incurred, in respect of or relating to an escape or discharge of oil or any threat or consequence of such escape or discharge, but excluding liability for loss of or damage to such oil.
- c) "persistent oil" means
 - i) any hydro-carbon mineral oil other than any oil which consists of hydro-carbon fractions at least fifty per cent (50%) of which, by volume, distils at a temperature of 340°C (645°F), and at least ninety five per cent (95%) of which, by volume, distils at a temperature of 370°C (700°F) when tested by the ASTM Method D86/78 or any other subsequent revision thereof; and
 - ii) any other oil which the Association may determine from time to time.

(2) Limitation Generally

(a) The Association's liability in respect of claims in respect of oil pollution shall be limited to such sum or sums and be subject to such terms and conditions as are set out in paragraph 3 of this Rule 7.

(b) Where the insured vessel, being capable of carrying oil in bulk as cargo, is on a voyage involving loading or discharging oil as cargo at any port or place in the United States of America or within the exclusive economic zone as defined in the US Oil Pollution Act of 1990 ("OPA 90") and any amendments thereto, the Association shall have no liability under an Owner's Entry for any claim in respect of oil pollution in respect of any incident to which OPA 90 is applicable, unless an agreement has been entered into with the Association on the terms and conditions set out in paragraph 4 of this Rule 7.

(c) The Association's liability under an Owner's Entry for any and all claims which arise in respect of passengers and seamen shall be limited to such sum or sums and be subject to such terms and conditions as are set out in paragraph 5 of this Rule 7.

(d) The Association's liability in respect of Charterers' Entries insured under Rule 3 is limited as provided for in that Rule, but the Association's liability in respect of all other Charterer's Entries including charterers co-assured under Owner's Entries as described in Rule 36 shall be limited in accordance with paragraphs 3 and 6 of this Rule 7.

(3) Limit of the Association's liability in respect of oil pollution for Owner's Entries and Charterers Co-assured under an Owner's Entry

- a) The Association's liability in respect of a charterer co-insured under an Owner's Entry as described in Rule 36 for any and all claims in respect of oil pollution in respect of one vessel in respect of one incident shall not exceed in the aggregate the amount of US\$ 350,000,000.
- b) The Association's liability in respect of an Owner's Entry and all Co-Assureds insured under that Owner's Entry for any and all claims in respect of oil pollution in respect of one vessel in respect of one incident shall not exceed in the aggregate the amount of US\$ 1,000,000,000.
- c) Where the insured vessel provides salvage or other assistance to another vessel following a casualty, a claim by the Member in respect of oil pollution arising out of the salvage, the assistance or the casualty shall be aggregated with any and all claims in respect of oil pollution incurred by any other vessels similarly engaged in connection with the same casualty when such other vessels are either:
- i) insured by the Association under Owner's Entries for claims in respect of oil pollution; or
- ii) insured for claims in respect of oil pollution under Owner's Entries with any other association which participates in the Pooling Agreement. In such circumstances the limit of the liability of the Association shall be such proportion of the sum set out in paragraph 3(b) of this Rule 7 as the claim by the Member bears to the aggregate of all such claims.
- d) Where a vessel entered in the Association by or on behalf of any person (except a charterer other than a demise or bareboat charterer) is also separately insured in the name of or on behalf of the same or any other such person by the Association or by any other association which is a party to the Pooling Agreement for claims in respect of oil pollution, the aggregate recovery in respect of all such claims in respect of one vessel in respect of one incident shall not exceed in the aggregate the amount set out in paragraph (3)(b) of this Rule 7 and the liability of the Association to each such person for all such claims in respect of one vessel in respect of one incident shall not exceed in the aggregate such proportion of that amount as the maximum amount for which the Association would otherwise be liable in respect of such claims bears to the aggregate of all such claims for which the Association and all such associations would otherwise be liable.

