

TEXT OF CHANGES- CLASS 1 RULES

Unless otherwise indicated those parts of the 2023 Rules where it is proposed that changes are made are set out in full with the changes marked. A proposed deletion from the 2023 Rules is identified by striking through the text to be deleted. Proposed additions are underlined. All changes are in red.

1. RULE 2 SECTION 16 – CARGO

A change is proposed to this rule to align with amendments to the Pooling Agreement. This will require Members not to waive or otherwise prejudice rights of recourse against third parties as presently exists under contracts of carriage where the Hague/Hague Visby Rules or other mandatorily applicable provisions apply.

The proposed amendment reads as follows:

Section 16. Cargo

The liabilities costs and expenses set out in paragraphs (A) to (C) which arise in respect of cargo intended to be or being or having been carried in the insured vessel:-

(A) Loss, (including shortage), or damage

Liability for loss, (including shortage), or damage arising out of any breach by the Member or by any person for whose acts, neglect or default he may be legally liable, of his obligation properly to load, handle, stow, carry, keep, care for, discharge or deliver the cargo or out of unseaworthiness or unfitness of the insured vessel.

(B) Disposing of cargo

The additional costs and expenses (over and above those which would have been incurred by him in any event under the contract of carriage or in order to make the vessel fit to receive cargo) incurred by the Member;

(a) in discharging or disposing of cargo as a result of:

(i) such cargo being damaged or worthless, or

(ii) damage to the insured vessel against which the Member is, or would be, insured in accordance with Rule 12;

(b) in discharging, storing or disposing of cargo as a result of the owner of such cargo refusing to take delivery;

but only if and to the extent that the Member is unable to recover those costs from any other party and/or by sale of such cargo and/or in general average.

(C) Through or Transshipment Bills of Lading

Liability under a Through or Transshipment Bill of Lading or other form of contract approved by the Managers in writing and providing for carriage, partly to be performed by the insured vessel, of any cargo, including liability for loss (including shortage), or damage arising from events occurring while that cargo is being carried by means of transport other than the insured vessel or stored or handled in or outside the dock areas of the ports of loading and discharge of the insured vessel, but only when such carriage, storage or handling is necessary to perform such Through or Transshipment Bill of Lading or other contract.

(NOTE: As to what forms of contract the Managers will generally approve, see the First Schedule)

PROVIDED THAT:

(p) There is no cover for liabilities, costs and expenses which would not have been incurred by the Member but for a waiver or limitation by it of rights of recourse that would otherwise have been available to it under the contract of carriage in accordance with the Hague or Hague Visby Rules and/or any mandatorily applicable law.

(NB: The other provisions of Rule 2 Section 16 which remain unaltered are not reproduced here for the sake of brevity)

2. RULE 3 – SPECIAL COVER AND CHARTERERS RISKS

An amendment to this rule is proposed to ease interpretation by removing the requirement to prove an exclusion elsewhere.

The proposed amendment reads as follows:

3. Special Cover and Charterers Risks

(B) Cover for Charterers and related parties

Without prejudice to the generality of this Rule 3, where an entry of a vessel in the Association is in the name of or on behalf of a charterer (other than a bareboat charterer or charterer by demise), the charterer may be covered as a Member, and any cargo interests wholly owned or controlled by such charterer or in the same ownership or control as him may be covered as a Co-Assured, upon such terms and conditions as the Managers of the Association may require in respect of the liabilities, losses, costs and expenses set out in Rule 2 and in respect of one or more of the liabilities, losses, costs and expenses set out in sub-paragraphs (1) to (7) of this paragraph (B), namely:

(1) Liability as charterer to indemnify the owner or disponent owner of the insured vessel in respect of the risks set out in Rule 2.

(2) Notwithstanding anything to the contrary in these Rules, liability as charterer to pay freight, charter hire, demurrage or damages to the owner or disponent owner of the insured vessel as a result of loss of or damage to the vessel for which the Member is responsible, ~~but to the extent (and no more) that cover would otherwise be excluded by virtue of Rule 16(i) to (ix) and Proviso (a)(i) to Rule 2, Section 10.~~

(NB: The other provisions of Rule 3 which remain unaltered are not reproduced here for the sake of brevity)

3. 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.

