



SHIOWNERS

16, Rue Notre-Dame
L-2240 Luxembourg

T +352 22 97 10 1
F +352 22 97 10 222
W www.shipownersclub.com

TO ALL MEMBERS

30th November 2016

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 Wednesday 11th January 2017 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 SPECIAL RESOLUTIONS.

SPECIAL RESOLUTION No 1

THAT the Constitution be amended as set out hereafter on pages (1 to 3), the amendments to be effective immediately.

SPECIAL RESOLUTION No 2

THAT the Rules be amended as set out hereafter, the amendments to be effective as from 20th February, 2017.
The proposed amendments to the Rules, with explanations, follow overleaf on pages (4 to 31).

By order of the Board
Pascal Hermann
General Manager
30th November 2016

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).



▶ CONSTITUTION CHANGES

Introduction

In 2013 the Constitution of The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (SMP) was changed to allow a resolution by the Board of Directors to appoint the External Auditors. At the Madrid 2016 Board meeting, the Directors considered the EU legislation which provides a new EU regulatory framework for statutory audit. This new legislation will apply to SMP given that all EU insurance undertakings are deemed to be Public Interest Entities (PIEs) and all PIEs are required to apply the terms of this EU Audit Reform.

Recommendation

Following the EU Audit Reform (as presented in September at the Madrid Board Meeting under item 15), we recommend that the Association should amend the Constitution whereby the AGM would appoint the Statutory Auditors and to also give the capacity to the AGM to appoint and set the remuneration of the external auditors.

In addition it is recommended to amend articles 39 of the Constitution to bring more clarity on the General Corporate Authority for clarification of the signatory powers.

We have received Legal advice for the wording of the redrafted articles below.

The Members are asked to consider the following changes to the articles of the Association's Constitution:

Article 39. - General Corporate Authority

Existing text

39. When dealing with third parties, we shall be bound towards third parties in all circumstances by the signature of any two Persons either Directors or Persons to whom such signatory power has been granted by the Board of Directors.

Proposed Text

39. When dealing with third parties, we shall be bound towards third parties in all circumstances by

- I. the signature of any two Persons either (x) Directors, or (y) Person(s) to whom such signatory power has been granted by the Board of Directors, or
- II. by the joint or individual signature of those Person(s) to whom such signatory power has been granted by the Board of Directors.

Article 58, 59 and 60 - External Auditors

Existing text

The auditors and the audit

58. Our auditors will be qualified under the laws of the Grand Duchy of Luxembourg to act as our auditors.

59. Our auditor(s) will be appointed and may be removed by the Board of Directors.

60. (a) The auditors will report to the Board of Directors and the Managers on the accounts examined by them, and on every income and expenditure account and balance sheet we present at the General Meeting.

(b) The auditors' report will be available at the relevant General Meeting and be open for every Member to inspect.

(c) The auditors will have a right to look at our books, accounts and vouchers at any time. They will also be entitled to ask our Managers for any information and explanations they need to be able to perform their duties as auditors.

Proposed Text

The *statutory* auditors and the audit

58. Our *statutory* auditors will be qualified under the laws of the Grand Duchy of Luxembourg to act as our *statutory* auditors.

59. ~~Our auditor(s) will be appointed and may be removed by the Board of Directors~~

(a) At each Annual General Meeting the Members will appoint a *statutory* auditor or *statutory* auditors to hold office until the end of the next Annual General Meeting.

(b) At any Annual General Meeting the Members will be deemed having reappointed a retiring *statutory* auditor without any resolution being passed unless:

- (i) he or she is not qualified to be reappointed; or
- (ii) an Ordinary Resolution has been passed at that meeting appointing somebody instead of the retiring *statutory* auditor if he or she is not reappointed; or
- (iii) he or she has expressed in writing that they are not willing to be reappointed.

(c) The Members will set the remuneration of the *statutory* auditors at a General Meeting.

(d) The Members can remove any *statutory* auditor from office *where there are proper grounds* by Ordinary Resolution and, by the same or another Ordinary Resolution, *the members* can appoint another person to be *statutory* auditor.

60. (a) The *statutory* auditors will report to the Board of Directors, *the Audit and Risk Committee* and the Managers on the accounts examined by them, and on every income and expenditure account and balance sheet ~~we~~ *presented* at the General Meeting *and on any other matter required by law and any other subject they would consider appropriate*.

(b) The *statutory* auditors' report will be available at the relevant General Meeting and be open for every Member to inspect.

(c) The *statutory* auditors will have a right to look at our books, accounts and vouchers at any time. They will also be entitled to ask our Managers for any information and explanations they need to be able to perform their duties as *statutory* auditors.

In accordance with article 70 on amending of the Constitution of the Association the Members are asked to approve the changes to the Constitution outlined above with immediate effect.

RULE 1 – BASIS OF COVER

Existing Text:

1-8

9 Notwithstanding the provisions of Rule 16, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a seafarer, the Association shall discharge or pay such claim on the Member's behalf directly to such seafarer or dependant thereof.

Provided always that

i the seafarer or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated,

ii the amount payable by the Association 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,

iii where the Association is under no liability to the Member in respect of the claim solely by reason of Rule 49 the Association shall nevertheless discharge or pay the claim but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.

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 Member's behalf.

