



CIRCULAR 23/2012

TO ALL MEMBERS

12th November 2012

The Shipowners' Mutual Protection and  
Indemnity Association (Luxembourg)  
16, Rue Notre-Dame  
L-2240 Luxembourg

Tel: +352 22 97 10 1  
Fax: +352 22 97 10 222  
Email: [info@shipowners.lu](mailto:info@shipowners.lu)  
[www.shipowners.lu](http://www.shipowners.lu)

## NOTICE OF EXTRAORDINARY GENERAL MEETING

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) will be held on Thursday 24th January 2013 at 09.00 hours in the Pan Pacific Hotel, 7 Raffles Boulevard, Marina Square, Singapore for the purpose of considering, and if thought fit, passing the following as SPECIAL RESOLUTIONS:

### SPECIAL RESOLUTION I

THAT the Rules be amended as set out hereafter, the amendments to be effective as from noon, 20<sup>th</sup> February 2013.

The proposed amendments to the Rules, with explanations, follow overleaf on pages 2 to 8.

By order of the Board  
Pascal Herrmann  
General Manager  
11th December 2012

NOTE: A Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and on a poll to vote instead of him. The proxy need not be a Member of the Association.

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## PART I – INTRODUCTORY

### Existing Text:

#### I BASIS OF COVER

(None)

10 All contracts (etc...)

### Proposed Text:

#### I BASIS OF COVER

10 Notwithstanding the provisions of Rule 16, where a Member has failed to discharge a legal liability in respect of repatriation under any statutory enactment giving effect to the 2006 Maritime Labour Convention the Association shall discharge such liability on the Members behalf.

#### PROVIDED ALWAYS THAT

i the amount payable by the Association in discharging such liability 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,

ii where the Association is under no liability to the Member in respect of the claim solely by reason of Rule 48 the Association shall nevertheless discharge such liability but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.

11 All contracts (etc...)

## PART II – P&I RISKS COVERED

### Existing Text:

#### SECTION I Liabilities in respect of seamen

##### B REPATRIATION AND SUBSTITUTES' EXPENSES

- i The expense of repatriating a seaman of the insured vessel who has been ill or injured or has died or whose repatriation has been necessitated by a casualty to the insured vessel.
- ii The expense of repatriating a seaman who has been left ashore when there is a statutory obligation to do so.
- iii The expense of substituting a seaman who has been ill, injured or has died.
- iv The expense of substituting a seaman who has been left ashore or been repatriated as a result of illness, injury or statutory obligation.

#### PROVIDED THAT

Paragraph B of this Section does not cover expenses which arise out of or are the consequence of

- a the expiry of the seaman's period of service on the insured vessel either in accordance with the terms of a crew agreement or by mutual consent of the parties to it, or
- b breach by a Member of any crew agreement, or
- c sale of the vessel.

### Explanation

The 2006 Maritime Labour Convention (MLC) will enter into force on 20<sup>th</sup> August 2013. The MLC requires that owners have financial security in place to provide compensation in the event of the death or long term disability of seafarers due to occupational injury, illness or hazard as set out in national law, the seafarer's employment agreement or collective agreement, and that the seafarers are repatriated in accordance with guidelines as set out.

Whilst cover will in general respond to MLC liabilities there are some repatriation elements e.g. insolvency which are beyond the current scope of cover and require a rule change in order to comply with certification requirements.

### Proposed Text:

#### SECTION I Liabilities in respect of ~~seamen~~ seafarers

##### B REPATRIATION AND SUBSTITUTES' EXPENSES

- i The expense of repatriating a ~~seaman~~ seafarer of the insured vessel who has been ill or injured or has died or whose repatriation has been necessitated by a casualty to the insured vessel.
- ii The expense of repatriating a ~~seaman~~ seafarer who has been left ashore when there is a statutory obligation to do so.
- iii The expense of ~~substituting~~ repatriating a ~~seaman-seafarer who has been ill, injured or has died~~ under any statutory enactment or provisions either giving effect or equivalent to the 2006 Maritime Labour Convention.
- iv The expense of substituting a ~~seaman~~ seafarer who has been ill, injured or has died.
- v The expense of substituting a ~~seaman~~ seafarer who has been left ashore or been repatriated as a result of illness, injury or statutory obligation.

#### PROVIDED THAT

Paragraph B of this Section does not cover expenses which arise out of or are the consequence of

- a the expiry of the ~~seaman's~~ seafarer's period of service on the insured vessel either in accordance with the terms of a crew agreement or by mutual consent of the parties to it, or
- b breach by a Member of any crew agreement, or
- c sale of the vessel.

~~save to the extent they are payable by the Member under any statutory enactment or provisions either giving effect or equivalent to the 2006 Maritime Labour Convention.~~

The amendments to part II, Section I B clarify cover for the Member's liability for costs of crew repatriation under the MLC. It is necessary to make a corresponding change to Part I in order to extend the current waiver of the 'pay to be paid' Rule 16 to encompass MLC requirements.

## PART II – SECTION 19 FINES

### Existing Text:

D For smuggling by Master or crew.

### Proposed Text:

D For smuggling or any infringement by Master or crew of any customs law or regulation other than in relation to cargo carried on the vessel.

