

Class 1 – Protection & Indemnity and Other Risks

Rule 1. Introductory.

- (1) All contracts of insurance effected by the Association incorporate all the provisions of these Rules, save insofar as those provisions are varied by any special terms which may have been agreed pursuant to the powers of the Association as set out in the Constitution.
- (2) The risks insured by the Association are set out in Rule 2; but risks other than those set out in Rule 2 may be insured by virtue of Rules 3, 3A and 4. **The provisions of these Rules govern a contract of insurance between the relevant Member (or joint Member) and the Association alone: for the avoidance of any doubt membership of the Association does not create any contractual or other legal relationship between any one Member and any other.**
- (3) The risks specified in Rule 2 are always subject to the provisos, warranties, conditions, exceptions, limitations and other terms set out in these Rules.
- (4) A person by whom or on whose behalf an application is made for the insurance or reinsurance by the Association of any vessel shall be deemed to have agreed not only on his own behalf but also on behalf of himself, any and all Co-Assureds and his or their successors and each of them that both he and they will in every respect be subject to and bound by any contract of insurance with the Association, including the provisions of these Rules incorporated as aforesaid.
- (5) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be subject to the Constitution.
- (6) These Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be governed by English law, and, subject to the arbitration provisions set out in Rule 59 hereof, shall constitute an irrevocable submission by the Association and its Members and Co-Assureds to the jurisdiction of the English courts.
- (7) In the event of any conflict between the English text of these Rules and any text thereof written in any other language the English text shall prevail.
- (8) If any provision of these Rules is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force without being impaired or invalidated in any way.

(NOTE: The definitions of "Association", "Member", "Co-Assured", "Managers", "Committee", "Vessel" and other terms used in these Rules are set out in Rule 60.)

Rule 2 Section 2A Liability to passengers.

Liability to pay damages or compensation:-

- (i) for personal injury, illness or death ~~of on-board~~ any passenger of an insured vessel and hospital, medical or funeral expenses incurred in relation to such injury, illness or death. In this paragraph funeral expenses shall include the repatriation of dead bodies;
- (ii) to passengers on board an insured vessel (other than for those risks covered under paragraphs (i) and (iii) of this Section) arising as a consequence of a casualty to the insured vessel, including the cost of forwarding passengers to destination or return to port of embarkation and of maintenance of passengers ashore;
- (iii) for loss of or damage to the effects of any passengers on board an insured vessel;

PROVIDED THAT:-

- (a) Cover under this Section is limited to liabilities, costs and expenses arising out of any act, neglect or default on board or in relation to the insured vessel.

- (b) The terms of the passage ticket or other contract between the passenger and the Member have been approved by the Managers in writing and cover for the liabilities, costs and expenses set out in this Section has been agreed between the Member and the Managers on such terms as the Managers may require.
- (c) There is no cover under this Section in respect of liabilities, costs and expenses incurred by a Member for personal injury, illness or death or loss or damage to property, delay or any other consequential loss sustained by any passenger on an insured vessel by reason of carriage of that passenger by air, except where such liabilities, costs and expenses occur during repatriation by air of injured or sick passengers following a casualty to the insured vessel, or during excursions from the insured vessel (but subject to proviso (d) below).
- (d) There is no cover under this Section in respect of contractual liabilities, costs and expenses incurred by a Member arising in respect of a passenger on board the insured vessel whilst on an excursion from the insured vessel in circumstances where either:-
 - (i) a separate contract has been entered into by the passenger for the excursion, whether or not with the Member, or
 - (ii) the Member has waived any or all of his rights of recourse against any sub-contractor or other third party in respect of the excursion.
- (e) Unless and to the extent that the Member has obtained appropriate special cover by agreement in writing with the Managers, there is no cover under this Section in respect of claims relating to cash, negotiable instruments, precious or rare metals or stones, valuables or objects of a rare or precious nature.

Rule 2 Section 16 Cargo (proviso)

n) Paperless Trading

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, cost or expense whatsoever or howsoever arising, whether directly or indirectly, out of or in consequence of:

- (i) The Member's participation in, or use of, any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping and/or international trade with electronic messages (any such system or arrangement being referred to in this endorsement as a "paperless system"), or
- (ii) A document, created or transmitted under a paperless system, which contains or evidences a contract of carriage, or
- (iii) The carriage of goods pursuant to such a contract of carriage, save to the extent that the Association may determine that such liability, cost or expense would have arisen and would have been covered by the Association if the Member had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document.

