

## TEXT OF CHANGES - CLASS 1 RULES

Unless otherwise indicated those parts of the 2021 Rules where it is proposed that changes are made are set out in full with the changes marked. A proposed deletion from the 2021 Rules is identified by striking through the text to be deleted. Proposed additions are underlined. All proposed changes are accompanied by a vertical mark in the margin for ease of identification.

### 1. RULE 13A PREMIUM TAX AND OTHER EXCISE TAXES

A change is proposed to ensure any sum the Club determines to be a premium tax or similar-type charge or fee is recoverable from the Member.

The proposed change reads as follows:

#### 13a Premium Tax and Other Excise Taxes

The Member shall pay on demand to the Association or its order the amount of any premium tax or other excise tax or similar charge or fee for which the Association determines in its discretion that it or the Member has or may become liable and shall indemnify and hold harmless the Association in respect of any loss, damage, liability, cost or expense which the Association may incur in respect of such premium tax or other excise tax, charge or fee.

### 2. RULE 17 – LIABILITY EXCLUDED FOR CERTAIN RISKS AND EXCLUSION OF CERTAIN LIABILITIES, COSTS AND EXPENSES OF SALVAGE VESSELS, DRILLING VESSELS, DREDGERS AND OTHERS, SPECIALIST OPERATIONS, DIVING ETC.

To align with changes to the International Group Pooling Agreement two amendments are proposed, firstly under Section D(ii) to exclude liabilities arising from the operation of ROV's and secondly under Section E to further refine the provisions around cover for accommodation units.

The proposed changes read as follows:

#### 17 Liability excluded for certain risks and exclusion of Certain Liabilities, Costs and Expenses of Salvage Vessels, Drilling Vessels, Dredgers and Others, Specialist Operations, Diving etc.

Without prejudice to Rule 4, unless special cover shall have been agreed in writing between a Member and the Managers, there is no cover in respect of:

(D) liabilities, costs and expenses incurred by a Member in connection with any claim brought against it arising out of:

(ii) the operation by the Member of submarines, mini-submarines or diving bells or remotely operated underwater vehicles;

(E) ~~(a) personnel (other than marine crew) on board the insured vessel (being an accommodation vessel) employed otherwise than by the Member where either:~~

~~(i) such vessel is moored or anchored within 500 metres from any oil or gas production or exploration facility~~

~~or~~

~~(ii) there has not been a contractual allocation of risks as between the Member and the employer of the personnel which has been approved by the Association;~~

Liabilities, costs and expenses incurred in respect of any of the following:

- a) personnel (other than marine crew) on board the insured vessel, employed otherwise than by the Member, where the insured vessel is providing accommodation to such personnel in relation to their employment on or about an oil or gas exploration or production facility, unless a contractual allocation of such risk has been approved by the Association;
- (b) hotel and restaurant guests and other visitors and catering crew of the insured vessel when the insured vessel is moored (otherwise than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment.

***(NB: The other provisions of Rule 17 which remain unaltered are not reproduced here for the sake of brevity.)***

### **3. RULE 19A. SANCTIONS, PROHIBITIONS AND ADVERSE ACTION**

A small change is proposed to align this Rule with advice from leading sanctions counsel in the United States.

The proposed change reads as follows:

#### **19a. Sanctions, Prohibitions and Adverse Action**

- (1) Unless the Committee otherwise determines, there is no cover in respect of an insured vessel being employed by the Member in a carriage, trade or on a voyage which thereby in any way howsoever exposes the Club to the risk of violating, or to being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation or other competent authority.
- (2) The Association shall in no circumstances have a liability to a Member in respect of that part of any liabilities, costs and expenses which is not recovered by the Association from parties to the Pooling Agreement, and/or under the Group Excess Loss Reinsurance Contract or any other reinsurer 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 or 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 19A "shortfall" includes but is not limited to 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 or international organisation or other competent authority.
- (3) Notwithstanding the express or implied terms of any other provision of these Rules, on becoming aware of any prima facie evidence of any conduct by a Member which exposes or might expose the Club to the risk of violating, or to being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation or other competent authority the Association shall be entitled to terminate its insurance of the Member immediately and without notice, whereupon that Member shall immediately cease to be insured by the Association and the period of insurance shall immediately terminate in respect of any and all vessels entered by him.

