

January 2016

Notice to Members No. 18 2015/2016

NOTICE is hereby given that an Extraordinary General Meeting of Class 1 Members of the Association will be held at 1000 hours on Wednesday, 3 February 2016 in the Le Bristol Paris, 112 Rue du Faubourg Saint Honoré, 75008 Paris 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 2016:-

INTRODUCTION

Unless stated otherwise, those parts of the 2015 Rules or Constitution where it is proposed that changes are made are attached with the changes marked. A proposed deletion from the 2015 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. Page headers and page numbering of the Rules will be adjusted once the changes are adopted and prior to printing for the 2016 policy year.

West of England Insurance Services (Luxembourg) S.A.

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TEXT OF CHANGES – CLASS 1 RULES

1. RULE 6 - DEDUCTIBLES

It is proposed to increase the deductibles contained in the Rules from US\$10,000 to US\$11,000.

It is also proposed that liabilities arising under Rule 2 Section 15 be included in the list of claims to which the general deductible in Rule 6(2) applies.

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\$101,000 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 154 inclusive and 18 to 23 inclusive and any costs and expenses incurred in connection therewith under Rule 2 Section 24 the first US\$101,000 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.

2. RULE 7 - LIMITS OF THE ASSOCIATION'S LIABILITY OTHER THAN IN RESPECT OF OVERSPILL

All Clubs have agreed that consortium cover should extend beyond just cargo liabilities to other potential P&I liabilities.

An amendment is therefore proposed to condition (ii) for a consortium claim as described in Rule 7(7) to ensure it is sufficiently wide so as to encompass the full range of poolable P&I liabilities.

It is also proposed that it be a condition precedent of consortium cover that the Member has had the terms of the applicable Consortium Agreement approved in writing by the Managers. A corresponding amendment is suggested accordingly.

The proposed change to Rule 7(7) reads as follows (for the sake of brevity the other provisions of Rule 7 are not repeated here):

7. Limits of the Association's liability other than in respect of overspill

For the purpose of this Rule 7 and the provisos thereto, and without prejudice to anything elsewhere contained in these Rules

(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 ~~agreement arrangement~~ which shall have been approved in writing by the Managers 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 or in connection with 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.

3. RULE 17 – LIABILITY EXCLUDED FOR CERTAIN RISKS AND EXCLUSION OF CERTAIN LIABILITIES, COSTS AND EXPENSES OF SALVAGE VESSELS, DRILLING VESSELS, DREDGERS AND OTHERS, SPECIALIST OPERATIONS, DIVING ETC

It is proposed that Rule 17 be amended to clarify the scope of application of the exclusion for liabilities, costs and expenses incurred by drilling vessels or barges when engaged in drilling or production operations in connection with oil or gas exploration or production.

The proposed change to Rule 17 reads as follows (for the sake of brevity the other provisions of Rule 17 are not repeated here):

17 Liability excluded for certain risks and exclusion of Certain Liabilities, Costs and Expenses of Salvage Vessels, Drilling Vessels, Dredgers and Others, Specialist Operations, Diving etc.

Without prejudice to Rule 4, unless special cover shall have been agreed in writing between a Member and the Managers, there is no cover in respect of:-

- (B) liabilities, costs and expenses incurred in respect of a drilling vessel or barge or any other vessel or barge employed to carry out drilling or production operations in connection with oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of any such operations, to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations.

For the purposes of this paragraph B a vessel shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either;

- (i) the oil is transferred directly from a producing well to the storage vessel; or
(ii) the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting.

In respect of any entered vessel employed to carry out production operations in connection with oil or gas production, the exclusion shall apply:

(a) from the time that a connection whether directly or indirectly, has been established between the Insured Vessel and the well until such time that the Insured Vessel has been disconnected from the well as part of a planned procedure to leave the site for the purpose of navigation to shore or to another production site; or

(b) where the Insured Vessel is unintentionally, as well as intentionally as an emergency response, disconnected from the well; or

(c) where the insured Vessel remains connected to the well, but the production is shut down, whether or not as an emergency response.