11

A All contracts of insurance afforded by the Association to its Members and these Rules and Regulations made hereunder shall be governed by and construed in accordance with English law. In particular they are subject to and incorporate the Marine Insurance Act 1906 and upon its entry into force the Insurance Act 2015 save to the extent such Acts are modified or excluded by the Rules or by the terms of any contracts of insurance.

Proposed Text:

1-8

9 Notwithstanding the provisions of Rule 16, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a seafarer, the Association shall discharge or pay such claim on the Member's behalf directly to such seafarer or dependant thereof.

Provided always that

i the seafarer or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated,

ii the amount payable by the Association 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,

iii where the Association is under no liability to the Member in respect of the claim solely by reason of Rule 49 the Association shall nevertheless discharge or pay the claim but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim.

~~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 Member's behalf.~~

~~1110~~

A All contracts of insurance afforded by the Association to its Members and these Rules and Regulations made hereunder shall be governed by and construed in accordance with English law. In particular they are subject to and incorporate the Marine Insurance Act 1906 and upon its entry into force the Insurance Act 2015 save to the extent such Acts are modified or excluded by the Rules or by the terms of any contracts of insurance.

Explanation

Please see the explanation for this Rule change under Part 2, Rule 2 section 1.

PART 2 – P&I RISKS COVERED

Existing Text:

RULE 2 STANDARD COVER

Unless otherwise agreed by the Managers in writing a Member is covered against the risks set out in Sections 1 to 22 below in respect of any insured vessel.

1 Liabilities in respect of seafarers

A Illness, injury, death, medical examination

i Liability to pay damages or compensation for personal injury, illness or death of any seafarer whether or not on board a vessel and hospital, medical, funeral or other expenses incurred in relation to such injury, illness or death.

ii Liability to pay expenses incurred in medical examination of seafarers prior to engagement.

B Repatriation and substitutes' expenses

i The expense of repatriating a 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 seafarer who has been left ashore when there is a statutory obligation to do so.

iii The expense of repatriating a seafarer under any statutory enactment or provisions either giving effect or equivalent to the 2006 Maritime Labour Convention.

iv The expense of substituting a seafarer who has been ill, injured or has died.

v The expense of substituting a 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 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.

Proposed Text:

RULE 2 STANDARD COVER

Unless otherwise agreed by the Managers in writing a Member is covered against the risks set out in Sections 1 to 22 below in respect of any insured vessel.

1 Liabilities in respect of seafarers

A Illness, injury, death, medical examination

i Liability to pay damages or compensation for personal injury, illness or death of any seafarer whether or not on board a vessel and hospital, medical, funeral or other expenses incurred in relation to such injury, illness or death.

ii Liability to pay expenses incurred in medical examination of seafarers prior to engagement.

B Repatriation and substitutes' expenses

i The expense of repatriating a 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 seafarer who has been left ashore when there is a statutory obligation to do so, [other than an obligation under the Maritime Labour Convention 2006](#).

~~iii The expense of repatriating a seafarer under any statutory enactment or provisions either giving effect or equivalent to the 2006 Maritime Labour Convention.~~

~~iii~~ The expense of substituting a seafarer who has been ill, injured or has died.

~~iv~~ The expense of substituting a seafarer who has been left ashore or been repatriated as a result of illness, injury or [pursuant to a statutory obligation other than an obligation under the Maritime Labour Convention 2006](#).

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 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

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.

- 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.~~

Explanation

Upon the entry into force of the Maritime Labour Convention 2006 (MLC) in August 2013, the Rules were changed so as to extend P&I cover to MLC claims which would not ordinarily fall to Club cover. These were the costs of repatriation of seafarers in the case of abandonment, the seafarer's refusal to go on board a ship bound for a war zone and on termination of employment. The aim of including such MLC cover at that time within the Rules was to ensure, as far as possible, that a vessel's P&I Certificate of Insurance was accepted as financial security under MLC 2006.

Amendments to the MLC will enter into force on 18th January 2017. After this date, vessels subject to the MLC will be required to display certificates in a prescribed form confirming that insurance or other financial security is in place for MLC liabilities. Some liabilities arising under these MLC certificates will fall within standard P&I cover for crew. However, other liabilities fall outside the scope of poolable P&I cover, notably repatriation costs and sixteen weeks unpaid wages arising from seafarer abandonment. The IG Clubs have agreed that such liabilities will remain outside poolable cover.

From 18th January 2017, MLC certificates will be provided on the basis set out in the new MLC Extension Clause. The Extension Clause will encompass all the relevant liabilities for which cover is required: both poolable and non poolable. Non poolable liabilities are to be separately reinsured whereas poolable liabilities will of course be reinsured in the usual way.

The MLC Extension Clause will be incorporated into the Members' cover by way of reference to it on the Certificates of Insurance. However, given that the Extension Clause encompasses both poolable and non poolable cover, it will sit outside of the Rule book. Hence references to the MLC within the Rules are now redundant and will be deleted.

RULE 2 – STANDARD COVER

Existing Text:

PART 2 P&I RISKS COVERED

4 Diversion expenses

Expenses incurred as a result of diversion or delay of an insured vessel (over and above the expenses that would have been incurred but for the diversion or delay) which was made necessary for the following reasons:

A Securing necessary treatment ashore of sick or injured persons or arranging the repatriation of dead bodies aboard the insured vessel.

B Awaiting a substitute for a sick or injured seafarer who has been landed ashore for treatment.

C Landing stowaways, refugees or persons saved at sea.

