SHIPOWNERS

THE SHIPOWNERS' MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG)

MINUTES of an Extraordinary General Meeting of The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) held on Tuesday 18th January 2022 at 11.45 hours at 16 Rue Notre-Dame, L- 2240 Luxembourg.

MINUTES

Dr Y. Wagner, Member of the Board of Directors of The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) , presided over the meeting.

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Dr Y. Wagner, Member of the Board of Directors took the Chair.

The notice convening the meeting was read.

The Chairman declared:

That the members present, or represented by a proxy holder, are shown on an attendance list signed by the members or their proxyholder and the Chairman. The said list as well as the proxies will be attached to the present minutes.

On the proposal of Mr Mark Whitaker seconded by Mr Peter Sydenham the following was unanimously passed as a Special Resolution.

SPECIAL RESOLUTION

THE MEETING RESOLVED THAT the Rules be amended as published in the Notice of the meeting on 14th December 2021 and set out hereafter, the amendments to be effective as from 20th February 2022.

The proposed amendments to the Rules, with explanations, follow overleaf on pages (1 to 11).

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Dr Y. Wagner

Chairman of the Meeting

Rule Changes 2022

Part 2 – P&I RISKS COVERED

RULE 2	STANDARD COVER

14 Cargo liabilities

The liabilities and expenses set out in paragraphs A to D below when and to the extent that they relate to cargo intended to be or being or having been carried in the insured vessel.

A-C

D ~~Through or transhipment bills of lading~~Cargo carried either partly by the insured vessel, or other than on the insured vessel

a Through or transhipment bills of lading

Liability for loss, shortage, damage or other responsibility in respect of cargo carried by a means of transport other than the insured vessel, when the liability arises under a through or transhipment bill of lading, or other form of contract approved by the Managers in writing, which provides for carriage partly to be performed by the insured vessel.

b Consortium vessels

i **Allocation of consortium claims**

Where a vessel under an owners' entry and a vessel under a charterer's entry are both employed by the Member pursuant to a consortium Agreement at the time the event giving rise to the consortium claim occurs, the consortium claim of the Member shall for the purpose of this Rule 2, Section 14 D b), be treated as a claim arising in respect of the owners' entry of the Member.

ii **Aggregation**

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 vessel.

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, then each such vessel shall be deemed to be a part entry of one vessel in the Association and the other Association(s) which is party to the Pooling Agreement, and where the consortium claims incurred by the Association and the other Association(s) in respect of the vessel arising from that event out of the carriage of cargo

on a consortium vessel in the aggregate exceed the sum specified in Rule 2 Section 14 D b) (iii), the liability of the Association for such consortium claims shall be limited to that proportion of the sum specified in Rule 2 Section 14 D b) (iii) below that the consortium claims recoverable from the Association in respect of each party entry bears to the aggregate of all the consortium claims incurred by the Association and any other Association which is a part to the Pooling Agreement.

iii **Limit of insurance**

The cover afforded for a consortium claim is limited pursuant to Rule 21 E to US$ 350 million each incident or occurrence in respect of all vessels under any and all P&I entries of a Member in the Association and any other Association which is a party to the Pooling Agreement.

E Provisos

i **Hague and Hague-Visby Rules**

Unless the Member has previously obtained appropriate special cover by agreement with the Managers or the Board in its discretion otherwise determines, there shall be no recovery from the Association in respect of liabilities which would not have been incurred or sums which would not have been payable by the Member if the cargo had been carried on terms no less favourable to the Member than those laid down in the Hague or Hague-Visby Rules, save where the contract of carriage is on terms less favourable to the Member than those laid down in the Hague or Hague-Visby Rules solely because of the relevant terms of carriage being of mandatory application. This exclusion shall not apply to a liability of a Member to indemnify another carrier under a vessel sharing or slot charter agreement, provided the liability of that carrier under the contract of carriage issued pursuant to the vessel sharing or slot charter agreement is not otherwise excluded by these Rules.

ii-ix

x **Consortium vessels**

There shall be no right of recovery under Rule 2, Section 14 D b) unless cover has been agreed by the Managers in writing on such terms as the Managers may require.

EXPLANATION

A consortium Agreement is an agreement where two or more operators agree to share or exchange cargo space on each other's ships.