#### 4. **RULE 28 BAIL, SECURITY AND CERTIFICATES OF FINANCIAL RESPONSIBILITY**

It is proposed that a prioritisation provision should form a new section of the bail rule, which gives the Managers the option to prioritise the reimbursement of certificated liabilities (i.e. those arising under a "blue card" or other bail or security issued by the Association) over other, non-certificated claims arising from the same incident.

Should the Association have to meet significant claims including fines but then still be obligated to pay certificated liabilities and which might then collectively exceed the available amount of reinsurance (especially for oil pollution with a limit of US\$1 billion), it may face a substantial unreinsured liability.

This proposed amendment replicates the same provision for passenger ship liabilities which has existed in all Clubs' rules for a many years (West's Rule 2 Section 2A(f)). The increasing capacity of passenger ships has meant that total liabilities may exceed the sub-limits on passenger and crew cover for these ships and this existing provision gives Managers a power of prioritisation to pay certificated Athens Convention liabilities first if necessary.

The risk of this new provision being invoked is extremely remote, however, since the levels of certificated liabilities are such that very substantial non-certificated liabilities would need to be incurred before any danger of exceeding limits is met.

The proposed change reads as follows:

##### **28 Bail, Security and Certificates of Financial Responsibility**

- (1) Without prejudice to the provisions of Rule 14(4), the Association may agree to provide bail or security in connection with its business on such terms as it may consider necessary, including but not limited to:
  - (a) bail or other security to obtain the release of, or to prevent the arrest or attachment of an insured vessel or any other vessel, property or assets (including freight or monies due) in the same or associated ownership or management as the insured vessel, or to obtain the release of or prevent the arrest of any seaman of such vessels,
  - (b) a guarantee to the Federal Maritime Commission under Section 2 of US Public Law 89-777,
  - (c) a certificate in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof,
  - (d) an undertaking to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006) as amended and the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006) as amended.
  - (e) a certificate in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.
  - (f) a certificate in respect of non-war risk liabilities in relation to the European Union Passenger Liability Regulation.
  - (g) a certificate issued by the Association in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks 2007.
- (2) If it does so agree, then subject to any variation of any of (a) to (g) below by specific agreement between the Association and the Member:-
  - (a) the Association shall be entitled to recover from the Member the expenses incurred in connection with providing such bail or security, except insofar as such

expenses, if incurred by the Member, would be recoverable from the Association under Section 24 of Rule 2 (sue and labour);

- (b) the Association shall be entitled to a commission from the Member of 1% per annum on the amount of the bail or security provided, or such other sum as may be considered appropriate by the Managers;
- (c) the Member shall upon the Association agreeing to provide the bail or security, give to the Association on request an undertaking in the form set out in the Second Schedule (form B3). Whether or not the Member has given such undertaking, if the Association does provide bail or security, with or without the Member's authority, then the provision of such bail or security shall be upon the terms as between the Association and the Member that the terms and conditions contained in that form of undertaking shall be binding on the Member as if such undertaking had been duly given by him to the Association;
- (d) the Member shall on such date or dates as the Association determines pay the Association the amount of any deductible which the Association determines may apply to any liability, loss, cost or expense in respect of which the bail or other security has been provided and in respect of which the Member may be insured;
- (e) any payment by the Association under any such guarantee, undertaking or certificate shall, to the extent of any amount recoverable under any policy of insurance or extension to the cover provided by the Association, be by way of loan;
- (f) 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 Member under any other insurance and against any third party;
- (g) the Association shall in no circumstances provide cash deposits.