D For the purpose of saving or attempting to save life at sea.

Explanation

This Rule change clarifies the categories of expenses allowable. We occasionally receive requests for reimbursement for loss of hire as a result of diversion which is more properly characterised as a loss of profit rather than an expense. Loss of hire could represent a very large risk not contemplated within P&I cover. Members can buy loss of hire insurance.

Proposed Text:

PART 2 P&I RISKS COVERED

4 Diversion expenses

Expenses **in respect of fuel, insurance, wages, stores, provisions and port charges** incurred as a result of diversion or delay of an insured vessel (over and above the expenses that would have been incurred but for the diversion or delay) which was made necessary for the following reasons:

A Securing necessary treatment ashore of sick or injured persons or arranging the repatriation of dead bodies aboard the insured vessel.

B Awaiting a substitute for a sick or injured seafarer who has been landed ashore for treatment.

C Landing stowaways, refugees or persons saved at sea.

D For the purpose of saving or attempting to save life at sea.

RULE 2 – STANDARD COVER

Existing Text:

PART 2 P&I RISKS COVERED

7 Collision with other vessels

The liabilities, set out in paragraphs A, B and C below, to pay damages to any other person as a consequence of a collision between the insured vessel and any other vessel, but only if and to the extent that such liabilities are not recoverable under the hull policies of the insured vessel.

A Contact with other vessels or cargo or property on other vessels

One fourth, or such other proportion as may have been agreed by the Managers in writing, of the liabilities arising out of the collision other than the liabilities identified in paragraph B of this Section.

B Other liabilities

Liability arising out of the collision for or relating to:

- i the raising, removal, disposal, destruction, lighting or marking of obstructions, wrecks, cargoes, or any other thing;
- ii any real or personal property or thing whatsoever (except other vessels or property on other vessels);
- iii pollution or contamination of any real or personal property except other vessels with which the insured vessel is in collision and property on such other vessels;
- iv the cargo or other property on the insured vessel, or general average contributions, special charges or salvage paid by the owners of that cargo or property;
- v loss of life, personal injury or illness.

C Excess collision liabilities

That part of the Member's liability, arising out of the collision, which exceeds the sum recoverable under the hull policies of the insured vessel solely by reason of the fact that the liability exceeds the valuation of the vessel in those policies.

Proposed Text:

PART 2 P&I RISKS COVERED

7 Collision with other vessels

The liabilities, set out in paragraphs A, B and C below, to pay damages to any other person as a consequence of a collision between the insured vessel and any other vessel, but only if and to the extent that such liabilities are not recoverable under the hull policies of the insured vessel.

A Contact with other vessels or cargo or property on other vessels

One fourth, or such other proportion as may have been agreed by the Managers in writing, of the liabilities arising out of the collision other than the liabilities identified in paragraph B of this Section.

B Other liabilities

Liability arising out of the collision for or relating to:

- i the raising, removal, disposal, destruction, lighting or marking of obstructions, wrecks, cargoes, or any other thing;
- ii any real or personal property or thing whatsoever (except other vessels or property on other vessels);
- iii pollution or contamination of any real or personal property except other vessels with which the insured vessel is in collision and property on such other vessels;
- iv the cargo or other property on the insured vessel, or general average contributions, special charges or salvage paid by the owners of that cargo or property;
- v loss of life, personal injury or illness.

vi [sums paid pursuant to the Special Compensation P&I Club \(SCOPIC\) Clause as incorporated into Lloyd's Open Form of Salvage Agreement in respect of salvage of a vessel in collision with the entered vessel.](#)

C Excess collision liabilities

That part of the Member's liability, arising out of the collision, which exceeds the sum recoverable under the hull policies of the insured vessel solely by reason of the fact that the liability exceeds the valuation of the vessel

in those policies.

Explanation

As well as providing 1/4 of the vessel's collision liability to the other vessel (as provided for in 7A) P&I cover should also supplement/dovetail with the Member's hull and machinery cover. Liabilities falling outside the scope of hull and machinery cover are captured within section 7 B '*Other Liabilities*'.

SCOPIE liability is generally excluded from the collision liability clause in a Lloyd's hull policy. Therefore this Rule change aims to ensure that Members are provided with P&I cover for liabilities for SCOPIE in respect of a vessel in collision with the entered vessel.

RULE 2 – STANDARD COVER

Existing Text:

PART 2 P&I RISKS COVERED

9 Pollution

Subject to Rule 21A, the liabilities, losses, damages, costs and expenses set out in paragraphs A to E below when and to the extent that they are caused or incurred in consequence of the discharge or escape from the insured vessel of oil or any other substance, or the threat of such discharge or escape.

- A** Liability for loss, damage or contamination.
- B** Any loss, damage or expense which the Member incurs, or for which he is liable, as a party to any agreement approved by the Board, including the costs and expenses incurred by the Member in performing his obligations under such agreements.
- C** The costs of any measures reasonably taken for the purpose of avoiding or minimising pollution or any resulting loss or damage together with any liability for loss or damage to property caused by measures so taken.
- D** The costs of any measures reasonably taken to prevent an imminent danger of the discharge or escape from the insured vessel of oil or any other substance.
- E** The costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution, provided always that such costs or liabilities are not recoverable under the hull policies of the insured vessel.
- F** A Member insured in respect of a vessel which is a 'relevant ship' as defined in the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006 shall, unless the Managers otherwise agree in writing, be a party to STOPIA 2006 for the period of entry of the vessel in the Club.
- G** A Member insured in respect of a vessel which is a 'relevant ship' as defined in the Tanker Oil Pollution Indemnity Agreement (TOPIA) shall, unless the Managers otherwise agree in writing, be a party to TOPIA for the period of entry of the vessel in the Club.