(4) US Oil Pollution Cover

The exclusion of any claim in respect of oil pollution liabilities under paragraph (2) (b) of this Rule 7 shall apply to all persons insured under any entry which insures the registered owner of the vessel, unless the Member agrees to the following terms and conditions:

- a) The Member shall declare quarterly in arrears at the end of each quarter ending 20th May, 20th August, 20th November and 20th February whether or not the Insured vessel has performed any voyage (a "relevant voyage") carrying oil as cargo to or from any port or place in the United States of America or within the exclusive economic zone ("EEZ") as defined in the US Oil Pollution Act 1990 ("OPA 90") and any amendments thereto and, if so, the number of voyages, and for each voyage, the nature and (in the case of cargoes of persistent oil carried by parcel tankers) quantity of the cargoes, the port(s) or place(s) of loading, discharging or transferring such cargoes and the date(s) of such loading, discharging or transfer.
- b) If the insured vessel makes a relevant voyage involving loading or discharging persistent oil as cargo at any port or place in the US or within the EEZ, the Member shall pay an additional premium to be determined by the Association.
- c) The Member shall pay such additional premium on or before the date specified in the debit note issued by the Association in accordance with the declarations made under paragraph 4(a) above.
- d) In the event that the Member fails for any reason to make a declaration (whether or not any relevant voyage has been performed) within three months of the quarter dates specified in paragraph 4(a) of this Rule 7, the exclusion for oil pollution set out in paragraph (2) (b) of this Rule 7 will again come into effect in respect of the insured vessel for which a declaration has not been made from the expiry of the said period of three months.
- e) In the event that any declaration made by the Member or on his behalf pursuant to paragraph 4(a) of this Rule 7 is in

any material respect inaccurate, the Member shall cease to be covered by the Association in respect of the insured vessel for which an inaccurate declaration has been made with effect from the date of receipt of the inaccurate declaration by the Association, provided always that the Association may in its discretion and upon such terms as it thinks fit either:

- i) reinstate the entry of the insured vessel for which cover has ceased pursuant to this provision, or
 - ii) admit in whole or in part any claim in respect of the insured vessel for which the Association is under no liability by reason of the cessation of cover in accordance with this provision.
- f) In the event that the Member fails to pay either in whole or in part any additional premium debited in accordance with paragraph 4(b) of this Rule 7, the provisions of Rule 41 shall apply.

(5) Passengers and Seamen

(a) For the purposes of this paragraph (5), 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.

(b) Unless otherwise limited to a lesser sum, the Association's liability under any one Owner's Entry in respect of one vessel in respect of one incident shall not exceed

- (i) in respect of liability to Passengers US\$ 2,000,000,000 in the aggregate and
- (ii) in respect of liability to Passengers and Seamen US\$ 3,000,000,000 in the aggregate.

PROVIDED that:

Where there is more than one Owner's Entry in respect of the same insured vessel in the Association and/or in one or more associations which participate in the Pooling Agreement,

(A) the Association's liability in respect of Passengers in respect of one vessel in respect of one incident shall not exceed in the aggregate such proportion of the amount of US\$ 2,000,000,000 that the amount for which the Association would otherwise be liable in respect of such persons bears to the aggregate of the amounts for which the Association and such other associations would otherwise be liable in respect of such persons;

(B) the Association's liability and the liability of such other associations' in respect of Passengers and Seamen in respect of one vessel in respect of one incident shall not exceed in the aggregate US\$ 3,000,000,000 and the liability of the Association in respect of one vessel in respect of one incident shall not exceed:

- (i) where claims in respect of liability to Passengers have been limited to US\$ 2,000,000,000 in accordance with proviso (A) such proportion of the balance of US\$ 1,000,000,000 as the amount for which the Association would otherwise be liable in respect of such Seamen bears to the aggregate amount for which the Association and such other associations would otherwise be liable in respect of such Seamen.
- (ii) in all other cases, such proportion of US\$ 3,000,000,000 as the amount for which the Association would otherwise be liable in respect of Passengers and Seamen bears to the aggregate amount for which the Association and such other associations would otherwise be liable in respect of such Passengers and Seamen.

(6) Charterers' Entries

Where a charterer is insured otherwise than in accordance with Rule 3 and subject to the provisions of sub paragraph (a) of this paragraph 6 the Association's liability in respect of all persons insured under a Charterer's Entry in respect of all liabilities, losses, costs or expenses falling within Rule 2, in respect of one vessel one incident shall not exceed the

aggregate amount of US\$ 350,000,000.