(3) Where:

- (a) the Association has issued any bail or security as referred to in part (1) of this Rule 28 by which it undertakes to directly meet or guarantee any relevant liabilities, (together the "Direct Liabilities"); and
- (b) claims in respect of Direct Liabilities alone or in combination with other claims may in the sole opinion of the Managers exceed any limit(s) on the cover provided by the Association as set out in the Rules or in the Certificate of Entry;

the Managers may in their absolute discretion defer payment of any such other claims or any part thereof until the Direct Liabilities, or such parts of the Direct Liabilities as the Managers may in their absolute discretion decide, have been discharged.

To the extent that any claims or liabilities (including any Direct Liabilities) discharged by the Association exceed the said limit(s) any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association promptly upon demand in respect of such payment and shall assign to the Association to the extent and on the terms that the Association determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party.

## 5. RULE 34 PERIOD OF COVER

To better highlight the existing and important provisions of this Rule it is proposed that the heading is amended for clarity.

The proposed change reads as follows:

### 34 ~~Period~~ Duration and Termination of Cover

The cover afforded by the Association shall begin at the time stated in the Certificate of Entry for the commencement of the cover and continue until the end of the then current Policy Year at noon on 20 February next unless otherwise agreed at the time of entry. Thereafter, subject to a cesser of insurance or to the exercise by the Club of any right to terminate an entry as provided elsewhere in these Rules, the cover shall continue from Policy Year to Policy Year unless:

- (1) notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than noon on 20 January in any year, that the insurance specified in the notice is to cease, in either of which events the insurance shall cease at the end of the then current Policy Year; or
- (2) the Managers shall have informed the Member orally or in writing at any time before the start of a Policy Year at noon on any 20 February that the terms of the insurance offered to it by the Club for that Policy Year are to be changed for the next Policy Year, including but not limited to premium or deductibles and whether such terms are generally or specifically applicable, in which event, unless terms are agreed between the Member and the Managers by the start of that Policy Year at noon on 20 February immediately following such notice, the insurance shall thereupon cease; or
- (3) the Managers by 30 days' notice in writing to a Member at any time terminate the entry in respect of any vessel.

An entered ship shall not be withdrawn from the Club at any other time or in any other manner except with the consent of the Managers.

If before the end of any Policy Year these Rules shall have been altered in any respect which affects the terms and conditions of the contract of insurance between a Member and the Association, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next Policy Year.

## 6. RULE 36 – JOINT MEMBERS, CO-ASSURED AND AFFILIATES

To align with changes to the International Group's Pooling Agreement, it is proposed that Rule 36C is amended so that parties (for example a commercial manager or operator) contracted by an affiliated charterer, who has cover in their own right, can be co-assureds under that affiliated charterer's cover. As it currently stands, such co-assureds can only attach to the owner's policy.

The proposed changes read as follows:

### 36 Joint Members, Co-Assured and Affiliates

#### C *Co-Assured – Other than a contractor or charterer*

A Co-Assured insured under the terms of this Paragraph C shall not be a Member of the Association but shall be named in any Certificate of Entry and shall not be a contractor or sub-contractor of the Member for the provision of services by or to the insured vessel or a charterer of all or any part of the insured vessel.

Notwithstanding the fact that such Co-Assured is named in the Certificate of Entry, the cover of the Association will only extend insofar as the Co-Assured may be found liable to pay in the first instance for loss or damage which is properly the responsibility of ~~the either a~~ Member or ~~any~~ Joint Member or an Affiliated Charterer within the meaning of part (B) of this Rule 36 ("an Affiliated Charterer") in respect of the entry and ~~there is no nothing herein contained shall be construed as extending~~ cover in respect of any amount to the extent such amount would not have been recoverable from the Association by ~~a the~~ Member or ~~a~~ Joint Member or an Affiliated Charterer had the claim in respect of such loss or damage been made or enforced against them. Once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including , where co-assured under an Entry with a Member or Joint Member or an Affiliated Charterer, to such Member or Joint Member or an Affiliated Charterer, any Member or Joint Member insured, in respect of that loss or damage.

