

January 2009

Notice to Members No. 13 2008/2009

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 0930 hours on Wednesday, 4 February 2009 in The Dolder Grand Hotel, Kurhausstrasse 65, 8032 Zurich, Switzerland 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 2009:-

INTRODUCTION

Those parts of the 2008 Rules where it is proposed that changes are made are attached with the changes marked. A proposed deletion from the 2008 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 2009 policy year.

TEXT OF CHANGES

1. CARGO – RULE 2 SECTION 16

An amendment is proposed to the exclusions from cover for cargo liability in proviso (e) to Rule 2 Section 16 to reflect a change to the Pooling Agreement dealing with cover for misdelivery under a non-negotiable bill of lading. The proposed amendment in summary provides cover for misdelivery where a carrier is obliged by law in one jurisdiction to deliver a cargo without presentation of a non-negotiable bill of lading, whereas he will be liable in a different jurisdiction for misdelivery if he does so.

The proposed changes include in Rule 2 Section 16 a new proviso (e) (v) and (e) (x).

~~(e) (v) delivery of cargo carried under a negotiable Bill of Lading or similar document of title without production of that Bill of Lading or document properly endorsed, except where cargo has been carried on a Member's insured vessel under the terms of a non negotiable Bill of Lading, Waybill or other non negotiable document, and has been properly delivered as required by that document, notwithstanding that that Member may be liable under the terms of a negotiable Bill of Lading or other similar document of title issued by or on behalf of a party other than that Member providing for carriage in part on that Member's vessel and in part upon another vessel, or by another mode of transport,~~

(e) (v) Delivery of cargo carried under a negotiable bill of lading or similar document of title without production of that bill of lading or document by the person to whom delivery is made except where cargo has been carried on an Insured Owner's vessel under the terms of a non-negotiable bill of lading, waybill or other non-negotiable document, and has been properly delivered as required by that document, notwithstanding that that Insured Owner may be liable under the terms of a negotiable bill of lading or other similar document of title issued by or on behalf of a party other than that Insured Owner providing for carriage in part upon that Insured Owner's vessel and in part by another mode of transport.

(e) (x) Delivery of cargo carried under a non-negotiable bill of lading, waybill or similar document without production of such document by the person to whom delivery is made, where such production is required by the express terms of that document or the law to which that document, or the contract of carriage contained in or evidenced by it, is subject, except where the carrier is required by any other law to which the carrier is subject to deliver, or relinquish custody or control of, the cargo, without production of such document.

2. CARGO – RULE 2 SECTION 16

Historically the Club, in line with others, has required Members to carry out pre-loading surveys on steel and certain other cargoes. The requirement has hitherto been dealt with in Notices to Members rather than the Rules. It is now felt appropriate by the Managers that the requirement should be formally incorporated into the Rules. Once the Rule change is approved by the Members, it is intended to issue an updated circular in respect of these surveys, because of their importance in reducing the risk of cargo damage claims.

The Rule change also aligns with the existing exclusion from cover in the Rules where a Bill of Lading, Waybill or other carriage document is issued with an incorrect description with the Master or Member's knowledge.

The proposed change is to add the following proviso (o) to Rule 2 Section 16:

(o) Pre-loading Surveys

A Member shall arrange for a survey as to the condition of any cargo carried or intended to be carried on an insured vessel as may at any time be required in any general notice to Members by the Association or otherwise in writing by the Managers. Such survey shall be carried out by a surveyor approved in writing by the Association. Without prejudice to provisos (e)(i) and (e)(ii) of this Section 2 of Rule 16, where such a survey is carried out before a Bill of Lading, Waybill or other document is issued in respect of such cargo by or on behalf of the Member, the Member shall, unless the Managers otherwise agree in writing, cause such Bill of Lading, Waybill or other document containing or evidencing the contract of carriage to describe the cargo or its condition in accordance with the findings of the surveyor.

3. SPECIAL COVER AND CHARTERERS RISKS – RULE 3

Last year the overall limit of cover provided under proviso (e) to Rule 3(B) for Charterers Comprehensive Cover was increased from US\$400 million to US\$500 million. This higher limit is available for 2009 and it is proposed to amend the proviso accordingly.

The full text of the Rule is not reproduced, since only the limit amount is amended.

