



SHIPOWNERS

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▶ **THE SHIPOWNERS' MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG)**

NOTICE OF EXTRAORDINARY GENERAL MEETING – 12 JANUARY 2021 AT 11.45 HOURS.

TO ALL MEMBERS

04th December 2020

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) will be held on Tuesday 12th January 2021 at 11.45 hours at The Shipowners' Mutual Protection and Indemnity Association (Luxembourg), 16, Rue Notre-Dame, L-2240 Luxembourg, for the purpose of considering and if thought fit, passing the following as a SPECIAL RESOLUTION.

SPECIAL RESOLUTION

THAT the Rules be amended as set out hereafter, the amendments to be effective as from 20th February, 2021. The proposed amendments to the Rules, with explanations, follow overleaf on pages 1 to 9.

By order of the Board

Pascal Herrmann

General Manager

04th December 2020

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/her. A proxy need not be a Member of the Association. The proxy must be in the form published on our website and signed by the appointing member or its legal representative(s). Given the current difficulties as a result of the COVID-19 pandemic with respect to holding general meetings, Luxembourg has adopted regulations and laws including exceptional measures which have been extended to June 30th 2021. (Grand Ducal Regulation of 20th March 2020, replaced by the laws of 20th June 2020, 23rd September 2020 and updated 25th November 2020). Members are encouraged to utilise their proxy voting form.

Rule Changes 2021

Part 2 – P&I RISKS COVERED



RULE 2

STANDARD COVER

12 Wreck liabilities

- A** Liabilities and expenses relating to the raising, removal, destruction, lighting or marking of the wreck of the insured vessel or any part thereof; or of any cargo equipment or other property which is or was carried on board the wreck of the insured vessel, when such raising, removal, destruction, lighting or marking is compulsory by law or the costs thereof are legally recoverable from the Member.
- B** Liabilities and expenses incurred by the Member as the result of any such raising, removal, destruction, lighting or marking of the wreck of the insured vessel or any part thereof or ~~of such~~ of cargo or other property thereon or any attempt thereat.
- C** Liabilities and expenses incurred by the Member as the result of the presence or involuntary shifting of the wreck of the insured vessel or any cargo or other property which is or was carried on board such wreck or as a result of his failure to raise, remove, destroy, light or mark such wreck or such cargo or other property.
- D Provisos**
- ~~i~~ i ~~There shall be no right of~~ Any right of recovery from the Association ~~is unless to the extent, only, that any the insured vessel became a~~ wreck of the insured vessel or part thereof as the result of resulted from a fortuitous event or casualty occurring during the vessel's period of insurance; but in this case the Association shall continue to be liable for the claim notwithstanding that in other respects the liability of the Association shall have terminated pursuant to Rule 46.
 - ii In respect of a claim under paragraph A of this Section, the value of all vessel's stores and materials saved, as well as the value of the wreck itself, the value of all cargo or other property saved to which the Member is entitled, salvage remuneration received by the Member and any sum recovered by the Member from third parties shall first be deducted from or set off against such liabilities or expenses and only the balance thereof, if any, shall be recoverable from the Association.
 - iii There shall be no right of recovery from the Association under this Section if the Member, without the agreement of the Managers in writing, shall have transferred his interest in the wreck (otherwise than by abandonment to his hull and machinery underwriters) prior to the raising, removal, destruction, lighting or marking of the wreck or prior to the incident giving rise to liability.
 - ~~iii~~ iv There shall be no right of recovery from the Association under this Section for any liabilities, costs or expenses resulting from dereliction or neglect of an insured vessel or parts thereof, or of any cargo, equipment, or property carried on board.
 - ~~iv~~ v Where the liabilities arise, or the expenses are incurred, under the terms of any contract or indemnity and would not have arisen but for those terms, those liabilities or expenses are only covered if and to the extent that
 - a those terms have been agreed by the Managers in writing, or

- b the Board in its discretion decides that the Member should be reimbursed.
- vi Unless the Board in its discretion shall otherwise determine, there shall be no right of recovery from the Association under this Section where the liabilities, costs and expenses or any part thereof:
 - a would not have been incurred had the insured vessel been 'fully insured' in accordance with the meaning of these words in Rule 24, or
 - b are incurred more than two years after the vessel, cargo, equipment or other property became a wreck or was lost.