**(NB: The other provisions of Rule 36 which remain unaltered are not reproduced here for the sake of brevity.)**

## TEXT OF CHANGES - CLASS 2 RULES

It is proposed that the changes set out above for several Class 1 rules should be mirrored in their Class 2 counterpart where this exists. The proposed changes are set out below but without further comment or explanation for the sake of brevity.

No other changes relating to Class 2 Rules are proposed.

### 1. RULE 17 PREMIUM TAX AND OTHER EXCISE TAXES

The proposed change reads as follows:

#### 17 Premium Tax and Other Excise Taxes

The Member shall pay on demand to the Association or its order the amount of any premium tax or other excise tax or similar charge or fee for which the Association determines in its discretion that it or the Member has or may become liable and shall indemnify and hold harmless the Association in respect of any loss, damage, liability, cost or expense which the Association may incur in respect of such premium tax or other excise tax, charge or fee.

### 2. RULE 19A. SANCTIONS, PROHIBITIONS AND ADVERSE ACTION

The proposed change reads as follows:

#### 19a. Sanctions, Prohibitions and Adverse Action

- (1) Unless the Committee otherwise determines, there is no cover in respect of an insured vessel being employed by the Member in a carriage, trade or on a voyage which thereby in any way howsoever exposes the Club to the risk of violating, or to being or becoming subject to, any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation or other competent authority.
- (2) The Association shall in no circumstances have a liability to a Member in respect of that part of any liabilities, costs and expenses which is not recovered by the Association from parties to the Pooling Agreement, and/or under the Group Excess Loss Reinsurance Contract or any other reinsurer 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 or 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 19A “shortfall” includes but is not limited to 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 or international organisation or other competent authority.

- (3) Notwithstanding the express or implied terms of any other provision of these Rules, on becoming aware of any prima facie evidence of any conduct by a Member which exposes or might expose the Club to the risk of violating, or to being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation or other competent authority the Association shall be entitled to terminate its insurance of the Member immediately and without notice, whereupon that Member shall immediately cease to be insured by the Association and the period of insurance shall immediately terminate in respect of any and all vessels entered by him.

### 3. RULE 27 PERIOD OF COVER

The proposed change reads as follows:

#### 27 Period-Duration and Termination of Cover

The cover afforded by the Association shall begin at the time stated in the Certificate of Entry for the commencement of the cover and continue until the end of the then current Policy Year at noon on 20 February next unless otherwise agreed at the time of entry. Thereafter, subject to a cesser of insurance or to the exercise by the Club of any right to terminate an entry as provided elsewhere in these Rules, the cover shall continue from Policy Year to Policy Year unless:

- (1) notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than noon on 20 January in any year, that the insurance specified in the notice is to cease, in either of which events the insurance shall cease at the end of the then current Policy Year; or
- (2) the Managers shall have informed the Member orally or in writing at any time before the start of a Policy Year at noon on any 20 February that the terms of the insurance offered to it by the Club for that Policy Year are to be changed for the next Policy Year, including but not limited to premium or deductibles and whether such terms are generally or specifically applicable, in which event, unless terms are agreed between the Member and the Managers by the start of that Policy Year at noon on 20 February immediately following such notice, the insurance shall thereupon cease; or
- (3) the Managers by 30 days’ notice in writing to a Member at any time terminate the entry in respect of any vessel.

An entered ship shall not be withdrawn from the Club at any other time or in any other manner except with the consent of the Managers.

If before the end of any Policy Year these Rules shall have been altered in any respect which affects the terms and conditions of the contract of insurance between a Member and the Association, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next Policy Year.