For the purpose of this proviso a "document" shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information.

Rule 15 LIABILITY EXCLUDED FOR NUCLEAR RISKS IN RESPECT OF POLLUTION BY WASTE AND THE CARRIAGE OF LIVE ANIMALS.

Unless either (1) the Committee otherwise determines or (2) it is otherwise agreed in writing between the Member and the Association, there is no cover in respect of any liabilities, costs or expenses directly or indirectly caused by or contributed to by or arising from:-

- (a) ionising radiations from, or the radioactive, toxic, explosive or other hazardous or contaminating properties of

- (i) any nuclear fuel or any nuclear waste or the combustion of nuclear fuel, or
 - (ii) any nuclear installation, reactor or other nuclear assembly or nuclear component thereof, or
- (b) any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,

other than liabilities, costs and expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an Insured Vessel.

- (c) The intended or actual carriage of live animals.
- (d) ~~The discharge or escape, or the threat of discharge or escape of any hazardous waste (previously carried in the insured vessel) from any land in or on which such waste is kept, treated or deposited.~~
- (d) The discharge or escape, or the threat of discharge or escape, or the presence of any substance, material, product, or waste determined or deemed to be hazardous, in any dump, site, storage or disposal facility, whether or not such substance, material, product or waste was previously carried on an entered ship as cargo, fuel or stores.**

Rule 3A. SPECIAL COVER FOR CHARTERERS AND RELATED PARTIES.

Without prejudice to the generality of 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 following liabilities, losses, costs and expenses and against the risks set out in Rule 2 on the following terms and conditions, subject always to the Constitution and these Rules.

The Member shall be covered in respect of the following risks:

- (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) Liability as charterer to pay damages to the owner or disponent owner of the insured vessel in respect of loss of or damage to the vessel, and/or loss of use of the vessel arising from such loss or damage, 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.
- ~~(3) Liabilities, losses, costs and expenses incurred as charterer and covered under Rule 2 and under other paragraphs of this Rule 3A for which cover would otherwise be excluded by Rule 14, but:~~
 - ~~(a) there shall be no such cover in respect of the risks set out in clause 5 of the Institute War and Strike Clauses, Hulls-Voyage 1/11/95;~~
 - ~~(b) cover against such liabilities, losses, costs and expenses may be terminated by the Association on 7 days' notice; and~~
 - ~~(c) such cover shall terminate automatically in the circumstances and manner described in clause 6.2 of the Institute War and Strike Clauses, Hulls-Voyage 1/11/95.~~
- (4) Liability as charterer to contribute to general average, special charges or salvage in respect of freight and any property, other than cargo, carried on board the insured vessel and owned or leased by the Member.
- (5) Loss of or damage to fuel oil, stores and supplies belonging to the Member or for which he is responsible.

Both the Member and the Co-Assured shall be covered in the capacity of cargo owner in respect of:

(6) The liabilities, losses, costs and expenses set out in Rule 2, Section 11 and the Member shall further be covered against such liabilities, losses, costs and expenses where they arise out of an incident occurring at a time when the Co-Assured:

- (a) owned all or part of the cargo being carried on the insured vessel; and
- (b) was wholly owned or controlled by, or was in the same ownership or control as, the Member;

and where the liabilities, losses, costs and expenses in such circumstances arise by virtue of the relationship between the Member and the Co-Assured.

PROVIDED THAT:-

(a) If the Co-Assured has an interest in the cargo carried on board that vessel that interest shall constitute, for the duration of the voyage on which such cargo is carried, an interest in the vessel sufficient to constitute him a Co-Assured in respect of such vessel under Rule 36, and the provisions of paragraph (c) of the preamble to Rule 2 shall not apply.

(b) The terms of each charterparty must be in all material respects in a form approved by the Managers.

(c) To the extent that the risks covered under or by virtue of this Rule, including the risks covered under Rule 2, are reinsured by the Association, the Member and the Co-Assured shall only be entitled to recover from the Association the net amount actually recovered by the Association under such reinsurance in respect of his claim, together with that portion (if any) of the cover retained by the Association.