4. LIMIT OF THE ASSOCIATION'S LIABILITY OTHER THAN IN RESPECT OF OVERSPILL – RULE 7

Last year Rule 7 was amended to incorporate changes to the limits of cover to reflect changes previously made to the Pooling Agreement. Solicitors advising the Club on those changes have suggested some further minor amendments to improve and clarify the text.

The proposed text change is as follows:

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 under an Owners entry for ~~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 all Co-Assured charterers ~~co-insured~~ under an Owner's Entry as described in Rule 36 for any and all claims, including 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.

5. PAYMENT FIRST BY THE MEMBER, SUBROGATION AND ASSIGNMENT – RULE 10

Following agreement by the Clubs not to apply the “Pay to be paid” rule in respect of death or injury to seamen, the International Group’s solicitors have now provided a draft wording for incorporation into Club’s rules.

It is proposed to modify the Club’s “Pay to be paid” Rule 10 in line with the recommended draft by adding the following two paragraphs to this Rule as follows:

10. PAYMENT FIRST BY THE MEMBER, SUBROGATION AND ASSIGNMENT

The insurance afforded to a Member is indemnity only and not liability.

Unless the Committee in its discretion otherwise determines it shall be a condition precedent of a Member's right to recover from the funds of the Association in respect of any loss, damage, liabilities, costs or expenses that he shall first have discharged or paid the same otherwise than from money advanced expressly or impliedly for that purpose whether by way of loan or otherwise.

Without prejudice to the Managers’ powers under Rule 27 relating to the handing and settlement of claims, where the Association makes a payment to a Member or a Co-Assured and the Member or Co-Assured has rights against a third party, whether by way of a claim for contribution, indemnity or otherwise arising out of a claim or matter in respect of which the Association has made such payment to the Member or the Co-Assured, the Association shall be subrogated to the rights of the Member and the Co-Assured in respect of the claim or matter to the extent of that payment, including the right to any interest accruing on that amount prior to its recovery from such third party and the right to recover any costs incurred in relation to the exercise of such rights.

Further, the Member and the Co-Assured agree to hold such rights as trustees for the Association and to take such steps as the Association may direct with regard to their enforcement and recovery. All such recoveries, including interest and recovered costs howsoever and whensoever made, are to be paid to the Association, provided that if any such recovery exceeds the amounts paid by the Association, including interest and costs whether paid to third parties or incurred by the Association, the balance shall be paid to the Member.

If required by the Association, the Member and the Co-Assured shall execute a legal assignment of such rights to the Association. In the event that such rights are not assignable or transferable as a matter of law, the Member and the Co-Assured undertake not to dissolve themselves or otherwise render themselves incapable of taking such steps as may be required by the Association in enforcing any such rights against a third party.

The cover provided by the Association as set out in these Rules is solely for the benefit of the Member. It is not intended, save as otherwise provided in this Rule 10, that rights should be acquired by any third party through the operation of the Contracts (Rights of Third Parties) Act 1999 of the United Kingdom or similar legislation.

Notwithstanding any other provisions of this Rule 10 and the provisions of Rules 11 and 41, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a seaman, the Association shall discharge or pay such claim on the Member's behalf directly to such seaman or dependant thereof.

PROVIDED ALWAYS THAT

- (i) the seaman or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated,
- (ii) subject to (iii) below, the amount payable by the Association shall under no circumstances exceed the amount which the Member would have been able to recover from the Association under the Rules and the Member's terms of entry,
- (iii) where the Association is under no liability to the Member in respect of such claim by reason of Rule 41, the Association shall nevertheless discharge or pay that claim to the extent only that it arises from an event occurring prior to the date of cancellation, but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.

6. LIABILITY EXCLUDED FOR WAR RISKS – RULE 14

Following agreement by the Clubs to provide certificates of financial responsibility under the Bunkers Convention and to cover both conventional P&I liabilities and war risk and nuclear P&I liabilities arising under those certificates, the International Group's solicitors have now provided a draft wording for incorporation into Club's rules. It is proposed to modify Rule 14 in line with the recommended draft. The change also makes it clear that cover under other certificates of financial responsibility previously approved by the Group Clubs, namely FMC (for passenger vessels), CLC 1969 and 1982 and STOPIA, also extends to war and nuclear risks to the extent provided for in these certificates and undertakings.

