

January 2015

Notice to Members No. 20 2014/2015

NOTICE is hereby given that an Extraordinary General Meeting of Class 1 and Class 2 Members of the Association will be held at 1000 hours on Wednesday, 4 February 2015 in the Hotel Grande Bretagne, 1 Vasileos Georgiou A' Street, Syntagma Square, Athens, Greece for the purpose of considering and, if thought fit, passing the following SPECIAL Resolution:

SPECIAL RESOLUTION

THAT alterations to certain Rules of Classes 1 and 2 (as hereafter set out with commentary) be made to take effect from noon GMT on 20 February 2015:-

INTRODUCTION

Unless stated otherwise, those parts of the 2014 Rules or Constitution where it is proposed that changes are made are attached with the changes marked. A proposed deletion from the 2014 Rules or Constitution 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 2015 policy year.

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TEXT OF CHANGES – CLASS 1 RULES

1. RULE 2 SECTION 15 – QUARANTINE EXPENSES

It is proposed that the scope of this Rule is narrowed to match industry practice by limiting cover to liabilities arising out of an outbreak of an infectious disease on board the entered vessel and not more widely.

15 Quarantine expenses

Additional expenses incurred by the Member as a direct consequence of an outbreak of infectious disease on board the entered vessel, including quarantine and disinfection expenses and the net loss to the Member (over and above such expenses as would have been incurred but for the outbreak) in respect of fuel, insurance, wages, stores, provisions and port charges.

PROVIDED THAT

There shall be no cover in respect of additional expenses incurred in trading to a port at which the Member knew or ought to have known that such expenses were likely to be incurred.

2. RULE 2 SECTION 16(B) – DISPOSING OF CARGO

It is proposed this Rule be amended in order to clarify that the costs of storing cargo pending re-sale or destruction where the owner of that cargo refuses to take delivery are a covered risk.

The proposed change is as follows:

Section 16 Cargo

(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; the owner of such cargo refusing to take delivery, or

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

3. RULE 6 - DEDUCTIBLES

It is proposed to increase the deductibles contained in the Rules from US\$8,000 to US\$10,000.

The proposed change to Rule 6 reads as follows:

6 Deductibles

Unless otherwise agreed in writing between a Member and the Managers as part of the terms upon which a vessel is entered in the Association, the Member's recovery from the Association shall be subject to the following deductibles:-

(1) *Cargo claims and cargo's proportion of General Average*

In respect of liabilities, costs and expenses referred to in Rule 2 Sections 16 and 17 and any costs and expenses incurred in connection therewith under Rule 2 Section 24 the first US\$810,000 in respect of one insured vessel in respect of each cargo voyage.

(2) *All other Claims*

In respect of the liabilities costs and expenses referred to in Rule 2 Sections 1 to 14 inclusive and 18 to 23 inclusive and any costs and expenses incurred in connection therewith under Rule 2 Section 24 the first US\$810,000 in respect of one insured vessel in respect of each incident.

PROVIDED THAT:-

Where two or more claims on the Association have arisen out of the same incident and are subject to more than one deductible by reason of this Rule or by reason of any special terms agreed with the Member, the Member's recovery shall be subject to the highest only of such deductibles.

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

The Nairobi International Convention on the Removal of Wrecks 2007 is due to enter into force in contracting States on 14 April 2015. All Club Boards agreed that liabilities arising under the Convention will be poolable.

For certain IMO conventions, cover includes liabilities incurred under a certificate issued by the Club which arise from a war event that would otherwise be excluded from cover under Rule 14 but where the Club is unable to recover that liability or part thereof from the Member or their war risk underwriters.

A minor change to Rule 14 subsection (4) is required to add the Nairobi Convention to the list of certificates where such cover is provided in readiness for the entry into force of the Convention during the 2015 policy year.

The proposed change is as follows:

(NB the other provisions of Rule 14 – which remain unaltered – are not reproduced here for the sake of brevity)

14 Liability Excluded for War Risks and Other Risks, Except in Respect of Certain Guarantees and Undertakings Given by the Association

(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 the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

[\(e\) a certificate issued by the Association in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007](#)

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.

TEXT OF CHANGES - CLASS 2 RULES

1. RULE 3 – EXTENT OF COVER

It is proposed that the general limit of Class 2 cover should be increased to US\$10m with no sub-limit for newbuilding risks. A change to Rule 3 is required to reflect that revised limit.