~~(d) In respect of the cover provided under paragraph (3) of this Rule, the Member warrants to the Association that the insured vessel is chartered on terms not less favourable to the Member than the following:~~

- ~~(i) owners may decline any orders sending the vessel to any place which is dangerous through war risks (as defined in clauses 1.1 to 1.3 of the Institute War and Strike Clause Hulls Voyage 1/11/95);~~
- ~~(ii) owners may insure their own interests against such war risks; and~~
- ~~(iii) the Member is to reimburse any premium paid by owners for insurance against such war risks, and the Member shall further use his best endeavours to procure a term of the charterparty that he is not liable for any loss, damage or expense which is or which could be covered by available war risks insurance on normal commercial terms.~~

(e) There is to be no cover under paragraph (5) of this Rule in respect of:

- (i) ordinary loss in weight or volume or ordinary degradation or deterioration of such fuel oil, stores or supplies;
- (ii) loss, damage or expense caused by inherent vice or nature of such fuel oil, stores or supplies;
- (iii) loss, damage or expense caused by delay, even where such delay is caused by a risk insured by the Association;
- (iv) loss, damage or expense caused by a terrorist or any person acting from a political motive.

(f) In respect of the cover under paragraph (5) of this Rule the Association waives any implied warranty of seaworthiness of the vessel.

- (g) The provisions of Rules 7(2) and 8(3)(b) and of the Oil Pollution Limitation of Cover and Charterer's Limitation of Cover clauses shall not apply, but the Committee shall have power under this Rule to make Bye-Laws from time to time providing for the limitation of or other restrictions upon the liability of the Association for claims under all paragraphs of this Rule 3A, including cover under Rule 2. In the absence of any such Bye-Law, the Association's liability under all paragraphs of this Rule 3A, including cover under Rule 2 or otherwise, in respect of all parties insured in respect of any one vessel under any one contract of insurance in respect of any one incident shall not exceed in the aggregate the amount of US\$500,000,000 inclusive of interest and costs. For the purposes of this proviso, claims in respect of loss of or damage to cargo on the same cargo carrying voyage (including claims in respect of cargo's contribution to general average payable by the Member solely by reason of a breach of the contract of carriage) shall be deemed to have arisen out of the same incident and that incident shall be deemed to have occurred at the earliest of:-
- (i) the first place of discharge or port at which such loss or damage was ascertained and at the time of such ascertainment; and
 - (ii) if such loss or damage was ascertained after discharge of the cargo from the insured vessel, at the time and place of discharge; and
 - (iii) where the Member sold the insured vessel (or otherwise disposed of the interest in the insured vessel in respect of which he has been insured) during the cargo carrying voyage, at the time when last entry for the insured vessel terminated and at the place where the insured vessel was at that time,

and a reference in this proviso to a cargo carrying voyage shall include, in cases where cargo is carried under a contract for carriage partly in the insured vessel and partly by other means of transport, the entire through or combined transport of that cargo under that contract.

Rule 14. LIABILITY EXCLUDED FOR WAR RISKS.

Unless either (a) the Committee otherwise determines or (b) it is otherwise agreed in writing between any Member and the Association, there is no cover in respect of any liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or on the part of the Member's servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was caused by:-

- (1) War, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power-, **or any act of terrorism.**
- (2) Capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat.
- (3) Mines, torpedoes, bombs, rockets, shells, explosives or similar weapons of war (save for those liabilities, costs or expenses which arise solely by reason of the transport of any such weapons whether on board the insured vessel or not).

PROVIDED ALWAYS THAT:-

- (a) This exclusion shall not apply to the use of such weapons, either as a result of government order or through compliance with a written direction given by the Managers or the Committee, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise fall within the cover given by the Association.
- (b) **In the event of any dispute as to whether or not any act constitutes an act of terrorism, the decision of the Committee shall be final.**

Rule 19 ~~YEAR 2000 AND~~ DATE COMPLIANCE & EXCLUSION OF COVER IF ADVENTURE ILLEGAL, HAZARDOUS OR IMPROPER.