PROVIDED that:

(a) Where the insured vessel provides salvage or other assistance to another ship following a casualty, a claim by a Member in respect of oil pollution arising out of the salvage, the assistance or the casualty shall be aggregated with any claim in respect of oil pollution by any other vessel(s) similarly engaged in connection with the same casualty when such other vessel(s) are either:

(i) insured by the Association in respect of oil pollution under Charterer's Entries; or

(ii) insured in respect of oil pollution under Charterer's Entries with any other association which participates in the Pooling Agreement. In such circumstances the Association's liability shall not exceed such proportion of US\$ 350,000,000 as the claim by the Member bears to the aggregate of all such claims.

(7) Consortium claims

(a) Definitions

For the purpose of this paragraph (7) the following words and expressions shall have the following meanings:

Consortium Agreement

any arrangement under which a Member agrees with other parties to the reciprocal exchange or sharing of cargo space on the insured vessel and Consortium Vessels.

Consortium Vessel

means a vessel or space thereon, not being the insured vessel, employed to carry cargo under a Consortium Agreement.

Consortium Claim

A claim shall be a Consortium Claim where:

(i) it arises under a P&I entry of an insured vessel; and

(ii) it arises out of the carriage of cargo on a Consortium Vessel; and

(iii) the Member and the operator of the Consortium Vessel are parties to a Consortium Agreement; and

(iv) at the time the event giving rise to the claim occurs there is employed by the Member pursuant to the Consortium Agreement a vessel entered on behalf of the Member in the Association or another association which is a party to the Pooling Agreement.

For the purpose of a Consortium Claim under this paragraph 7, the Consortium Vessel shall be treated as an insured vessel entered on behalf of the Member under a Charterer's Entry in the Association.

(b) Allocation of Consortium Claims

Where an insured vessel under an Owner's Entry and an insured vessel under a Charterer's Entry are both employed by a Member pursuant to a Consortium Agreement at the time the incident giving rise to the Consortium Claim occurs, the Consortium Claim of the Member shall for the purpose of these Rules be treated as a claim arising in respect of the Owner's Entry of the Member.

(c) Aggregation

(i) Where the Member has more than one vessel employed pursuant to the Consortium Agreement at the time the event giving rise to a Consortium Claim occurs, all such vessels shall be deemed to be an entry of one insured vessel.

(ii) Where a Member employs one or more vessels pursuant to the Consortium Agreement at the time the event giving rise to a Consortium Claim occurs and the Member has an entry in respect of such vessels in the Association and another association which is a party to the Pooling Agreement:

A. each such vessel shall be deemed to be a part entry of one vessel in the Association and the other association(s) which is a party to the Pooling Agreement, and

B. where the Consortium Claims incurred by the Association and the other association(s) in respect of the insured vessel arising from that event out of the carriage of cargo on a Consortium Vessel in the aggregate exceed the sum specified in sub-paragraph (d) of this paragraph 7, the liability of the Association for such Consortium Claims shall not exceed that proportion of the sum specified in sub paragraph (d) of this paragraph 7 that the Consortium Claims recoverable from the Association in respect of each part entry bears to the aggregate of all the Consortium Claims for which the Association and any other association which is a party to the Pooling Agreement may be liable.

(d) Limit

The Association's liability in respect of a Consortium Claim on one Consortium Vessel in respect of all insured vessels under all entries in the Association and any other association which is a party to the Pooling Agreement in respect of one incident shall be limited in the aggregate to the amount of US\$ 350,000,000.

3. As a result of the changes proposed to be made to Rule 7 there are consequential changes to Rules 8 and 31, the text of which will read as follows and to the definitions Rule 60 which will include a new definition of an Owner's Entry and a Charterer's Entry.

RULE 8 - OTHER LIMITATIONS OF THE ASSOCIATION'S LIABILITY

(1) Generally

The Association shall in no circumstances be liable hereunder for a sum in excess of the liability in law of the Member for damages or otherwise and, when a Member is entitled to limit his liability, the liability of the Association shall not exceed the amount of such limitation. Where the Association is sued directly by a third party, it shall be entitled to adopt each and every denial, defence and right to limitation of liability that would have been available to the Member in such proceedings were the Member and not the Association to be the party sued.