EXPLANATION

The changes to Rule 2 section 12 span two distinct areas:

Firstly, the Rule now clarifies removal of 'parts of the vessel' can also be capable of Club cover, even where the vessel itself has not become a wreck. For example, where a vessel has not become a wreck but a spud leg, or an anchor, has become detached and is itself a wreck.

Secondly, as Club cover is triggered only if wreck removal is compelled at law, it is considered unnecessary to require a wreck to have been caused by a casualty, and to define the term 'casualty'. Therefore, 'fortuitous event or casualty' is now deemed sufficient to trigger Club cover for wreck liabilities, and the definition of casualty at Rule 67, for the purpose of Rule 2 section 12, has been removed. New proviso D iv) retains the safeguard in relation to wrecks caused by dereliction or neglect, such exclusion having been previously contained in the casualty definition.

Rule Changes 2021

Part 2 – P&I RISKS COVERED



RULE 2 STANDARD COVER

13 Quarantine expenses

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

Provided that

There shall be no cover in respect of additional expenses where, at the time the entered vessel has been ordered to a port, the Member knew, or it was reasonable to anticipate, that such additional expenses would be incurred.

EXPLANATION

The addition of the words 'extraordinary' and 'necessarily and solely' reflect the current position which is that Club cover is available only in limited, and specific, circumstances. Furthermore, the words 'on board the entered vessel' provide further clarification that, as has always been the case, the outbreak of infectious disease must have occurred on board the entered vessel.

Likewise, the proviso has been added to clarify the current position that expenses are irrecoverable if Members knew or ought to have known that they were likely to have been incurred as a result of trading to a specific port.



RULE 2

STANDARD COVER

15 Unrecoverable general average contributions

The proportion of general average expenditure, special charges or salvage which the Member is or would be entitled to claim from cargo or from some other party to the marine adventure and which is not legally recoverable after the exhaustion of all legal remedies, by reason only of a breach of the contract of carriage.

Provided that

[i](#) [There shall be no right of recovery from the Association in respect of irrecoverable cargo contributions under this Section where a vessel's entry with the Association excludes Section 14 of this Rule.](#)

[ii](#) All the provisos to Section 14 shall also apply to claims under this Section.

[iii](#) Unless the Member has previously obtained appropriate special cover by agreement with the Managers, the proportions of general average expenditure which the Member is or would be entitled to claim from cargo or from some other party to the marine adventure shall be deemed to have been adjusted in accordance with any unamended version of the York/Antwerp Rules and the Member's right of recovery from the Association limited accordingly.

EXPLANATION

Where the Club accepts a vessel for entry excluding cargo risks, it is not envisaged that P&I cover will extend to unrecoverable general average contributions from cargo interests. This change makes this explicit within the Rules.

Rule Changes 2021



Part 2 – P&I RISKS COVERED

RULE 2 STANDARD COVER

19 Fines

Fines as set out in paragraphs A to D below when and to the extent that they are imposed in respect of an insured vessel by any competent court, tribunal or authority and are imposed upon the Member or upon any seafarer whom the Member may be legally liable to reimburse or reasonably reimburses with the agreement of the Managers.

A For short or over delivery of cargo, or failure to comply with regulations relating to the declaration of goods, or documentation of cargo, [\(other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat\)](#), provided that the Member is covered by the Association for cargo liabilities under Rule 2 Section 14 and subject to the provisions of that Rule.

B For breach of any immigration law or immigration regulation.

C In respect of accidental escape or discharge of oil or other substance from the insured vessel.