The proposed change is as follows:

3 Extent of Cover

Subject to any special terms which may be agreed a Member is entitled:

(a) to recover from the Association the costs and expenses incurred in connection with any of the claims, disputes and proceedings described in Rule 2, (including costs and expenses payable to other parties to such proceedings under any judgement or order therein), but only if the Committee has determined that the case merits the support of the Association and has not withdrawn that support;

(b) to receive legal advice from the Association in connection with any of the claims, disputes and proceedings described in Rule 2 or the possibility thereof;

(c) to recover from the Association the costs and expenses incurred in obtaining advice in connection with the claims, disputes and proceedings aforesaid or the possibility thereof from lawyers, surveyors, representatives and other persons (other than employees of the Member or of the Association or Managers), where the Managers have consented to the obtaining of such advice.

PROVIDED THAT:

(A) No costs or expenses shall be recoverable from the Association unless:

a) they have been incurred with the prior consent in writing of the Managers; or

b) they have been incurred by the Association on behalf of the Member in accordance with Rule 9 (Employment of Lawyers and others); or

c) the Committee shall determine that they were reasonably incurred and ought in all the circumstances to be borne by the Association, and

d) they are not excluded by any proviso, warranty, condition, exemption, limitation, deductible or other term contained in these Rules or in the terms of entry, and

e) they were incurred by the Member in the capacity in which the Member has entered the insured vessel in the Association.

~~(B) Unless otherwise agreed by the Managers in writing there shall be no recovery from the Association in excess of US\$5 million in the aggregate in respect of any case as defined in Rule 52 and where such case relates to the building of an insured vessel, there shall be no recovery from the Association in excess of US\$ 2 million in the aggregate. Unless a higher figure is agreed by the Managers in writing, there shall be no recovery from the Association in excess of US\$ 10 million in the aggregate in respect of any one case (as defined in Rule 52), including where such case relates to the building of an insured vessel.~~

There is no cover for any claims, dispute or proceeding with or against the Association, its directors, the Managers or their employees or agents.

2. **RULE 7 – NOTIFICATION OF CLAIMS, ADMISSION OF LIABILITY, ETC.**

It is proposed that the notification requirements under this Rule be amended to require that notification of new matters must be made in writing and that the Members' obligation to notify the Club of "every survey or opportunity to survey" is widened to include opportunities to inspect objects and documents.

The proposed change is as follows:

7 **Notification of Claims, Admission of Liability, etc.**

(1) A Member must:

(a) promptly notify the Managers in writing of every casualty, event or matter which is liable to give rise to a claim upon the Association and of every event or matter (including any legal or arbitration proceedings commenced against the Member) which is liable to cause the Member to incur liabilities, costs or expenses for which he may be insured by the Association;

(b) promptly notify the Managers of every survey or inspection of any object or document or any opportunity to survey in connection with a matter referred to under (a);

(c) at all times promptly notify the Managers of any information, documents or reports in his or his servants' or agents' possession, power or knowledge relevant to such casualty, event or matter as is referred to under (a);

(d) whenever so requested by the Managers, promptly produce to the Managers and/or allow the Managers or their agents to inspect, copy or photograph, all relevant documents of whatsoever nature in his or his servants' or agents' possession or power;

(e) permit the Managers or their agents to interview any servant, agent or other person who may have been employed by the Member at the material time or at any time thereafter or whom the Managers may consider likely to have any direct or indirect knowledge of the matter or who may have been under a duty at any time to report to the Member in connection therewith.

(2) A Member shall not settle or admit liability for any claim for which he may be insured by the Association, nor submit to judgement in respect of such a claim, nor enter into any arrangement with a judgement creditor for the discharge or payment of any such claim or for the provision of funds to discharge the judgement debt without prior written consent of the Managers.

(3) If a Member commits any breach of his obligations referred to in (1) or (2) above the Committee may determine to reject any claim by the Member against the Association arising out of the casualty, event or matter, or reduce the sum otherwise payable by the Association in respect thereof by such amount as it may determine.

3. **RULE 11 – DEDUCTIBLES AND PARTY AND PARTY COSTS**

Cover for disputes concerning new building risks has hitherto not been subject to a maximum deductible. To complement the new limit of FD&D cover proposed in Rule 3 as set out above, it is proposed that the maximum deductible for new building disputes should be US\$100,000, with the corresponding figure for navigating risks remaining at the current US\$50,000.

Secondly, this Rule is ambiguous as to the treatment of costs where the Member has agreed to a lump sum settlement which does not specify what proportion relates to costs. It is therefore proposed that the Rule be amended to make clear the requirement that a Member must

account to the Club for a pro-rata recovery of costs where a lump sum settlement has been reached. This has been the practice for many years.

The proposed change is 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.

By order of the Board
Thierry Brevet
Secretary
33 Boulevard Prince Henri
1724 Luxembourg

January 2015

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 to 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.