- (1) Without prejudice to the provisions of paragraph (2) of this Rule and of Rule 23, a Member shall at all times take such steps to protect his interests in relation to Date Compliance as the Committee would expect an uninsured person acting reasonably in similar circumstances to take.

For the purpose of this Rule "Date Compliance" shall mean that, in relation to computers and other equipment or systems for processing, storing or retrieving data, hardware, software, firmware and microprocessors and any equipment which contains or relies upon microprocessors, neither performance nor functionality is adversely affected, whether before or after any implemented or attempted changes or modifications for the purposes of Date Compliance, by any date and in particular that:-

- (a) no value for current date would cause any interruption in operation
- (b) date based functionality and performance shall behave consistently for all dates
- (c) in all interfaces and data storage, the century in any date shall be specified either explicitly or by unambiguous algorithms or inference Rules
- ~~(d) the year 2000 shall be recognised as a leap year.~~

If a Member fails to fulfil the obligations contained in this Rule the Committee may reject or reduce any claim against the Association arising directly or indirectly out of such failure.

- (2) There is no cover in respect of an insured vessel carrying contraband, blockade running or being employed in an unlawful trade, or if the Committee determines that the carriage, trade, voyage or any other activity on board or in connection with the insured vessel, was imprudent, unsafe, unduly hazardous or improper.

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To: The West of England Ship Owners Mutual
Insurance Association (Luxembourg)

Dear Sirs

Vessel:

Voyage:

Date:

Casualty:

Bills of Lading:

Nature of Claim:

We hereby request you (either personally or through your agents) to provide bail or other security for the above claim in the sum of _____ which bail or security is now being requested and/or is now required in order to avoid the arrest or detention of MV _____ or in order to secure her release from arrest.

In consideration of your providing such bail or security (hereinafter called "the bail or security") we hereby agree as follows:-

1. To pay immediately upon any liability being incurred by you or your agents under or in connection with the bail or security a sufficient sum to discharge such liability in full and generally to take all such measures as may be necessary to ensure that such liability is discharged in full without delay as soon as it may be incurred and that neither you nor your agents shall be required to make any payment whatsoever to discharge such liability save out of the funds (hereinafter called "the funds") which we shall have provided.

Provided that we reserve our right to claim repayment of any sums we may pay hereunder which we believe are recoverable in accordance with your Rules and

2. To indemnify you and hold you harmless in respect of any loss or damage whatsoever which may result from your giving the bail or security and to reimburse to you at any time upon your demand any sum or sums of money which you may be called upon to pay under or in connection with the bail or security.
3. To pay on demand all your costs, expenses, charges and commission (as specified in your Rules) in connection with the provision of the bail or security.
4. Without prejudice to the foregoing, in the event that, in breach of our obligation under Clause 1 above, we fail to provide the funds and you are obliged nevertheless to incur or, notwithstanding that you have no such obligation, you elect to incur any such liability, loss, damage, costs, expenses, charges or commission, then
 - a) you shall be entitled to demand from us immediate payment of the amount of any such liability, loss, damage, costs, expenses, charges or commission;

- b) in the event that, in breach of our obligations hereunder, such payment is not immediately made, we will pay to you interest thereon or on any part thereof for the time being outstanding at the rate of 2 per cent per annum above the offered rate between prime banks in the London Inter Bank Euro-dollar Market for 3 month deposits (the rate being determined monthly on the first day of the appropriate month) until such payment is made.
5. That in relation to our obligations as to payment and indemnity to the Association hereunder all or any sums due from us to the Association shall be paid by us in full, without discount set-off or counter claim of any kind whatsoever.
6. That in addition to the this letter of undertaking we shall upon your first demand provide you with such additional counter security as you may from time to time require. Should we fail to provide such additional counter security to you on such demand, we shall immediately pay to you the amount for which we hereby request you to provide the bail or security.
7. That, by providing any of the bail or security, you shall incur no obligation whatsoever to provide any further bail or security in connection with the above claim and that you may at any time in its absolute discretion cause the above bail or security to be cancelled or released.
8. That this agreement shall be governed by English law and that, without prejudice to your rights to institute proceedings in any other jurisdiction, the High Court of Justice in London shall have jurisdiction to hear and determine any action brought by you in connection herewith.

Yours faithfully