(2) Unreasonable failure to limit

When a Member is or would be entitled to limit his liability in respect of any vessel, but the Committee determines that he has unreasonably failed to take the necessary steps to limit his liability, the liability of the Association shall not exceed the amount of the limitation. The burden of proving that a failure to limit is not unreasonable shall be on the Member.

(3) Limitation for persons other than shipowners

(a) The Committee shall have power under this Rule to make Bye-Laws from time to time providing for limitation of or other restrictions upon the liability of the Association for claims (otherwise than in connection with oil pollution) against charterers (other than demise charterers) and to vary or revoke any such Bye-Laws.

(b) If a Member has entered a vessel in the Association, and he is not the registered owner or demise charterer of that vessel or the manager or operator having control of the operation and employment of that vessel (being such control as is customarily exercised by a ship owner) or any other person in possession or control of that vessel or an insurer of

protection and indemnity risks of such description of persons, then unless otherwise agreed in writing between the Member and the Managers the liability of the Association in respect of any claim brought by the Member relating to that vessel shall not exceed the amount to which he could have limited his liability for the claim if he had been the registered owner and had not been denied the right to limit, and all contracts of insurance between a Member who is a charterer (other than a demise charterer) and the Association shall, except as provided in Rule 3 or in Rule 7 or otherwise agreed in writing by the Managers, be subject to the Association's Charterer's Limitation of Cover Clause (otherwise than in respect of oil pollution) for the time being in force which clause shall be a Bye-Law of the Association and shall also at all times be and be deemed to be incorporated in these Rules.

RULE 31 - APPLICATION FOR ENTRY

Any person who desires to enter a vessel for insurance in the Association shall make application for such entry in such form as may from time to time be required by the Managers.

The Managers shall be entitled in their absolute discretion to refuse any application for the entry of a vessel for insurance in the Association, whether or not the applicant is a Member of the Association.

Applications for the entry of a vessel or vessels may be made in respect of vessels which form part of a particular and specified fleet for the purposes of such entry and if the Association accepts such an application, the Association will treat such entries as belonging to such a fleet notwithstanding that the beneficial ownership of such vessels may be different from one another, and all Members and joint Members within each such fleet shall be jointly and severally liable to perform all the obligations of any one of them towards the Association, including without limitation the liability to pay all Calls and other sums due to the Association in respect of any and all vessels within that fleet entry. Any failure by a Member or joint Member in the same fleet to perform any obligation whatsoever towards the Association shall be deemed to be a failure of all Members and joint Members within such fleet. In the case of a failure to pay Calls or any other sums whatsoever due from such Member to the Association, the Association shall be entitled to give notice to all or any of such Members or joint Members under Rule 41.

An entry shall be an Owner's Entry or a Charterer's Entry or such other entry as the managers shall determine.

RULE 60 - DEFINITIONS

"OWNER'S ENTRY": Entry of an insured vessel by any owner, owner in partnership, owner holding separate shares in severalty, part owner, trustee or bareboat or demise charterer of any insured vessel, any manager or operator having control of the operation and employment of an insured vessel (being such control as is customarily exercised by a shipowner), any other person in possession and control of any insured vessel, and any other person that the Managers shall determine may be insured under such Owner's Entry.

"CHARTERER'S ENTRY": Entry of a vessel by a charterer (other than a bareboat or demise charterer) and any other person that the Managers shall determine may be insured under such Charterer's Entry.

Legal advice has been taken in respect of the proposed changes and they will be reviewed again by the Association's lawyers to further adjust, if necessary, any parts of the text for the purposes of ensuring alignment with the terms of the Pooling Agreement is appropriate.

By order of the Board
P A Aspden
Secretary
33 Boulevard Prince Henri
1724 Luxembourg

November 2007

A Member entitled to attend and vote is entitled to appoint a proxy (who need not be a Member of the Association) to attend and on a poll vote instead of him. The instrument appointing a proxy shall be left with the Secretary not less than 48 hours before the holding of the Meeting.

(Minor textual adjustments were made to this notice since it was first posted on the website on 14th November 2007; they do not affect the substance of the document.)