Unless the Managers have agreed in writing or

Proposed Text:

PART 2 P&I RISKS COVERED

9 Pollution

Subject to Rule 21A, the liabilities, losses, damages, costs and expenses set out in paragraphs A to E below when and to the extent that they are caused or incurred in consequence of the discharge or escape from the insured vessel of oil or any other substance, or the threat of such discharge or escape.

- A** Liability for loss, damage or contamination.
- B** Any loss, damage or expense which the Member incurs, or for which he is liable, as a party to any agreement approved by the Board, including the costs and expenses incurred by the Member in performing his obligations under such agreements.
- C** The costs of any measures reasonably taken for the purpose of avoiding or minimising pollution or any resulting loss or damage together with any liability for loss or damage to property caused by measures so taken.
- D** The costs of any measures reasonably taken to prevent an imminent danger of the discharge or escape from the insured vessel of oil or any other substance.
- E** The costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution, provided always that such costs or liabilities are not recoverable under the hull policies of the insured vessel.
- F** A Member insured in respect of a vessel which is a 'relevant ship' as defined in the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) shall, unless the Managers otherwise agree in writing, be a party to STOPIA 2006 (as amended 2017) for the period of entry of the vessel in the Club.

- G** A Member insured in respect of a vessel which is a 'relevant ship' as defined in the Tanker Oil Pollution Indemnity Agreement (TOPIA) 2006 (as amended 2017) shall, unless the Managers otherwise agree in writing, be a party to TOPIA 2006 (as amended 2017) for the period of entry of the vessel in the Club.

unless the Directors otherwise determine there shall be no cover under Rule 2 Section 9 in respect of such a vessel during a period the Member is not a party to TOPIA.

H Provisos

i If the discharge or escape from the insured vessel causes loss, damage or contamination to property belonging wholly or in part to the Member, he shall have the same rights of recovery from the Association and the Association shall have the same rights as if such property belonged wholly to different owners.

ii The value of any vessel or wreck and of any stores and materials, or cargo or other property, removed and saved as a result of any measures taken as outlined in this Section shall either be credited to the Association or deducted from any recovery due from the Association.

iii Unless the Board in its discretion otherwise decides there shall be no right of recovery of any liabilities, losses, damages, costs or expenses arising as a consequence of the discharge or escape of any hazardous waste, previously carried on the insured vessel, from any land based dump, storage or disposal facility.

Unless the Managers have agreed in writing or unless the Directors otherwise determine there shall be no cover under Rule 2 Section 9 in respect of such a vessel during a period the Member is not a party to TOPIA 2006 (as amended 2017).

H Provisos

i If the discharge or escape from the insured vessel causes loss, damage or contamination to property belonging wholly or in part to the Member, he shall have the same rights of recovery from the Association and the Association shall have the same rights as if such property belonged wholly to different owners.

ii The value of any vessel or wreck and of any stores and materials, or cargo or other property, removed and saved as a result of any measures taken as outlined in this Section shall either be credited to the Association or deducted from any recovery due from the Association.

iii Unless the Board in its discretion otherwise decides there shall be no right of recovery of any liabilities, losses, damages, costs or expenses arising as a consequence of the discharge or escape of any hazardous waste, previously carried on the insured vessel, from any land based dump, storage or disposal facility.

iv There shall be no right of recovery from the Association under this Section where:

a a claim is otherwise than in respect of general average, and

b either:

i the liability, loss, cost or expense is recoverable in general average under the terms of the contract of carriage, or

ii the liability, loss, cost or expense is not allowable in general average under the terms of the contract of carriage but would be so allowable if the contract of carriage had incorporated any unamended version of the York Antwerp Rules.

Explanation

This change to provisos F and G reflect the proposed amendments to STOPIA 2006 and TOPIA 2006 due to come into effect in 2017. The proposed amendments seek to address both the introduction of future sanctions legislation and the time period and operation of future reviews by the International Group of the provisions of both agreements.

This change at proviso H ties in with the change to Rule 2 Section 15 (Inrecoverable general average contributions), to which please refer for a full explanation.

RULE 2 – STANDARD COVER

Existing Text:

PART 2 P&I RISKS COVERED

10 Towage

A Customary towage of an insured vessel

Liability under the terms of a contract for the customary towage of an insured vessel, that is to say:

- i towage for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or
- ii towage of such insured vessels as are habitually towed in the ordinary course of trading from port to port or from place to place.

B Towage of an insured vessel other than customary towage

Liability under the terms of a contract for towage of an insured vessel other than the customary towage covered under paragraph A of this Section but only if and to the extent that cover has been agreed by the Managers in writing.

C Towage by an insured vessel

Liability arising out of towage of another vessel or object by an insured vessel.

Provided that

Liability for loss of or damage to or wreck removal of the towed vessel or object or any cargo or property thereon is excluded unless:

- i such towage was necessary for the purpose of saving life or property at sea, or
- ii the insured vessel is towing under an approved contract, or
- iii cover has otherwise been agreed by the Managers in writing.