~~**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.~~

ED Any other fine or penalty where the Member has satisfied the Board that it took such steps as appear to the Board reasonable to avoid the event giving rise to such fine or penalty and which the Board in its discretion decides that the Member should recover.

FE Provisos

- i Notwithstanding the terms of Rule 27 paragraph 1 the Board in its discretion may admit claims for loss of an insured vessel following final confiscation of the vessel by a competent court, tribunal or authority by reason of infringement of any customs law or customs regulation, to such extent as it shall think fit. The amount recoverable shall not exceed the market value of the insured vessel at the date of final confiscation, disregarding any charter or other engagements, to which the vessel may be committed.
- ii There shall be no right of recovery under this Section for fines arising out of infringements or violations of or non-compliance with the provisions regarding construction, adaptation and equipment of ships contained in the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and as modified or amended by any subsequent protocol, or the legislation of any state giving effect to that Convention; but the Board in its discretion may admit claims for such fines to such extent as it shall think fit.
- iii There shall be no right of recovery under this Section for fines arising out of infringements or violations of or non-compliance with the provisions of the ISM or ISPS Codes; but the Board in its discretion may admit claims for such fines to such extent as it shall think fit.

EXPLANATION

All IG Clubs have for many years provided cover for fines imposed in circumstances where there has been no intentional or reckless unlawful conduct on the part of the shipowner. The scope of cover provided by the Clubs in the IG is broadly similar and has been broadly unchanged for more than twenty

years.

One of the categories for which cover is available as of right is fines for 'smuggling or infringement of any customs law or regulation other than in relation to cargo'. Fines falling within this category are commonly imposed in respect of relatively minor items such as small quantities of cigarettes or alcohol, or undeclared medical supplies. However, fines may also arise out of the smuggling of drugs for which penalties can be extremely high. This amendment changes the scope of cover by making claims in respect of smuggling fines payable only on a discretionary basis. There has been a steady growth in the scale of smuggling in recent years, and providing insurance as of right for smuggling fines may be seen by governments as undermining the intended penal and corrective effect. Maintaining a Rule which expressly provides insurance for smuggling fines may one day create a reputational risk for Clubs and is inconsistent with Clubs' sustainability goals. Further, although providing cover for smuggling fines (arising other than from wilful misconduct) is not thought to be unlawful in most jurisdictions, it is possible that Clubs may face the argument that insurance for such fines is contrary to public policy.

b



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 persons.
- 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.
- bc** The liability of a joint Member and the Member to each other shall not be excluded nor discharged by reason of their being joint Members in accordance with this Rule 41 1). Any payment to the Member in respect of any liabilities, losses, costs and expenses shall operate only as satisfaction but not exclusion or discharge of the liability of a joint Member to the Member.
- ed** 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 Owners (or, in the case of a Charterer's Entry, charterers) 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 amendment at Rule 41 1) c) replicates language recommended by BIMCO which specifies that the cover afforded to a joint entrant (e.g. charterer) does not exclude that person's liability, and that any payment by the Insured Owner would operate only as satisfaction but not exclusion or discharge of the underlying liability of the charterer. This change mirrors a corresponding amendment, this year, to the pooling agreement.

The amendment at Rule 41 1) d) provides a logical clarification.



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 otherand 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 A charterer (including contractor) of the Member or joint Member for the provision of services by or to the insured vessel, provided that:
 - i the contract has been approved by the Association; and
 - ii the contract is on Knock for Knock 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

The intention of the proviso at Rule 41 2 b) iii) is to ensure that the co-assured contractor should be in no more favourable position than the Member and that if the Member would have been entitled to limit liability, the cover to the co-assured contractor should be similarly restricted.



RULE 67 DEFINITIONS

~~Casualty, within the context of Rule 2 Section 12 Proviso Di, means a fortuitous incident caused by collision, stranding, explosion, fire or similar cause, but excludes any wreck caused by dereliction or neglect.~~

EXPLANATION

This definition has now been deleted; see the explanation for the changes to Rule 2, section 12.