



SHIPOWNERS

► **EGM AND MEETING OF THE BOARD OF DIRECTORS -
WEDNESDAY 22ND JANUARY 2020**

EGM of the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) and meeting of the Board of Directors of the Shipowners' Mutual Protection and Indemnity Association (Luxembourg), both held at 16 Rue Notre-Dame, L-2240, Luxembourg on Wednesday 22nd January 2020.

To all Members,

Please be advised of the following:

1. At the above referenced EGM, a SPECIAL RESOLUTION was passed to amend the Rules as proposed in the EGM Notice of 27th November 2019, effective as from 20th February 2020. These amendments to the Rules, follow overleaf pages 1 to 11.
2. At the above referenced Meeting of the Board of Directors, a Regulation was passed amending Rule 25 and the War Risk Extension Clause. These amendments, effective as from 20th February 2020, follow overleaf pages 12 to 13.

Rule Changes 2020

Part 2 – P&I RISKS COVERED



RULE 2

STANDARD COVER

11 Liability arising under certain indemnities and contracts

Liabilities, costs and expenses under a P&I entry, arising under the terms of an indemnity or contract given or made by or on behalf of the Member relating to facilities or services provided or to be provided to or in connection with an entered vessel, but only if and to the extent that: ~~Liability for loss of life, personal injury or illness, or for loss of or damage to property, arising under the terms of an indemnity or contract given or made by or on behalf of the Member relating to facilities or services provided or to be provided to or in connection with the insured vessel, but only if and to the extent that:~~

- A** Cover has been agreed by the Managers in writing upon such terms as the Managers may require; or
- B** The Board in its discretion decides that the Member should be reimbursed.

Note

The Association may be able to cover liabilities arising out of Knock for Knock agreements. For the purpose of this Note, this includes an agreement that satisfies the definition of Knock for Knock save that it contains a reciprocal gross negligence carve out (i.e. a provision excluding from the Knock for Knock agreement claims arising out of gross negligence).

~~Provided that the terms of any indemnity or contract have been submitted to the Managers in advance so that cover may be agreed in writing and endorsed on the Certificate of Insurance the Association may be able to cover such liabilities arising out of such indemnities or contracts as follows:~~

- ~~i Statutory or common law liabilities or contractual liabilities assumed under an indemnity or contract when it provides that each party to the indemnity or contract will be responsible for loss or damage to his own equipment, fuel or other property and the equipment, fuel or other property of any of his co-venturers or other contractors, and for death or injury to his own employees and the employees of any of his co-venturers or other contractors, irrespective of each other's fault or neglect.~~
- ~~ii Liability under the terms of such indemnity or contract to pay damages or compensation for loss of life, personal injury or illness of any seafarer on an insured vessel arising during the course of his contract of employment.~~
- ~~iii Liability under the terms of such indemnity or contract to pay damages or compensation for loss of life, personal injury or illness of any person, other than a seafarer, on or near an insured vessel.~~
- ~~iv Liability under the terms of such indemnity or contract for loss of, damage to, interference with or infringement of rights relating to any ship, harbour, dock, pier, jetty, land or any fixed or moveable thing whatsoever.~~

v ~~Liability under the terms of such indemnity or contract for loss of or damage to cargo or other property.~~

EXPLANATION

This head of cover has, to date, set out the requirement for Members to seek approval from Managers for contracts and indemnities for which they require cover. It has also provided an indication in the Notes section (i) to (v) of the types of contractual liability that the Club may be able to consider covering. Given that cover for these contractual liabilities is already provided for (in Rule 2 sections 2, 3, 8, and 14), i) to v) of the Note is deemed superfluous and has now, therefore, been removed.

We have retained, and further clarified, the one remaining Note which deals with liabilities arising under Knock for Knock agreements. The Board will recall that we recently added a Definition in the Rules for Knock for Knock agreements. This Definition avoids the need to further explain the meaning of Knock for Knock within this Note. However, it has been necessary to reflect that, as a result of a change to the Pooling Agreement this year, Knock for Knock agreements are now acceptable if they satisfy the Definition but for the fact that they contain a gross negligence carve out. The change to the Pooling Agreement in this regard, reflects the increased occurrence of traditional knock for knock agreements containing such gross negligence carve outs.