Note to Section 10Cii

The contracts set out under A and B below are approved provided that they are not amended so as to increase the liability of the insured vessel. In countries where the terms of those contracts would not be enforceable at law the Managers may approve, on a case by case basis, contracts in which a Member contracts on the basis most likely to be effective in upholding the right to limit liability provided always that the

Proposed Text:

PART 2 P&I RISKS COVERED

10 Towage

A Customary towage of an insured vessel

Liability under the terms of a contract for the customary towage of an insured vessel, that is to say:

- i towage for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or
- ii towage of such insured vessels as are habitually towed in the ordinary course of trading from port to port or from place to place.

B Towage of an insured vessel other than customary towage

Liability under the terms of a contract for towage of an insured vessel other than the customary towage covered under paragraph A of this Section but only if and to the extent that cover has been agreed by the Managers in writing.

C Towage by an insured vessel

Liability arising out of towage of another vessel or object by an insured vessel.

Provided that

Liability for loss of or damage to or wreck removal of the towed vessel or object or any cargo or property thereon is excluded unless:

- i such towage was necessary for the purpose of saving life or property at sea, or
- ii the insured vessel is towing under an approved contract, or
- iii cover has otherwise been agreed by the Managers in writing.

~~Note to Section 10Cii~~

~~The contracts set out under A and B below are approved provided that they are not amended so as to increase the liability of the insured vessel. In countries where the terms of those contracts would not be enforceable at law the Managers may approve, on a case by case basis, contracts in which a Member contracts on the basis most likely to be effective in upholding the right to limit liability provided always that the~~

towage contract should not impose upon the tug any liability for the negligence of any other party:

A Where there is a contract with the owner of the tow

i the United Kingdom, Netherlands, Scandinavian or German standard towage conditions;

ii the International Ocean Towage Agreement's 'Towhire' or 'Towcon' conditions;

iii Lloyd's Standard Form of Salvage Agreement 1980 (LOF 1980), or Lloyd's Standard Form of Salvage Agreement 1990 (LOF 1990), or Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995), or Lloyd's Standard Form of Salvage Agreement 2000 (LOF 2000);

iv terms as between the owner of the insured vessel on the one part, and the owner of the tow and the owners of any cargo or other property on board the tow on the other part, that each shall be responsible for any loss or damage to his own vessel, cargo or other property on his own vessel and for loss of life or personal injury of his own employees or contractors, without any recourse whatsoever against the other, that is 'knock for knock' terms.

B Where there is no direct contractual relationship with the owner of the tow

A charter which contains:

i 'knock for knock' terms, as in the Note to Section 10C ii paragraph iv above, covering the property of sub-contractors of the charterers as well as the property of the charterers themselves; or

ii a separate clause within the charter requiring that all towage be carried out on terms no less favourable than 'knock for knock' terms.

~~towage contract should not impose upon the tug any liability for the negligence of any other party:~~

AD Where there is a contract with the owner of the tow the following contracts are approved for the purpose of Section 10 C ii:

i the United Kingdom, Netherlands, Scandinavian ~~or~~and German standard towage conditions;

ii ~~the International Ocean Towage Agreement's 'Towhire' or 'Towcon' conditions and 'Towhire';~~

iii **The current** Lloyd's Standard Form of Salvage Agreement ~~1980 (LOF 1980), or Lloyd's Standard Form of Salvage Agreement 1990 (LOF 1990), or Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995), or Lloyd's Standard Form of Salvage Agreement 2000 (LOF 2000)~~(1980, 1990, 1995, 2000 or 2011, whether or not incorporating SCOPIC) – no cure, no pay;

iv terms as between the owner of the insured vessel on the one part, and the owner of the tow and the owners of any cargo or other property on board the tow on the other part, that each shall be responsible for any loss or damage to his own vessel, cargo or other property on his own vessel and for loss of life or personal injury of his own employees or contractors, without any recourse whatsoever against the other, ~~that is 'knock for knock' terms.~~

v **Contracts on terms set out at Section 10 D iv above, which are or are likely to be unenforceable in whole or in part, where the contract does not impose on the owners of the insured vessel any liability to any person arising out of any act, neglect or default of the owner of the tow or any other person; and the contract limits the liability of the owner of the insured vessel under the contract or otherwise to the maximum extent possible by law.**

BE Where there is no direct contractual relationship with the owner of the tow

~~A charter which contains:~~

~~i 'knock for knock' terms, as in the Note to Section 10C ii paragraph iv above, covering the property of sub-contractors of the charterers as well as the property of the charterers themselves; or~~

~~ii a separate clause within the charter requiring that all towage be carried out on~~

~~terms no less favourable than 'knock for knock' terms.~~

The Managers may agree in writing to provide cover for the purpose of Section 10 C iii for charters which in their opinion contain:

a Terms as set out at 10 D iv above covering the property of sub-contractors of the charterers as well as the property of the charterers themselves; or

b A separate clause requiring that all towage be carried out on terms no worse than as provided for at Section 10 D iv; or

c Charters that otherwise comply with Section 10 D iv.

Explanation

This Rule has been amended to more accurately reflect the Pooling Agreement. The original note to Rule 19 Section 10 c (ii) could have led to confusion as it did not adequately distinguish between the two categories of contract provided for in the Pooling Agreement i.e. approved market forms of contract "approved market forms" on the one hand and, on the other hand, contracts requiring approval by the Club in writing.

