

December 2009

**Notice to Members No. 13 2009/2010**

**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 1000 hours on Wednesday, 3 February 2010 in the Hotel Adlon Kempinski, Unter den Linden 77, 10117 Berlin, 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 2010:-

**INTRODUCTION**

Those parts of the 2009 Rules where it is proposed that changes are made are attached with the changes marked. A proposed deletion from the 2009 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. Pages headers and page numbering of the Rules will be adjusted once the changes are adopted and prior to printing for the 2010 policy year.

## TEXT OF CHANGES

### 1. CARGO – RULE 2 SECTION 16 – PROVISO (E) – CERTAIN EXCLUSIONS FROM COVER

An amendment is proposed to the proviso (e)(vi) to Rule 2 Section 16 so as to exclude from cover liability for misdelivery under a non-negotiable bill of lading where the cargo is delivered to a person other than the party nominated by the shipper as the person to whom delivery should be made.

The amendment removes an anomaly where delivery without production of a non-negotiable bill of lading is an excluded risk under proviso (e)(x) of Rule 2 Section 16 whereas there is no exclusion where delivery is made to a person other than that nominated by the shipper. Such misdelivery is already excluded in respect of way bills and, to the extent relevant, negotiable bills of lading

The proposed change to proviso (e)(vi) reads:

- (vi) delivery of cargo carried under a non-negotiable bill of lading or waybill or similar non-negotiable document to a party other than the party nominated by the shipper as the person to whom delivery should be made;

### 2. CARGO – RULE 2 SECTION 16 - PROVISO (N) – PAPERLESS TRADING

The Rules currently exclude liability in respect of the carriage of cargo under paperless trading systems to the extent that they are greater than those arising under paper systems.

The International Group Clubs have agreed that, after review of a number of paperless systems, liabilities arising in respect of the carriage of cargo arising under paperless trading systems may be covered where the systems have been approved by the International Group. The proposed Rule change reflects this decision.

The two systems which are currently approved by the Group are the Bolero (bolero.net) and Electronic Shipping Solutions (essdocs.com)

Proviso (n) to Rule 2 Section 16 would be deleted and replaced with:

Unless either (1) the Committee otherwise determines or (2) it is otherwise agreed in writing between the Member and the Association, there shall be no recovery from the Association in respect of any liability, loss, cost or expense arising from the use of any electronic trading system, other than an electronic trading system approved by the International Group of P&I Associations, to the extent that such liability, loss, cost or expense would not (save insofar as the Association in its sole discretion otherwise determines) have arisen under a paper trading system.

For the purposes of this paragraph,

- (a) an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport which:

- (i) are documents of title, or

- (ii) entitle the holder to delivery or possession of the goods referred to in such documents, or
  - (iii) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.
- (b) a “document” shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.

### **3. CARGO – RULE 2 SECTION 16 – PROVISIO (H) VALUE DECLARED ON BILL OF LADING**

To align the Rule with the International Group Pooling Agreement it is proposed to delete the proviso and replace it as follows:

~~There is no cover in respect of liabilities, costs and expenses in respect of goods carried under an ad valorem Bill of Lading, Waybill or other document containing or evidencing the contract of carriage and where the value per unit, piece or package has been stated to be in excess of US\$2,500 (or the equivalent in any other currency) to the extent that such liabilities, costs and expenses exceed US\$2,500 per unit piece or package.~~

There is no cover for liabilities, costs and expenses in respect of carriage under an ad valorem bill of lading or other document of title:-

- (i) where a value of more than \$2,500 (or the equivalent in any other currency) per unit, piece or package is declared; and/or
- (ii) in the case of bills of lading subject to the Hague or Hague-Visby Rules, where a value is inserted in the bill of lading, whether by reference to each unit, piece or package or not, the effect of which, under any law held applicable to the bill, is to deprive the carrier of the right to limit liability for loss or damage in excess of package limits under Article IV Rule 5 of the Hague or Hague-Visby Rules, or in excess such package limits as may otherwise be available under the law applicable to the bill of lading, unless the consequent deprivation of the right to rely on such package limitation does not result in the carrier’s liability exceeding \$2,500 per unit, piece or package”.

### **4. BAIL – RULE 28**

It is proposed to add to the Bail Rule a provision to deal with indemnity from Members where the Club provides guarantees, security or certificates other than in order to prevent arrest of a vessel or attachment of Members’ assets.

The indemnity protects the Club where Membership ceases and the Club is exposed to uninsured liability as a result of issuing a guarantee, security or certificate. A typical example would arise where the Club has issued a Bunkers Convention certificate and where the Members’ entry ceases but where the Club cannot cancel that certificate for a period of 30 days following termination of the entry.

The proposed change is as follows:

**RULE 28 – BAIL, SECURITY AND CERTIFICATES OF FINANCIAL RESPONSIBILITY**

- (1) In no circumstances shall the Association be obliged to provide 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. The Association may agree to provide such bail or security in a particular case on such terms as it may consider necessary; if it does so agree, then subject to any variation of any of (a) to (e) 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 an undertaking in the form set out in the Second Schedule(form B3);
  - (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) whether or not the Member has given such undertaking, if the Association does provide bail or security 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.

\_\_\_\_\_The Association shall in no circumstances provide cash deposits.

- (2) Without prejudice to the provisions of Rule 14(4), and paragraph (1) of this Rule 28, where the Association provides any guarantee, undertaking or certificate in respect of any liability, cost or expenses which may be incurred by a Member including but not limited to:
- (a) a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or
  - (b) a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or
  - (c) an undertaking given by the Association to the International Oil Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), or

(d) a certificate issued by an Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

(i) the provision of such guarantee, undertaking or certificate shall be upon the terms as between the Association and the Member that the terms and conditions contained in the form of undertaking contained in the form set out in the Second Schedule (form B3) shall be binding upon the Member as if such undertaking had been duly given by him to the Association, and

(ii) the Member agrees that:

(a) any payment by the Association under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses 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; and

(b) 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.

**5. FORBEARANCE – RULE 55 (proposed to be renamed Forbearance and Force Majeure)**

It is proposed to include a force majeure clause reflecting the doctrine of frustration which applies in any event to Rules because they are governed by English law. The amendment amplifies the position under English law so that the Association is not liable for delay or default in meeting its obligations to Members as a result of matters beyond its reasonable control, in particular Acts of God, government intervention, war and similar circumstances.

The relevant provision proposed to be added in Rule 55 is:

**RULE 55 – FORBEARANCE AND FORCE MAJEURE**

No act, omission, course of dealing, forbearance, delay or indulgence by the Association in enforcing any of these Rules or any of the terms or conditions of its contracts with Members nor any granting of time by the Association shall prejudice or affect the rights and remedies of the Association under these Rules or under such contracts, and no such matter shall be treated as any evidence of waiver of the Association's rights thereunder, nor shall any waiver of a breach by a Member of such Rules or contracts operate as a waiver of any subsequent breach thereof. The Association shall at all times and without notice be entitled to insist on the strict application of these Rules and on the strict enforcement of its contracts with Members.

The Association shall not be liable for any delay or default in performing its obligations under these Rules if such delay or default is caused by conditions beyond its control including, but not limited to, Acts of God, restrictions or prohibitions of any kind made or imposed by any Government, wars, insurrections and any other cause beyond the Association's reasonable control

By order of the Board  
P A Aspden  
Secretary  
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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.