Rule Changes 2020

Part 2 – P&I RISKS COVERED



RULE 2 STANDARD COVER

18 Special compensation to salvors

- A** Liability of the Member to reimburse a salvor of the insured vessel for his 'reasonably incurred expenses' (together with any increment awarded thereon) under the exception to the principle of 'no cure – no pay' contained in Clause 1(a) of the Lloyd's Standard Form of Salvage Agreement 1980 (LOF 1980).
- B** Liability of the Member to pay to a salvor of the insured vessel 'special compensation' within the meaning of Article 14 of the International Convention on Salvage 1989 as incorporated into Lloyd's Standard Form of Salvage Agreement, ~~(LOF 1990 or 1995)~~ or into any [other](#) standard form of salvage agreement equivalent thereto approved by the Association for operations to prevent or minimise damage to the environment.
- C** Liability of the Member to pay to a salvor of the insured vessel special compensation under the terms of the Special Compensation P&I Club (SCOPIC) Clause as incorporated into Lloyd's Open Form of Salvage Agreement or any other 'No Cure-No Pay salvage contract approved by the Association.

EXPLANATION

The above amendment avoids the need to list all the latest iterations of the LOF contract.



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

Unless special cover shall have been agreed by the Managers in writing pursuant to Rules 3 and 4, there shall be no right of recovery from the Association of any claim relating to liabilities, costs and expenses incurred by a Member in respect of the following:

1-2

3 The performance of specialist operations including, but not limited to, dredging, blasting, pile driving, well-intervention, cable or pipe laying, construction, installation or maintenance work, [decommissioning](#), core sampling, depositing of spoil [and power generation](#) to the extent that such liabilities and expenses arise as a consequence of:

A Claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations; or

B The failure to perform such specialist operations by the Member or the fitness for purpose and quality of the Member's work, products or services, including any defect in the Member's work, products or services; or

C Any loss or damage to the contract works.

Provided always that this exclusion shall not apply to liabilities, costs and expenses incurred by a Member in respect of:

- i loss of life, injury or illness of crew and other personnel on board the insured vessel, or,
- ii the wreck removal of the insured vessel, or,
- iii oil pollution emanating from the insured vessel or the threat thereof,

but only to the extent that such liabilities, costs and expenses are otherwise covered by the Association in accordance with the Rules.

4-5

6 The operation of submarines, mini-submarines, ~~or~~ diving bells [or remotely operated vehicles](#).

EXPLANATIONS

3. The wording of the specialist operations exclusion within the Pooling Agreement has been under discussion for several years. The Board will recall, last year, that professional oil spill response was removed from the list of exclusions and well stimulation was replaced by well intervention. This year Power generation and decommissioning have been added to the list of specialist operations.

The Board will also recall the process that was agreed last year, regarding notification of and inclusion of new specialist operations for inclusion for pooling purposes.

6. This clarifies the position regarding exclusions for subsea activities.

Rule Changes 2020

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~~ unless:
 - i such vessel is moored or anchored ~~within more than~~ 500 metres ~~of an~~ from any oil or gas production or exploration facility; ~~or~~ and
 - ii there has not been a contractual allocation of risks 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

The Board will recall the change to these Rules that took effect in February 2019. By way of reminder, we refer to Rule 28, as revised last year. The previous exclusion wording in Rule 28 2 mirrored the then exclusion in the pooling agreement by catching both drilling vessels/barges employed to carry out oil or gas related drilling or production operations as well as any accommodation units moored or positioned on site as an integral part of any such operations, to the extent that liabilities and expenses arise out of or during drilling or production.

The exclusion of accommodation units had been under review for some time, by the International Group “Production Operations Specialist Craft” subcommittee. Thought had been given as to whether an accommodation unit moored on site, in fact presented a greater risk than any other type of vessel moored in close proximity to oil or gas related activities. Exposure to common risks such as pollution and damage to property were recognised to be similar for all vessel types, with the only real difference being the perceived greater exposure to non-marine personnel that is presented by accommodation units.

The greater exposure for non-marine personnel was catered for, separately, by an exclusion in the pooling agreement, mirrored in our Rule 29. Previously, the wording of this non-marine personnel exclusion required, only in order to pool such risks, that there was a contractual allocation of risks between the insured owner and the employer of the personnel which had been approved by the Club.

The Board will recall the deletion last year from Rule 28 2 of the exclusion for accommodation units which reflected the conclusion reached by the subcommittee that, with the exception of non-marine personnel

risks, accommodation units were thought to pose no greater risk for most common exposures, than other vessel types. At the same time, a change was made to Rule 29 to bolster the exclusion for non-marine personnel; the aim being to exclude liabilities in respect of personnel (other than marine crew) on board accommodation vessels where such vessels are moored or anchored within 500 metres of an oil or gas production units, or where there has not been a contractual allocation of risk between the member and the employer of the personnel approved by the Managers. The 2019 Rule changes were drafted by the IG for use by all Clubs. The IG has this year made some further clarifying amendments to achieve the aim set out above.