Previously our cover was more restrictive than the Pooling Agreement. For example the previous note to Rule 10 c ii) envisaged Manager approval for all market forms of towage contracts. In practise we do not require sight of each approved contract and such approval is not a requirement of the Pooling Agreement.

For the purpose of Rule 10 E the Pooling Agreement sets out general contractual guidance to best ensure that knock-for-knock principles are upheld.

RULE 2 – STANDARD COVER

Existing Text:

PART 2 P&I RISKS COVERED

11 Liability arising under certain indemnities and contracts

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

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 of 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

Proposed Text:

PART 2 P&I RISKS COVERED

11 Liability arising under certain indemnities and contracts

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

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 of 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.

The Association does not, however, cover claims arising out of the operation of submarines or mini-submarines or claims arising out of the use of divers while engaged in diving operations.

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.

~~The Association does not, however, cover claims arising out of the operation of submarines or mini-submarines or claims arising out of the use of divers while engaged in diving operations.~~

Explanation

This proposed deletion relates to the operation of submarines and mini submarines as well as the activities of divers.

With respect to the activities of professional or commercial divers there is an exclusion (with limited exceptions) already contained at Rule 28 (4). Rule 28 (4) accurately reflects the provisions of the Pooling Agreement and this proposed deletion ensures that there is no inadvertent narrowing of cover and/or conflict with Rule 28 (4). For example as the Rules stand, if a Member were to operate a recreational diving business and were to incur a contractual liability to compensate a diver for death or personal injury, such a claim would likely be excluded under Rule 2 section 11, whereas it would fall within poolable cover as reflected in Rule 28 (4).

With respect to the operations of submarines and mini submarines, an exclusion is already contained at Rule 28 (6). This reference within Rule 2 Section 11 is therefore superfluous.

RULE 2 – STANDARD COVER

Existing Text:

PART 2 P&I RISKS COVERED

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 by reason only of a breach of the contract of carriage.

Provided that

- i All the provisos to Section 14 shall also apply to claims under this Section.
- ii 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 the York/Antwerp Rules 1974, 1994 or 2004 and the Member's right of recovery from the Association limited accordingly.

Explanation

Our circular of June 2016 introduced and recommended to Members the incorporation of the York Antwerp Rules 2016 in their contracts of carriage.

The change to Rule 2 section 9 reflects the Pooling Agreement ("YAR 2016") and clarifies that pollution expenses are unrecoverable under Rule 2 section 9 if they could have been recovered in general average.

This is in line with the overall general average regime which provides that pollution charges should be shared amongst the parties to the common maritime adventure. In that sense, pollution charges that are recoverable by members from cargo interests should not ordinarily fall to Members' club cover. The exception to this is Rule 2 section 15 which allows Members to claim for unrecoverable general average contributions when such contributions could not be recovered as a result solely of a breach of a contract of carriage. On occasion in the past this has led to uncertainty as to how far Members must progress claims for GA against cargo interests before turning to the Club for cover. The Rule change makes it clear that Members must not turn to the Club prematurely.

The change to Rule 2 section 15 notes that any unamended version of the York Antwerp Rules is acceptable. Notwithstanding the fact that, together with the International Group we promote YAR 2016, we propose not to narrow the scope of our cover as there is no requirement in the Pooling Agreement to do so. We have therefore deliberately not excluded any earlier versions of the YAR. This is in order to ensure that Members are not deprived of cover whichever version they use.

Proposed Text:

PART 2 P&I RISKS COVERED

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 All the provisos to Section 14 shall also apply to claims under this Section.
- ii 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 1974, 1994 or 2004](#) and the Member's right of recovery from the Association limited accordingly.

RULE 2 – STANDARD COVER

Existing Text:

PART 2 P&I RISKS COVERED

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 by Clause 2 of Lloyd's Standard Form of Salvage Agreement 1990 (LOF 1990) and as included in Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995), for operations to prevent or minimise damage to the environment.

C Liability of the Member to pay to a salvor of the insured vessel 'Scopic Remuneration' within the meaning of the Scopic Clause as supplementary to Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995) or as incorporated into Lloyd's Standard Form of Salvage Agreement 2000 (LOF 2000).

Provided that

i In respect of a claim under paragraph C of this Section, in the event of the salvage of the vessel or any property on board and, in accordance with the Scopic Clause, there is no Article 13 award, the residual value of the vessel and of any property to which the Member is entitled shall first be deducted from or set off against such liability and only the balance shall be recoverable from the Association.

ii 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 would not have been incurred had the insured vessel been 'fully insured' in accordance with the meaning of these words in Rule 24.

Proposed Text:

PART 2 P&I RISKS COVERED

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 ~~by Clause 2 of~~ into Lloyd's Standard Form of Salvage Agreement ~~1990 (LOF 1990 or 1995) and as included in Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995),~~ or into any 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 ~~'Scopic Remuneration' within the meaning of the Scopic Clause as supplementary to Lloyd's Standard Form of Salvage Agreement 1995 (LOF 1995) or as incorporated into Lloyd's Standard Form of Salvage Agreement 2000 (LOF 2000),~~ 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.

Provided that

i In respect of a claim under paragraph C of this Section, in the event of the salvage of the vessel or any property on board and, in accordance with the Scopic Clause, there is no Article 13 award, the residual value of the vessel and of any property to which the Member is entitled shall first be deducted from or set off against such liability and only the balance shall be recoverable from the Association.

ii 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 would not have been

incurred had the insured vessel been 'fully insured' in accordance with the meaning of these words in Rule 24.