4. RULE 21 - RULES SUBJECT TO MARINE INSURANCE ACT

The UK Insurance Act 2015 ("the Act") will enter into force during 2016 and impact on those eight Clubs whose rules are subject to English law. This includes the West of England.

Although it is possible for insurers providing non-consumer insurance contracts to contract out of virtually all provisions of the Act, analysis showed that some provisions were in fact beneficial to the relationship between a mutual Club and its Members.

The amendment to Rule 21 as set out below reflects that analysis and establish a comprehensive framework to reflect the position both before and after the Act comes into effect. The other affected Clubs have adopted similar rules.

The proposed change to Rule 21 reads as follows:

21 - Rules subject to Marine Insurance Act 1906 and Insurance Act 2015

(1) Subject to Rules 21(2) and 21(3), these Rules and all contracts of insurance made by the Association shall be subject to and incorporate the provisions of the Marine Insurance Act, 1906 of the United Kingdom and any statutory modifications thereof, except insofar as such Act or modification may have been excluded by these Rules or by any term of such contracts. Without prejudice to the generality of the foregoing:-

- (i) The sections of the said Act relating to disclosure and representations (Sections 17 to 20) and those relating to warranties (Sections 33 to 41) shall apply to every contract of insurance between a Member and the Association.
- (ii) The Association shall not be liable for any loss, damage, liabilities, costs or expenses caused by the wilful misconduct of the Member or his manager.

(2) Upon the entry into force of the Insurance Act 2015 ("the Act"), the following provisions of the Act shall be excluded from the Rules and any contract of insurance made by the Association as follows:

- (a) Section 8 of the Act shall be excluded. As a result any breach of the duty of fair presentation shall entitle the Association to avoid the policy, regardless of whether the breach of the duty of fair presentation be innocent, deliberate or reckless.
- (b) Section 10 of the Act shall be excluded. As a result all warranties in these Rules or any contract of insurance must be strictly complied with and if the Member or any insured fails to comply with any warranty the Association shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied.
- (c) Section 11 of the Act shall be excluded. As a result the rules and all terms of any contract of insurance made by the Association, including terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if the Member or any insured fails to comply with any such term, the Association's liability may be excluded, limited or discharged in accordance with these rules notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.
- (d) Section 13 of the Act shall be excluded. As a result the Association shall be entitled to exercise its right to terminate the contract of insurance in respect of the Member and all insureds in the event that a fraudulent claim is submitted by or on behalf of the member and/or any insured and/or any affiliated or associated company of the member.

- (e) Should Section 13A of the Act take effect, then to the extent permissible, and without prejudice to Rule 53, no contract of insurance made by the Association shall be subject to, nor shall the Association be in breach of, any implied term that the Association shall pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent.
- (f) Section 14 of the Act shall be excluded. As a result, all contracts of insurance made by the Association shall be deemed to be contracts of the utmost good faith, and any breach of the duty of the utmost good faith shall entitle the Association to avoid the contract of insurance.
- (g) The provisions of the Marine Insurance Act 1906 which are omitted by the Act shall cease to apply as shall, save to the extent that the Act is excluded by these Rules, any such provisions which are incompatible with the Act.

(3) Upon the entry into force of the Act:

- (a) The applicant and any agent shall make to the Managers a fair presentation of the risk by providing the Managers with all material particulars and information together with any additional particulars and information as the Managers may require.
- (b) The applicant and any agent shall ensure that every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.
- (c) In accordance with sub-Rule 21(2)(a) above, Section 8 of the Insurance Act 2015 is excluded. Any breach of sub-Rule 21(3)(a) or (b) shall entitle the Association to avoid the contract of insurance, regardless of whether the breach is innocent, deliberate or reckless.
- (d) The Member shall disclose any change in any material information relating to an entry including, but not limited to, any change of: management, flag, classification society, government authority responsible for ship certification for the trade in question, nationality of crew, trading or operating area or nature of trade or operation. Upon such disclosure, or upon their discovery of a failure to disclose, the Managers may amend the Member's premium rating or terms of entry, or terminate the entry in respect of such ship with effect from the time of disclosure or failure to disclose.

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

January 2016

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.