An amendment is proposed to this rule to align with amendments to the Pooling Agreement relating to cover for non-marine personnel on board accommodation vessels. This change would remove the expressions “on board” and “on or about” which could introduce an ambiguity as to the location of the non-marine personnel at the time of the claim.

The proposed amendments 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:-

(E) 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)

4. RULE 57 – JURISDICTION

Amendments to this Rule are proposed to make it clear that the Association has the sole option to choose Arbitration or Court, and that Members agree to submit to the jurisdiction of the Court when this option is chosen by the Association. The option to choose the court of the country where the Member is incorporated is also included. The changes do not otherwise alter the way the clause operates, but aid clarification. Logical amendments from Queen's Counsel to King's Counsel have also been included.

The proposed amendments read as follows:

57. Jurisdiction

- (1) Subject to Rule 45A if any difference or dispute shall arise between a Member and the Association as to the rights or obligations of the Association or the Member or as to any other matter whatsoever, the resolution of such difference or dispute shall be governed by English law and procedure and shall, at the option of the Association, either:
 - (a) be determined exclusively by, at the option of the Association, (i) the High Court of Justice of England and Wales or (ii) the courts of the country where the Member is incorporated or (iii) the courts of the country in which the Member has its principal place of business; or
 - (b) be referred to the Arbitration in London of a sole legal Arbitrator. Such Arbitrator shall be a ~~King's Queen's~~ Counsel practising at the Commercial Bar or, if none is available, any other practising ~~King's Queen's~~ Counsel and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1996 and any Statutory modification or re-enactment thereof. In any such Arbitration any matter decided or stated in any Judgement or Arbitration Award (or in any reasons given by an Arbitrator or Umpire for making any Award) relating to proceedings between the Member and any third party, shall be admissible in evidence.
- (2) No Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any difference or dispute unless he has first obtained an Arbitration Award in accordance with this Rule or the Association has exercised its option for

such difference or dispute to be determined in accordance with paragraph 1(a)(i), (ii) or (iii) above.

(3) The Member agrees to submit to the jurisdiction of any court selected by the Association under paragraph (1)(a) above and further agrees that it will not argue that such court is an inconvenient or inappropriate forum.

(4) For the purpose of this Rule except paragraph (5) hereof the term “Member” shall also include a joint Member, a former Member, a Co-Assured, a trustee, an assignee, a successor to the Member and any other companies in the same or associated ownership or management as the Member or any of the foregoing or the shareholders, managers, agents or employees of any of them or any other person or entity claiming any insurance or re-insurance benefit from or other remedy against the Association, whether under these Rules or under a Bye law, Certificate of Entry, insuring or re-insuring agreement of this Association by contract or otherwise and the term “the Association” shall include any subsidiary or associated company of the Association or their or its Directors, agents or employees.

(5) The Member warrants its authority to bind to Arbitration the other entities and individuals included within the definition in paragraph (4) of this Rule. If any claim shall be made by any of them other than in Arbitration the Member shall procure that such claims be referred to Arbitration forthwith, pending which the Member shall not be entitled to proceed with any claim of its own against the Association connected with the same or any related subject matter; and the Association shall be entitled to recover from the Member any amounts agreed or adjudged to be due from the Association, and any costs incurred by it, in connection with any process other than Arbitration.

(6) In any difference or dispute where the Member or Association as defined in paragraph (4) above includes more than one party they shall be deemed one party for the purposes of appointing an Arbitrator, receiving notices, and otherwise for all purposes in connection with the conduct of the Arbitration proceedings.

(7) Any dispute or difference over the interpretation, effect or application of this Jurisdiction clause shall be decided exclusively by the High Court of Justice of England and Wales in London, in accordance with English law.

(8) Nothing in these Rules shall affect or prejudice the right of the Association to take action in accordance with the law of any country or state to enforce a right in rem or exercise a lien on ships or to obtain security by seizure, attachment or arrest of assets for any amounts payable to the Association.

TEXT OF CHANGES – CLASS 2 RULES

1. RULE 11 – DEDUCTIBLES AND PARTY AND PARTY COSTS

An amendment is proposed to remove the express reference to claims settled or compromised for a lump sum. Other methods of settlement are available, and the current wording is unnecessarily restrictive.