A consortium vessel is operated in a different manner to the other vessels that are entered in the Association since (although the vessel may not be owned by the Member), it is employed by the Member to carry cargo for the Member's own customers under a consortium Agreement. This Agreement gives the Member the right to utilise a percentage of the total cargo space, for the Member's own purposes.

Special provisions apply to the Association's liability for consortium claims, which are defined in Rule 67 (Definitions) as liabilities that arise out of the carriage of cargo on a consortium vessel pursuant to a consortium Agreement.

The cover that is available to a Member for consortium claims other than for pollution is limited to whichever is the lesser of the Limitation Amount (if any), and US$ 350 million each incident or occurrence each owner's Entry.

Rule Changes 2022

Part 4 – CLAIMS PROCEDURES

RULE 15 BAIL GUARANTEES, UNDERTAKINGS AND CERTIFICATES

1 The Association shall not be obliged to provide bail or other security in relation to claims made against a Member in any circumstances whatsoever. It shall be a condition precedent of the Managers' consideration of the provision of such bail or security that:

A the Member gives an undertaking to the Association on such terms as the Managers may require;

B the Member remits to the Association any deductible that may apply to such claim, and any call or other amount outstanding due to the Association;

C the Association shall be entitled to a commission from the Member of 1% on the amount of bail or security to be provided.

The Association shall in no circumstances provide cash deposits.

2 If the Association does provide bail or other security in relation to claims made against a Member it shall be without prejudice to the Member's obligations and the Association's rights under these Rules and shall not constitute any admission of a right of recovery from the funds of the Association of the claim in respect of which such bail or other security is provided.

3 Where the Association has issued bail or other security as stated above or any mandatory guarantee, undertaking or certificate of financial guarantee, by which it undertakes to directly meet or guarantee any relevant liabilities, (together the "Direct Liabilities") and claims in respect of Direct Liabilities alone or in combination with other claims may, in the sole opinion of the Board, exceed any limit(s) on the cover provided by the Association as set out in the Rules or in the Certificate of Insurance;

A The Board may, in its absolute discretion, defer payment of any such other claims or any part thereof until the Direct Liabilities, or such parts of the Direct Liabilities as the Board may in its absolute discretion decide, have been discharged.

B To the extent that any claims or liabilities (including any Direct Liabilities) discharged by the Association exceed the said limit(s), any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association promptly upon demand in respect of such payment and shall assign to the Association to the extent and on the terms that the Association determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party.

EXPLANATION

The International Group constituted a Fines Working Group to investigate and make Rule changes in response escalation of fines. This resulted in a recommendation that Clubs should be given the right, but not the obligation to prioritise Direct Liabilities over uncertified liabilities.

Rule Changes 2022

Part 5 – LIMITATIONS AND EXCLUSIONS

RULE 28	LIABILITIES EXCLUDED IN RESPECT OF SALVAGE VESSELS, DRILLING VESSELS, DREDGERS AND OTHER SPECIALIST OPERATIONS

2 An insured vessel being 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, to the extent that such liabilities and expenses arise out of or during drilling or production operations.

A

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

~~i~~ from the time that a connection, whether directly or indirectly, has been established between the insured vessel and the well pursuant to a contract under which the insured vessel is employed, until such time that the insured vessel ~~has been~~ is finally disconnected from the well in accordance with that contract. ~~as part of a planned procedure to leave the site for the purpose of navigation to shore or to another production site; or~~

~~ii where the insured vessel is unintentionally, as well as intentionally as an emergency response, disconnected from the well; or~~

~~iii where the insured vessel remains connected to the well, but the production is shut down, whether or not as an emergency response.~~

EXPLANATION

This Rule change brings our cover in line with the Pooling Agreement and was provoked by a desire to further clarify when a vessel captured by this Rule would be eligible for pooling. In particular to remove the ability to "switch on" poolable cover in certain circumstances (2B i and ii).

Rule Changes 2022

Part 5 – LIMITATIONS AND EXCLUSIONS

RULE 29 LIABILITIES EXCLUDED IN RESPECT OF NON-MARINE PERSONNEL

There shall be no right of recovery from the Association in respect of any liabilities, costs or expenses incurred in respect of any of the following:

1 Personnel (other than marine crew), on board the insured vessel, ~~being an accommodation vessel,~~ employed otherwise than by the Member, where ~~either:~~the insured vessel is providing accommodation to such personnel in relation to their employment on or about an oil or gas exploration or production facility, unless

~~i such vessel is moored or anchored within 500 metres of an oil or gas production or exploration facility; or~~

~~ii there has not been~~ a contractual allocation of such risk~~s as between the Member and the employer of the personnel which~~ has been agreed by the Managers in writing.