Rule Changes 2020

Part 5 – LIMITATIONS AND EXCLUSIONS



RULE 34 SURVEY OF VESSELS AND MANAGEMENT AUDIT

The Managers may at any time in their discretion appoint a surveyor or such other person as they may think fit on behalf of the Association:

- iii to inspect an insured vessel or a vessel proposed for insurance, and,
- iv to perform a management audit on the Member or Member proposed for insurance.

The Member or proposed Member shall:

- A** afford all facilities as may be required for such inspection;
- B** comply with all recommendations as the Managers may make following such inspection/audit and afford the Managers all facilities as may be required to carry out a follow-up inspection, at the Member's cost, to confirm compliance with all recommendations;

C-D

EXPLANATION

This self-explanatory addition to this Rule bolsters the ability of the Managers to carry out a follow-up survey, at the Member's cost.

Rule Changes 2020

Part 6 – ENTRY FOR AND CESSER OF INSURANCE



RULE 41 JOINT ENTRIES AND CO-ASSUREDS

- 1** If any entry of an insured vessel is made in the names of or on behalf of more persons than one whether jointly or separately interested (such persons being hereinafter referred to as 'joint Member' or joint Members' as the case may be) the terms upon which each joint Member shall be entitled to rights of recovery from the Association and upon which the Association shall be entitled to calls or premium from the joint Members shall be agreed by the Managers in writing.
- a The Managers shall not be bound to issue more than one Certificate of Insurance in respect of each insured vessel or more than one endorsement slip and delivery of such Certificate of Insurance or endorsement slip, as the case may be, to one of several jointly insured Members shall be sufficient delivery to each and all of such person.
 - b The joint Members and each of them shall be jointly and severally liable to pay all calls or premiums and other sums due to the Association in respect of such entry and the receipt of any one of such joint Members for any sums payable by the Association in respect of such entry shall be a sufficient discharge of the Association for the same.
 - c The cover afforded to a joint Member shall extend only to risks, liabilities and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of Members and which are within the scope of the cover afforded by the Rules and any special terms set out in the Certificate of Insurance.

EXPLANATION

This new clarifying text makes clear the scope provided to joint Members and mirrors the Pooling Agreement.

Rule Changes 2020

Part 6 – ENTRY FOR AND CESSER OF INSURANCE



RULE 46 CESSER OF INSURANCE

- 3** Unless otherwise agreed by the Managers in writing, a Member shall forthwith cease to be insured by the Association in respect of any vessel entered by him or on his behalf upon the happening of whichever shall be the earliest of the following events:

3A-3G

- H** Upon the vessel being employed or being permitted to be employed by the Member in a carriage, trade or on a voyage which may in anyway howsoever expose the Association or its Managers to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any State where the Association or its Managers have their registered offices or permanent places of business or by any State being a Major Power or by the United Nations or the European Union or upon the Member and/or any vessel or vessels entered by him or on his behalf being designated by any State where the Association or its Managers have their registered offices or permanent places of business or by any State being a Major Power or by the United Nations or the European Union. Notwithstanding that the happening of such event may not have increased the risk of any loss which may have occurred. For the purpose of this Rule, 'designated' means listed and subject to asset blocking or freezing such that persons are prohibited from dealing with them.

EXPLANATION

There is a growing trend, by the United States in particular, to designate entities and vessels. Such designations do not always strictly prohibit the Club from dealing with such listed entities or vessels. However, in such circumstances, there would likely be great difficulty in the Club paying claims or receiving premium, and dealing with related transactions. This is because foreign financial institutions would likely themselves be at risk of secondary sanctions. In any event, most banks take a very risk adverse approach and would not in any event deal with a designated entity or vessel, even if they were not at risk of secondary sanctions. It is therefore both practically impossible, and thereby improper, to continue Club cover in such circumstances.

Rule Changes 2020

Part 6 – ENTRY FOR AND CESSER OF INSURANCE



RULE 47 EFFECTS OF CESSER OF INSURANCE

When a Member ceases to be insured by virtue of an event as described in paragraph 1 of Rule 46 or when a Member ceases to be insured in respect of any vessel by virtue of any event as described in paragraph 2 or 3 of Rule 46 (the date on which any such event occurs being hereinafter referred to as the 'date of cessation') then – in respect of:

- a all vessels insured by the Member, where the event falls within paragraph 1 of Rule 46; and
- b the vessel concerned, where the event falls within paragraphs 2 or 3 of Rule 46:

1A-C

2A [Save as stated in paragraph 2B below, t](#)he Association shall remain liable for all claims under these Rules arising by reason of any event which occurred prior to the date of cessation but shall not otherwise be under any liability whatsoever by reason of anything occurring after the date of cessation. Except that notwithstanding that a cesser has been occasioned by any one of the events listed in paragraphs 3 A-G of Rule 46, the Association shall, subject always to the Rules and to the terms and conditions of the entry of the vessel, remain liable for claims arising directly from such cesser event.