The proposed amendment reads as follows:

11. Deductibles and Party and Party Costs

- (1) Each claim covered under Rule 3 shall be subject to a deductible of US\$ 5,000 and 25% of the claim in excess of the amount of US\$ 5,000, provided that the total deductible shall not exceed US\$ 50,000 except where the claim relates to a contract for the building of an insured vessel where the total deductible shall not exceed US\$ 100,000.

- (2) Whenever, in accordance with Rule 9, any lawyer, surveyor or other third party is appointed and employed by the Managers on behalf of the Member or appointed and employed by the Member with the prior consent of the Managers, the Members shall on the Managers' request pay to the Association US\$ 5,000 on account of the deductible which shall be repayable to the Member without interest to the extent that the Member's payment on account exceeds the amounts payable by the Association to such third parties.
- (3) The Member shall account to the Association for all costs, expenses and disbursements recovered by any order, award or settlement in every case supported by the Association. If any claims, disputes or proceedings are settled or compromised **for a lump sum**, the Association shall be entitled to recover from the Member such reasonable sum as the Association may in its sole discretion determine as being attributable to costs.

2. RULE 52 – JURISDICTION

An amendment is proposed to align the Class 2 Jurisdiction clause with the proposed amendments to Class 1, above.

The proposed amendments read as follows:

52. Jurisdiction

- (1) If any difference or dispute shall arise between a Member and the Association as to the rights or obligations of the Association or the Member or as to any other matter whatsoever, the resolution of such difference or dispute shall be governed by English law and procedure and shall, at the option of the Association, either:
 - (a) be determined **exclusively** by **at the option of the Association, (i) the High Court of Justice of England and Wales or (ii) the courts of the country where the Member is incorporated or (iii) the courts of the country in which the Member has its principal place of business;** or
 - (b) be referred to the Arbitration in London of a sole legal Arbitrator. Such Arbitrator shall be a **King's Queen's** Counsel practising at the Commercial Bar or, if none is available, any other practising **King's Queen's** Counsel and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1996 and any Statutory modification or re-enactment thereof. In any such Arbitration any matter decided or stated in any Judgement or Arbitration Award (or in any reasons given by an Arbitrator or Umpire for making any Award) relating to proceedings between the Member and any third party, shall be admissible in evidence.
- (2) No Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any difference or dispute unless he has first obtained an Arbitration Award in accordance with this Rule **or the Association has exercised its option for such difference or dispute to be determined in accordance with paragraph 1(a)(i), (ii) or (iii) above.**
- (3) **The Member agrees to submit to the jurisdiction of any court selected by the Association under paragraph (1)(a) above and further agrees that it will not argue that such court is an inconvenient or inappropriate forum.**
- (4) For the purpose of this Rule except paragraph (5) hereof the term "Member" shall also include a joint Member, a former Member, a Co-Assured, a trustee, an assignee, a successor to the Member and any other companies in the same or associated ownership or management as the Member or any of the foregoing or the shareholders, managers, agents or employees of any of them or any other person or entity claiming any insurance or re-insurance benefit from or other remedy against the Association, whether under these Rules or under a Bye law, Certificate of Entry, insuring or re-insuring agreement of this Association by contract or otherwise and the term

“the Association” shall include any subsidiary or associated company of the Association or their or its Directors, agents or employees.

(5) The Member warrants its authority to bind to Arbitration the other entities and individuals included within the definition in paragraph (4) of this Rule. If any claim shall be made by any of them other than in Arbitration the Member shall procure that such claims be referred to Arbitration forthwith, pending which the Member shall not be entitled to proceed with any claim of its own against the Association connected with the same or any related subject matter; and the Association shall be entitled to recover from the Member any amounts agreed or adjudged to be due from the Association, and any costs incurred by it, in connection with any process other than Arbitration.

(6) In any difference or dispute where the Member or Association as defined in paragraph (4) above includes more than one party they shall be deemed one party for the purposes of appointing an Arbitrator, receiving notices, and otherwise for all purposes in connection with the conduct of the Arbitration proceedings.

(7) Any dispute or difference over the interpretation, effect or application of this Jurisdiction clause shall be decided exclusively by the High Court of Justice of England and Wales in London, in accordance with English law.

(8) Nothing in these Rules shall affect or prejudice the right of the Association to take action in accordance with the law of any country or state to enforce a right in rem or exercise a lien on ships or to obtain security by seizure, attachment or arrest of assets for any amounts payable to the Association.