2 Hotel and restaurant guests and other visitors and catering crew of the insured vessel when the insured vessel is moored, otherwise than on a temporary basis, and is open to the public as a hotel, restaurant, bar or other place of entertainment.

EXPLANATION

In 2020 Pooling Agreement changes were made in relation to the treatment of accommodation units. Firstly, the exclusion of accommodation units moored as an integral part of drilling and production operations was deleted. Secondly, the Pooling Agreement was amended to include, within the exclusion of accommodation ships, those moored within 500 metres of an oil or gas production or exploration facility.

In practice, application of the 500 metre zone exclusion has not proved to be an ideal solution. The International Group Production and Operations Committee has further reviewed the Pooling Agreement and concluded that it would be appropriate to remove the 500 metre exclusion and rely solely on an acceptable contractual division of liability. It will be clarified in the Pooling Agreement that an acceptable risk allocation will be one that is on terms no less favourable to the Member than Knock for Knock.

Rule Changes 2022

Part 6 – ENTRY FOR AND CESSER OF INSURANCE

RULE 41 JOINT ENTRIES AND CO-ASSUREDS

2 The Managers may accept an application from a Member or joint Member for another person or persons to become Co-assureds in respect of that Member's or joint Member's entry as follows:

a A charterer which is affiliated to or associated with the Member or joint Member provided such charterer shall only be covered for the risks, liabilities, costs and expenses for which the Member or joint Member has cover. For the purpose of this Rule a charterer shall only be affiliated to or associated with the Member or joint Member if:

i both the Member or a joint Member and the charterer have the same parent; or

ii one of the Member or joint Member or the charterer is the parent of the other

and a parent is a company which owns at least 50% of the shares in and voting rights of another or owns a minority of the shares in the other and the ability to procure that it is managed and operated in accordance with its wishes.

b Any person (a "contractor") who has entered into a contract with ~~A charterer (including contractor) of~~ the Member or joint Member for the provision of services by or to the insured vessel, and any person in the contractor's group, provided that:

i the contractor, and, if so requested by the contractor, any person in the contractor's group, is named in the certificate of insurance; and the contract has been approved by the Association; and

ii the contract includes a ~~is on~~ Knock for Knock agreement in respect of any and all persons in the contractor's group ~~terms~~; and

iii the Co-assured shall only be covered for liabilities, costs and expenses which are to be borne by the Member or joint Member under the terms of the contract and to the extent only they would, if borne by the Member or joint Member, be recoverable by that Member or joint Member from the Association.

EXPLANATION

Rule 41 is designed to cater for requests from Members to name other parties as co-assureds on a 'misdirected arrow' basis. This cover allows for the Club to respond to claims that are directed to co-assureds, in circumstances where the Member has the underlying responsibility. Hence, the claim is misdirected as towards the co-assured. The concept of misdirected arrow cover is common in an offshore context, as many of the standard offshore charterparties require charterers (and parties associated to charterers) to be named as co-assured on the owner's P&I Entry.

To date the Pooling Agreement has catered for offshore co-assureds based on the Knock for Knock regime in the BIMCO Supplytime '89 form. The '89 form describes charterers as including contractors and sub-contractors. There are corresponding requirements within the '89 form to name charterers as co-assured and waive rights of subrogation against a wide number of parties associated with charterers. Currently, pooling allows for cover to be extended on a misdirected arrow basis to any contractor, and any subcontractor, provided that cover does not extend beyond the owner's contractual responsibilities under a Knock for Knock agreement.

Times have moved on since the ’89 form. The 2005 and 2017 Supplytime forms significantly expand the concept of charterers and introduce the concept of the Charterers’ Group. Within the definition of Charterers’ Group in the ’17 form, are the charterers’ sub-contractors, clients, co-venturers and their respective affiliates and employees. Therefore, there is a wider requirement in respect of co-assurance and waiver, accordingly. As a result, we have found that we are often requested to name other parties, beyond only contractors and subcontractors (as per the ’89 form). Therefore, we proposed to the other Clubs an update to the existing wording of the Pooling Agreement relating to offshore co-assureds, to better reflect modern practice. Our recommendation was accepted, and the wording of the Pooling Agreement has been widened in order to bring this wider group of persons within the scope of the contractor’s assumption of responsibility. This Rule change reflects the agreed change to the Pooling Agreement.