2B [Where paragraph 3H of Rule 46 applies there shall be no recovery in respect of any liabilities, costs or expenses in relation to claims arising by reason of any event which occurred prior to the date of cessation where the payment of any claim or the provision of any benefit in respect of those liabilities, costs and expenses would in the opinion of the Managers expose the Association or its Managers to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any State where the Association or its Managers have their registered offices or permanent places of business or by any State being a Major Power or by the United Nations or the European Union.](#)

EXPLANATION

Rule 46 lists multiple cesser events, including sanctions risks at Rule 46 H. Rule 47 2 makes clear that claims are payable for events pre-dating the cesser event. The situation is necessarily different in relation to incidents occurring prior to cesser, where payment could expose the Club to sanctions. This new Rule 47 2B reflects this position.



Part 5 – LIMITATIONS AND EXCLUSIONS

RULE 25 LIABILITY EXCLUDES FOR WAR RISKS

There shall be no right of recovery from the Association in respect of any liabilities or expenses, whether or not a contributory cause of their being incurred was any neglect on the part of the Member or the Member's servant or agents, when the incident giving rise to the liability or expenses was caused by the following:

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

Provided that

- i. A Member shall be covered in respect of the risks set out in Rule 2 which would otherwise not be covered by reason of this Rule 25 but only ~~excess of the greater of US\$ 50,000 or the proper value of the entered vessel not exceeding US\$ 100 million on the terms set out and annexed to these Rules.~~ [in accordance with the terms of the War Risk Extension Clause, as appended to these Rules.](#)
- ii. The exclusion in Rule 25 and Rule 26 shall not apply to liabilities, costs and expenses of a Member insofar only as they are discharged by the Association on behalf of the Member pursuant to a demand made under a guarantee, undertaking or certificate issued by the Club in accordance with, or pursuant to, any other law, regulation or international convention coming into force during the current Policy Year. Where any such guarantee, undertaking or certificate is provided by the Club on behalf of the owner as guarantor or otherwise, the owner agrees that:
 - a) any payment by the Club under any guarantee, undertaking or certificate above, in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other 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 Club, to the extent and on the terms that the Managers determine in their discretion to be practicable, all the rights of the owner under any such other insurance and against any third party; and
 - c) unless the Managers shall otherwise determine, the owner shall indemnify the Club to the extent that any payment under any guarantee, undertaking or certificate referred to above, in discharge of the said liabilities, costs and expenses is or would have been recoverable under a standard P&I War Risk policy of insurance, had the owner complied with all the terms and conditions thereof, under which the vessel shall be deemed to be insured without deductible for its full value.

EXPLANATION

This change to Rule 25 ties in with the change, this year, to the War Risk Extension Clause. As set out in the explanation to the change to the War Risk Extension Clause, the minimum attachment point for the excess War P&I Cover (where the vessel is not protected by Primary War P&I up to proper hull value) has changed from US\$100 million to US\$500 million. Hence the need to make this amendment to Rule 25.



WAR RISK EXTENSION CLAUSE

The following war risk extension clause forms part of a member's insurance unless otherwise agreed by the managers in writing.

This WAR RISKS EXTENSION CLAUSE provides for such liabilities as would be covered by the Association and the Member's terms of entry, but for the exclusion of war risks in Rule 25.

6. EXCESS

The cover shall apply, any one event, in excess of the greater of:

US \$50,000; or

the proper value of the vessel (proper value meaning the market value of the vessel free of any commitment as determined by the Board; ~~where~~ which shall be deemed to be not less than US\$50,000 and not more than US\$500 million; ~~the proper value exceeds US\$ 100 million, the proper value will be deemed to be US\$ 100 million);~~ or

the amount recoverable under any other policy of insurance, whether of war risks or otherwise.

Under a charterer's entry other than a charterer by demise or bareboat charterer the cover shall apply, any one event, in excess of the greater of the deductible set out in the Member's certificate of insurance or US\$ 50,000.

EXPLANATION

At renewal of the GXL programme for 2020/2021 it was agreed that the excess War P&I cover would be renewed for 2020 for a period of 12 months, with the costs included in the total rates charged to shipowners. There is, however, a change to the terms of the placement in order to maintain the excess nature of the cover provided, increasing the minimum attachment point of the cover (where the vessel is not protected by Primary War P&I up to proper hull value) from US\$100 million to US\$500 million.