The change is effected by inserting an additional paragraph in Rule 14 and cross-referring changes in that Rule and Rule 15, the latter dealing with nuclear risks.

The proposed text changes to the two Rules are as follows:

14. LIABILITY EXCLUDED FOR WAR RISKS AND OTHER RISKS, EXCEPT IN RESPECT OF CERTAIN GUARANTEES AND UNDERTAKINGS GIVEN BY THE ASSOCIATION.

- (1) Except as provided in paragraphs (2) and (3) and (4) of this Rule 14, ~~or~~ 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:-

- (i) 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.
- (ii) Capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat.
- (iii) 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.
- (2) A Member shall be covered in respect of the risks set out in Rule 2 which would otherwise not be covered by reason of paragraph 1 of this Rule in the following terms:
- a) Such cover shall be subject to an excess of the greater of either:
 - i) The fully insured value of the entered vessel as defined in Rule 12, which for the purposes only of this Rule 14 shall be deemed to be not less than US\$50,000 and not more than US\$100 million; or
 - ii) The amounts recoverable under any War Risk Protection and Indemnity insurance (other than provided under the Member's terms of entry or under these Rules other than under Rule 3 (6)) including but not limited to Hull and Machinery and Crew War Risk insurance and including any Protection and Indemnity inclusive clauses attached thereto, which for the purpose of this Rule 14 shall be deemed both to exist and to have provided the Member with a full recovery.
 - b) Such cover shall be subject to a limit of US\$500 million each vessel, any one accident or such limit as may be applicable to the claim under the Member's terms of entry with the Association.
 - c) The limit under sub paragraph (b) of this paragraph 2 shall not in any case exceed US\$500 million in respect of all the Member's entries (whether as an owner or a charterer or otherwise) in the Association or any other party to the Pooling Agreement.
 - d) Where the Association reinsures in whole or in part any risk covered under this paragraph 2, the Member shall be entitled to recover from the Association only the net amount recovered under any reinsurance together with that proportion (if any) of the cover retained by the Association.

- e) Save as provided in sub-paragraph (f) of paragraph 2 and in paragraph 3 of this Rule 14 but otherwise notwithstanding anything to the contrary in this or any other of the Association's Rules there is no cover for any liability, loss, damage, cost or expense directly or indirectly caused by or contributed to by or arising from:
 - i) any chemical, biological, biochemical or electromagnetic weapon; or
 - ii) the use or operation, as a means of inflicting harm, of any computer virus.
- f) The Committee may determine to pay one or more Members up to US\$65 million in the aggregate in respect of any liability, loss, damage, cost or expense which is not covered by reason of sub paragraph e) of this paragraph 2.
- g) The Committee may at any time whatsoever determine that any port, place, countries, zones or areas (whether of land or sea) be excluded from the cover provided under this Rule 14.

Such cover shall cease in respect of such ports, places, countries, zones or areas at midnight on the seventh day following the date of issue by the Association to the Members of Notice of such determination.

Unless the Committee otherwise determines there shall be no cover in respect of any claim howsoever arising out of any event, accident or occurrence within such ports, places, countries, zones or areas after such time and date.

- h) Whether or not Notice has been given under sub-paragraph (g) of this proviso, cover provided under this Rule 14 shall cease immediately:-
 - i) in respect of any vessel, in connection with the cover provided under this paragraph 2 of Rule 14, in the event of such vessel being requisitioned either for title or use.
 - ii) upon the outbreak of war (whether declared or not) between any of the following countries:
 - the United Kingdom, The United States of America, France, the Russian Federation, the Peoples Republic of China; andthere is no cover for any liability, loss, damage, cost or expense arising from such outbreak of war.
 - i) Notwithstanding any other term or condition of cover provided under this paragraph 2 the Committee may determine to cancel such cover upon giving 7 days notice to Members such notice becoming effective on the expiry of 7 days from midnight of the day on which it was given; and the Committee may at any time after such notice is given resolve to reinstate such cover on such terms and conditions and with such limits as it may determine.
- (3) A Member shall be covered for liability to seamen and for sue and labour costs upon the following terms:

SUPPLEMENTAL COVER 2004 (BIOCHEMICAL RISKS)

- 1.1 Subject to the terms and conditions and exclusions set out herein, cover is extended to include the liability of the Member:

- (a) to pay damages, compensation or expenses in consequence of the personal injury to or illness or death of any seaman (including diversion expenses, repatriation and substitute expense and shipwreck unemployment indemnity),
- (b) for the legal costs and expenses incurred solely for the purpose of avoiding or minimising any liability or risk insured by an Association (other than under the Omnibus Rule),

1.2 where such liability is not recoverable under either

- (a) cover provided by the Association for such liabilities, costs, losses and expenses as would be covered under the Rules but for the exclusion of war risks in Rule 14, or
- (b) any underlying war risk policies covering the same risks,

1.3 solely by reason of the operation of an exclusion of liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising from

- (a) any chemical, biological, bio chemical or electromagnetic weapon
- (b) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system,

1.4 other than liabilities, costs, losses and expenses arising from

- (a) explosives or the methods of the detonation or attachment thereof
- (b) the use of the entered ship or its cargo as a means for inflicting harm, unless such cargo is a chemical or biochemical weapon
- (c) the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

2. Excluded Areas

2.1 Unless and to the extent the Directors may in their discretion otherwise determine, there shall be no recovery in respect of any liabilities, costs, losses and expenses directly or indirectly caused by or contributed to by or arising out of any event, accident or occurrence within the ports, places, zones or areas or during such period as are specified in Clause 2.2 of this paragraph 3.

2.2 At any time or times before, or at the commencement of, or during the Policy Year, the Managers on behalf of the Association may by notice to the Member specify, the ports, places, countries, zones and periods referred to in Clause 2.1 of this paragraph 3 from a date and time not being less than 24 hours from midnight on the day the notice is given to the Member.

3. Cancellation

Cover hereunder may by notice to the Member be cancelled by the Association from a date and time specified by the Association, not being less than 24 hours from midnight on the day notice of cancellation is given to the Member.

4. Limit of Liability

4.1 Subject to Clause 4.2 of this paragraph 3 the limit of the liability of the Association under this extension of cover in respect of all claims shall be in the aggregate US\$30 million each ship any one accident or occurrence or series thereof arising from any one event.

4.2 In the event that there is more than one entry by any person for biochemical cover as provided herein in respect of the same ship with the Club and/or any other insurer which participates in the Pooling Agreement or General Excess Loss Reinsurance Contract, the aggregate recovery in respect of all liabilities, costs, losses and expenses arising under such entries shall not exceed the amount stipulated in Clause 4.1 of this paragraph 3 and the liability of the Association under each such entry shall be limited to such proportion of that amount as the claims arising under that entry bear to the aggregate of all such claims recoverable from the Association and any such other insurer.

5. Deductible

The deductible shall be the deductible applicable to the relevant cover set out in the Certificate of Entry.

(4) In respect of liabilities, costs and expenses otherwise excluded from cover by this Rule 14 or by Rule 15 sub paragraphs (a), (b),(c) and (d), the Association will discharge on behalf of the Member such liabilities, costs and or expenses where they arise under a demand made pursuant to the issue by the Association on behalf of the Member of

(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

PROVIDED ALWAYS THAT:

(i) The Member shall indemnify the Association to the extent that any payment under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Member complied with the terms and conditions thereof, 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 recovered 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.

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

~~Notwithstanding the provisions of Rule 15,~~Except as provided in Rule 14(4) and 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 liability, cost or expense (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or his 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 directly or indirectly caused by or arises from:-

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- (c) any weapon of war or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive 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
- (e) The intended or actual carriage of live animals
- (f) 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, from or 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 and whether at any time mixed or combined in any way in whole or in part with any other substance whatsoever

7. LIABILITY EXCLUDED FOR WAR RISKS – RULE 14

The cover for war risks provided under Rule 14 was never intended by the International Group to extend to liabilities under (TOPIA) and this has been reflected for several years in a clause included in every Members' terms of entry. The terms of the clause can now be incorporated into the Rules.

The change is made by adding the following text to the end of Rule 14:

TOPIA

There is no cover under Rule 14 in respect of any liabilities, costs and expenses which may arise under or in connection to the Tanker Oil Pollution Indemnification Agreement (TOPIA).

8. CLASSIFICATION, SURVEYS OF VESSELS, SHIP MANAGEMENT AND SAFETY – RULE 20B (2)

An additional comma is necessary in Rule 20 to eliminate possible ambiguity in the text of the Rule.