Rule Changes 2022

Part 6 – ENTRY FOR AND CESSER OF INSURANCE

RULE 41 JOINT ENTRIES AND CO-ASSUREDS

2 The Managers may accept an application from a Member or joint Member for another person or persons to become Co-assureds in respect of that Member's or joint Member's entry as follows:

a-e

d Other persons provided that the liability of the Association to such persons only extends insofar as he may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Member or joint Member insured under the same entry and nothing herein contained shall be construed as extending cover in respect of any amount to the extent such amount~~which~~ would not have been recoverable from the Association by the Member or joint Member insured under the same entry had the claim in respect of such loss or damage been made or enforced against him. Once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Member or joint Member insured under the same entry in respect of that loss or damage.

EXPLANATION

The Board will recall that the Pooling Agreement was amended for the policy year 2020 to clarify that the co-assured contractor would be in no more favourable a position than the insured owner. We amended our corresponding Rule 41 2) b) iii), accordingly. Thus, if the insured owner would have been entitled to limit liability, the cover of the co-assured contractor would be similarly restricted. This was achieved by adding the words "to the extent only they" to the provision which specifies the extent of the liabilities recoverable by the insured owner.

The restriction on the cover available to the named co-assured, mirrored at our Rule 41 2) d), was considered to contain a similar potential ambiguity. This is now clarified with the addition of the words '*to the extent such amount*'.

Rule Changes 2022

Part 8 – ADMINISTRATIVE PROCEDURES

RULE 67	DEFINITIONS

Consortium Agreement means, for the purpose of Rule 2, Section 14 D b), 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 Claim means, for the purpose of Rule 2, Section 14 D b), a claim which

a arises under a P&I entry of an insured vessel; and

b it arises out of the carriage of cargo on a consortium vessel; and

c the Member and the operator of the consortium vessel are parties to a consortium Agreement; and

d at the time cover pursuant to Rule 2, Section 14 D b) initially attaches, the Member employs an insured vessel pursuant to that consortium Agreement

For the purpose of a consortium claim, the consortium vessel shall be treated as an insured vessel entered on behalf of the Member under a Charterer's Entry in the Association.

Consortium Vessels means, for the purpose of Rule 2, Section 14 D b), a vessel, feeder vessel or space thereon, not being the insured vessel, employed to carry cargo under a consortium Agreement.

EXPLANATION

These new definitions are necessary to facilitate the new consortium and slot cover provided for in Rule 2 section 14.

Rule Changes 2022

Part 8 – ADMINISTRATIVE PROCEDURES

RULE 67	DEFINITIONS

Knock for Knock, a provision or provisions stipulating that,

a each party to a contract shall be similarly responsible for loss of or damage to, and/or death of or injury to, any of its own property or personnel, and/or the property or personnel of its contractors and/or of its and their sub-contractors and/or of other ~~third~~ parties, and ~~that~~/or

~~a~~b liability arising out of the ownership or operation of its own property, and that

~~b~~i such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party, and that

~~c~~ii each party shall, in respect of those losses, damages or ~~other~~ liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that that party shall incur in relation thereto.

EXPLANATION

The definition of 'Knock for Knock' in Rule 67 mirrors the Pooling Agreement. Following Group discussion, it has been noted that the reference to "other liabilities" at Rule 67 is capable of different interpretation. Some Clubs considered that it could include wreck removal and oil pollution; others that it is limited to damage to property and injury to personnel. Clubs have agreed that the Knock for Knock definition should be amended to make it clear that it includes wreck removal and pollution, since such reciprocal provisions are included in many contracts including those drafted by BIMCO. To give effect to this decision and further to clarify the provision, it is proposed to amend the Pooling Agreement, and Rule 67, as follows:

In relation to the proposed amendments:

a) The word "third" has been deleted from the expression "other third parties" to remove ambiguity and clarify that it can refer to parties in the relevant contractor's group;

b) New Rule 67 (b) is intended to capture wreck removal and oil pollution liabilities of the contracting parties but of those parties alone;

c) At Rule 67 (b) (ii), the word "other" has been deleted as now unnecessary.