Explanation

This minor Rule change ensures that Club cover is sufficiently wide to allow Article 14 and SCOPIC claims flowing not only from LOF contracts but from *any* standard form of salvage agreement approved by the Club. Further, the wording of this Rule has been broadened so as to encompass both present and future revisions of the standard LOF form.

RULE 33 – CLASSIFICATION AND STATUTORY CERTIFICATION OF VESSEL

Existing Text:

6 The Member must comply with all statutory requirements of the flag state relating to the construction, adaptation, condition, fitment and equipment of the insured vessel and must at all times maintain the validity of such statutory certificates as are issued by or on behalf of the flag state in relation to such requirements.

7 The Member must comply with all statutory requirements of the flag state relating to manning the vessel.

8 The Member must comply with all statutory requirements of the flag state relating to safety management and must at all times maintain the validity of ISM certificates, ISPS certificates, and other certificates issued by or on behalf of the flag state in relation to such requirements.

Unless and to the extent that the Board in its discretion otherwise decides, a Member shall not be entitled to a right of recovery from the Association in respect of any claim whatsoever arising during such period that he has not fulfilled these conditions, notwithstanding that such failure to comply may not have increased the risk of any loss which may have occurred.

Explanation

This change is in order to streamline Rule 33 by combining all statutory requirements of the flag state into one sub-paragraph of the Rule.

Proposed Text:

6 The Member must comply with all statutory requirements of the flag state and SOLAS, as applicable, relating to safety management, manning, ~~the~~ construction, ~~modifications adaptation~~, condition, fitment, loadline and equipment of the insured vessel and must at all times maintain the validity of ~~such statutory~~ certificates ~~as are~~ issued by or on behalf of the flag state in relation to such requirements.

~~7 The Member must comply with all statutory requirements of the flag state relating to manning the vessel.~~

~~8 The Member must comply with all statutory requirements of the flag state relating to safety management and must at all times maintain the validity of ISM certificates, ISPS certificates, and other certificates issued by or on behalf of the flag state in relation to such requirements.~~

Unless and to the extent that the Board in its discretion otherwise decides, a Member shall not be entitled to a right of recovery from the Association in respect of any claim whatsoever arising during such period that he has not fulfilled these conditions, notwithstanding that such failure to comply may not have increased the risk of any loss which may have occurred.

RULE 41 – JOINT ENTRIES AND CO-ASSUREDS

Existing Text:

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.

b 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.

c 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.

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

The rule as currently drafted prohibits joint assureds and co assureds from recovery of sums in dispute between them. This minor change extends this provision to encompass sums not in dispute but simply due and owing from one assured to the other.

Proposed Text:

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.

b 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.

c 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.

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 **or claims** 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 **or claims** between Co-assureds and Members or joint Members.

RULE 46 – CESSER OF INSURANCE

Existing Text:

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 any way howsoever expose the Association to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever under the United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America, or if the provision of insurance by the Association in respect of such vessel or such carriage, trade or voyage is or becomes unlawful, prohibited or sanctionable. Notwithstanding that the happening of such event may not have increased the risk of any loss which may have occurred.

Proposed Text:

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 any way 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.** For the purpose of this Rule 46 “Major Power” means any of the following States: United Kingdom, United States of America, France, The Russian Federation and the People’s Republic of China. ~~under the United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America, or if the provision of insurance by the Association in respect of such vessel or such carriage, trade or voyage is or becomes unlawful, prohibited or sanctionable.~~ Notwithstanding that the happening of such event may not have increased the risk of any loss which may have occurred.

Explanation

This amendment ensures that the cesser clause is triggered where either the Club or the Managers are exposed to sanctions. Further, the list of sanctions regimes triggering cesser has been broadened to include all of the P5 countries.

It is conceivable that a vessel may be employed on a voyage or trade which, for example, does not expose SMP to sanctions under the EU regime but which does expose SPL as a result of its incorporation in the UK. This Rule change is timely as the UK sanctions regime may differ in the future due to Brexit. Our presence in Singapore and Hong Kong raises similar issues of a difference in regimes.

RULE 47 – EFFECTS OF CESSER OF INSURANCE

Existing Text:

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:

1 The Member shall be and remain liable to pay

A all such calls as may have been levied for the relevant policy year in accordance with Rule 54; and

B all overspill calls for the relevant policy year; and

C all calls and other sums payable in respect of previous policy years.

2 The 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, save that the Association shall remain liable in relation to liabilities flowing from any one of the events listed in paragraph 3 of Rule 46.

3 The Member shall be allowed a return of calls for the relevant policy year on a pro rata basis from noon on the date of the happening of such event to the end of the relevant policy year. No claim for a return of calls relating to any policy year shall be recoverable from the Association unless written notice has been given to the Association within six months of the end of the policy year concerned.

Explanation

This Rule change corrects an error in the drafting of this Rule.

Proposed Text:

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:

1 The Member shall be and remain liable to pay

A all such calls as may have been levied for the relevant policy year in accordance with Rule 54; and

B all overspill calls for the relevant policy year; and

C all calls and other sums payable in respect of previous policy years.

2 The 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, save that the Association shall remain liable in relation to liabilities flowing from any one of the events listed in paragraph 3 **A-G** of Rule 46.