### Explanation

Cover is available under this wording where there has been an infringement of any custom law or regulation other than in relation to cargo carried on the vessel. It applies to infringements of regulations relating to other items which are on board the vessel and which the Member is obliged to declare under the applicable laws and regulations, e.g. stores, provisions, spares or even food.

We have always sought to cover such fines. However, the current fines Rules is not sufficiently explicit and appears narrower than other International Group Club Rules.

## PART V

### Existing Text:

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 and expenses incurred by a Member in respect of the following:

I – 6 (Text as detailed)

### Proposed Text:

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 and expenses incurred by a Member in respect of the following:

I – 6 (Text as detailed)

7 An insured vessel being a semi-submersible heavy lift vessel or other vessel designed exclusively for the carriage of heavy lift cargo where the claim arises out of the loss of or damage to or wreck removal of cargo, unless the cargo is being carried under a contract on unamended Heavycon terms or any other contract approved by the Managers in writing.

### Explanation

We have in the past dealt with heavy lift cargoes by certificate endorsement. In line with our aim to eliminate non-standard text on certificates and as a reflection of an increase in entered heavy lift tonnage we have formalised the exclusion within our Rule 28, 7 excludes from cover all liability for loss of or damage to or wreck removal of cargo on heavy lift vessels except where such cargo is carried under a contract on Heavycon or similar terms approved by the Managers. Heavycon is a BIMCO contract on knock-for-knock terms in respect of the vessel and cargo. Sequential changes in numbering of the remainder of the Rule have been made to facilitate insertion of this new text.



## Part VI

### Existing Text:

#### 40 JOINT ENTRIES

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 such joint Member shall be entitled to rights of recovery from the Association and upon which the Association shall be entitled to calls from the joint Members shall be agreed by the Managers in writing.

1 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 persons.

2 The joint Members and each of them shall be jointly and severally liable to pay all calls 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.

3 Failure by any joint Member to disclose material information within his knowledge shall be deemed to have been the failure of all the joint Members.

4 Conduct of any joint Member which would have entitled the Association to exclude a right of recovery by him shall be deemed the conduct of all the joint Members.

5 Unless otherwise agreed by the Managers in writing, the contents of any communication from or on behalf of the Association to any joint Member shall be deemed to be within the knowledge of all the joint Members, and any communication from any joint Member to the Association, the Managers or their agents shall be deemed to have been made with the full approval and authority of the joint Members.

6 There shall be no right of recovery from the Association in respect of any liabilities, costs and expenses arising directly or indirectly from

### Proposed Text:

#### 40 JOINT ENTRIES AND CO-ASSURED

I 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 such joint Member shall be entitled to rights of recovery from the Association and upon which the Association shall be entitled to calls 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 persons.

B The joint Members and each of them shall be jointly and severally liable to pay all calls 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.

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

A The liability of the Association to a Co-assured only extends insofar as he may be found liable to pay in the first instance for liabilities which are properly the responsibility of the Member or joint Member which, if the Member or joint Member has entered into a contract with the Co-Assured, means those liabilities which are to be borne by the Member or joint Member under such contract and nothing in this Rule shall be construed as extending cover in respect of any amount which would not have been recoverable from the Association by the Member or joint Member had a claim in respect of such loss or damage be made or enforced against him.

B Once the Association has indemnified a Co-assured it shall not be under any further liability to any person in respect of that claim.

disputes between joint Members.

3

**A** Failure by any joint Member to disclose material information within his knowledge shall be deemed to have been the failure of all the joint Members.

**4B** Conduct of any joint Member which would have entitled the Association to exclude a right of recovery by him shall be deemed the conduct of all the joint Members.

**5C** Unless otherwise agreed by the Managers in writing, the contents of any communication from or on behalf of the Association to any joint Member shall be deemed to be within the knowledge of all the joint Members, and any communication from any joint Member to the Association, the Managers or their agents shall be deemed to have been made with the full approval and authority of the joint Members.

~~6 There shall be no right of recovery from the Association in respect of any liabilities, costs and expenses arising directly or indirectly from disputes between joint Members.~~

**D** There shall be no right of recovery from the Association in respect of any liabilities, costs and expenses arising directly or indirectly from disputes between joint Members or between Co-assureds. The cover provided to Co-assureds does not extend to any liabilities, costs and expenses arising directly or indirectly from disputes between Co-assureds and Members or joint Members.

### Explanation

We have in the past dealt with joint assured and co-assured status by certificate endorsement. In recognition of the different circumstances requiring a party to be named as joint or co-assured a choice of clauses has been available. In line with our aim to simplify Certificates of Entry and in order to ensure clarity we have formalised this cover within our Rules thereby reducing endorsement requirements. Rule 40 has been extended to encompass co-assureds. The new wording clarifies that where a Member or joint Member has entered into a contract with the co-assured cover extends solely to encompass liabilities arising under such contract and is not therefore extended to cover liabilities of the co-assured incurred under contract with a third party.

## PART VIII – ADMINISTRATIVE PROCEDURES

Existing Text:

65 DEFINITIONS

Seaman

Proposed Text:

65 DEFINITIONS

~~Seaman~~ Seafarers

### Explanation

The term 'Seaman' used throughout the Rules is outdated and requires replacement with 'Seafarer' to bring it in line with the Maritime Labour Convention 2006.