The proposed text change is as follows:

B. Surveys.

- (2) Without prejudice to the provisions of Rule 20A and 20C no claim for recovery from the Association arising from any incident whatsoever arising between the time of the Managers' requirement for survey and the time such survey, repairs or recommended actions have been carried out shall be allowed save as determined by the Committee or the Managers if the vessel shall not have been submitted for survey or repaired as aforesaid.

9. LAID UP RETURNS – RULE 50

The Managers propose changes to this Rule:

- (a) to reduce the laid up rate of return where a vessel has neither crew nor cargo on board from 90% to 75%, reflecting the significant increase in environmental and similar risks associated with lay up since the percentage was last set in the Rules.
- (b) to require members to provide certification of or documentation evidencing lay up (the requirement currently exists but is not formally set out in the Rules).
- (c) to give the Board a discretion to determine that a place of lay up is not safe in cases where there is a concern that it may not be so, particularly where recession in the industry may result in the availability of safe lay up locations being limited.
- (d) To permit the Managers to determine the level of return up to 50% where any crew remain on board the vessel.

The proposed text change is as follows:

50. LAID-UP RETURNS.

(1) If an insured vessel shall be laid-up in any safe port or place for a period of thirty or more consecutive days after finally mooring there (such period being computed from the day of arrival to the day of departure, one only of such days being included) the Member concerned shall be allowed a return of Calls except Overspill Calls calculated at the rate of ~~90-75~~ per cent of his total Calls except Overspill Calls payable in respect of such vessel for the period of lay-up. From that return there shall be deducted the reinsurance premiums which the Association remains liable to pay to reinsurance underwriters in respect of the insured vessel for the period of lay-up.

(2) For the purpose of this Rule a vessel shall not be treated as laid-up if ~~she-it had~~ either crew members ~~(other than for her maintenance or security)~~ (other than crew necessary in the opinion of the Managers for its maintenance and safety) or cargo on board.

Provided that the Managers may allow a return of up to 50 ~~per cent~~% of the Calls except Overspill Calls in respect of such vessel for such period of lay up where the vessel is laid up with crew ~~(other than necessary for her maintenance and safety)~~ (other than crew necessary in the opinion of the Managers for its maintenance and safety) but without any cargo on board. From that return there shall be deducted the reinsurance premiums which the Association remains liable to pay to reinsurance underwriters in respect of the insured vessel for the period of lay-up.

(3) Unless otherwise agreed in writing by the Managers, no claim for laid-up returns relating to any Policy Year shall be recoverable from the Association unless:

(a) written notice thereof has been given to the Association within six months of the end of the Policy Year concerned, and a Member shall not be entitled to laid-up returns in respect of an insured vessel as from the time such vessel shall have been agreed by Hull Underwriters as constituting a constructive total loss or a compromised total loss (whether or not subject to production to Hull Underwriters of further evidence concerning the casualty) or shall have become a commercial total loss.

(b) the claim for laid-up returns is accompanied by a certificate or other document issued by the government or port authority having jurisdiction over the port or place of lay-up which states:

(i) the port or place of lay-up

(ii) the date on which the lay-up period began and, (if the lay-up has ended), the date on which the lay-up ended

(iii) that the insured vessel had no cargo on board at any time during the lay-up period

(iv) the number of crew on board during the lay-up period.

(4) If an insured vessel commences or recommences trading after such vessel has been and remained in safety in any safe port for a period of four consecutive calendar months or more after finally mooring there (such period being computed from the day of arrival to the day of departure, one only of such days being included) in circumstances in which the Member concerned is entitled to Laid-up Returns under paragraph (1) or (2) of this Rule, he shall be obliged immediately to inform the Managers of such commencement or

recommencement so as to enable the Managers if they think fit to require to be satisfied as to the condition of the insured vessel by a survey of the insured vessel or otherwise.

- (5) If the Member does not so inform the Managers, the Association shall not be liable for any loss, damage, liability, costs or expenses which would have been avoided if the opportunity for such survey had been given, a survey had been carried out and all defects revealed in that survey had been remedied.
- (6) The Directors shall have sole discretion in determining whether the port or place concerned is safe within the meaning of this Rule 50.

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

January 2009

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.