3 The Member shall be allowed a return of calls for the relevant policy year on a pro rata basis from noon on the date of the happening of such event to the end of the relevant policy year. No claim for a return of calls relating to any policy year shall be recoverable from the Association unless written notice has been given to the Association within six months of the end of the policy year concerned.

PART 3 – LEGAL ASSISTANCE AND DEFENCE COVER

Existing Text:

PART 3 LEGAL ASSISTANCE AND DEFENCE COVER

RULE 6 LEGAL ASSISTANCE AND DEFENCE COVER

1 The Managers may accept the entry of a vessel for Legal Assistance and Defence cover as provided in this Rule 6, but no such cover shall be afforded to a Member without the agreement of the Managers in writing.

2 Unless otherwise stated cover under this Rule is subject to the claims procedures, limitations and exclusions set out in Parts 4 and 5 and in the remainder of these Rules.

3

A The cover afforded by the Association shall apply to claims, disputes or proceedings:

i under any charterparty, bill of lading, contract of affreightment or other contract, including, but not limited to claims and disputes concerning hire, off-hire, set-off, freight, deadfreight, laytime, demurrage and/or damages for detention, despatch, speed, performance and description of a vessel, port safety and orders to an insured vessel;

ii under any charterparty, bill of lading, contract of affreightment or other contract, the exercise or assertion of any rights arising thereunder or generally, including but not limited to the right of withdrawal, exercise of lien, and claims arising therefrom;

iii in respect of the cancellation of a charterparty or other contract;

iv in respect of the loss of, damage to or detention of an insured vessel;

v in respect of the supply of inferior, unsatisfactory or unsuitable fuel, materials or equipment, or other necessities;

vi for negligent or improper repair of or alteration to an insured vessel;

vii in respect of general and/or particular average contributions or charges;

viii in respect of improper loading, lightering, stowage, trimming or discharge of cargo;

Proposed Text:

PART 3 LEGAL COSTS ASSISTANCE AND DEFENCE COVER

RULE 6 LEGAL COSTS ASSISTANCE AND DEFENCE COVER

1 The Managers may accept the entry of a vessel for Legal Costs Assistance and Defence Cover as provided in this Rule 6, but no such cover shall be afforded to a Member without the agreement of the Managers in writing.

2 Subject to paragraphs 6,7, 8 and 9 of this Rule 6 and to Rule 21C, Legal Costs Cover is in respect of “Legal Costs”, which for the purpose of this Rule means as follows:

A the costs and expenses incurred in obtaining advice in connection with any of the claims, disputes or proceedings described in paragraph 3 of this Rule;

B the costs and expenses of or incidental to such claims, disputes or proceedings including costs which the Member may become liable to pay to any other party to such claims, disputes or proceedings.

~~2 Unless otherwise stated cover under this Rule is subject to the claims procedures, limitations and exclusions set out in Parts 4 and 5 and in the remainder of these Rules.~~

3

A The Legal Costs Cover afforded by the Association shall apply to claims, disputes or proceedings:

i under any charterparty, bill of lading, contract of affreightment or other contract, including, but not limited to claims and disputes concerning hire, off-hire, set-off, freight, deadfreight, laytime, demurrage and/or damages for detention, despatch, speed, performance and description of a vessel, port safety and orders to an insured vessel;

ii under any charterparty, bill of lading, contract of affreightment or other contract, the exercise or assertion of any rights arising thereunder or generally, including but not limited to the right of withdrawal, exercise of lien, and claims arising therefrom;

ix in respect of and in connection with charges, disbursements, accounts received from agents, stevedores, chandlers, brokers, customs, harbour or other authorities, or others connected with the running, management and operation of an insured vessel;

x in respect of amounts due from or to underwriters and any other persons and/or companies conducting the business of marine insurance, other than amounts due to or from the Association;

xi in respect of salvage or towage services rendered by an insured vessel except where the insured vessel is a salvage tug or other vessel used or intended to be used for salvage operations and the claim arises as a result of or during any salvage operations or attempted salvage operations;

xii by or against passengers intended to be, being or having been carried on an insured vessel or their personal representatives or dependants;

xiii by or against officers, crews, stowaways and other persons on or about an insured vessel;

xiv in connection with the building, purchase or sale of an insured vessel;

Provided that

Claims arising in connection with the building or purchase of a vessel shall fall within the cover provided by the Association only if an entry has been made with effect from the date of the relevant contract or such date as may be agreed by the Managers in writing.

xv in connection with the mortgage of an insured vessel;

xvi in connection with the representation of a Member at official investigations, inquests, or other enquiries whatsoever in relation to an insured vessel.

B The Board in its discretion shall have power to extend cover to a Member in respect of any claims, disputes or proceedings not covered under paragraph 3A of this Rule which in the opinion of the Board fall within the scope of the Legal Assistance and Defence cover and it may impose such conditions on such right of recovery as it thinks fit.

4 Subject to paragraphs 5, 6, 7 and 8 of this

iii in respect of the cancellation of a charterparty or other contract;

iv in respect of the loss of, damage to or detention of an insured vessel;

v in respect of the supply of inferior, unsatisfactory or unsuitable fuel, materials or equipment, or other necessities;

vi for negligent or improper repair of or alteration to an insured vessel;

vii in respect of general and/or particular average contributions or charges;

viii in respect of improper loading, lightering, stowage, trimming or discharge of cargo;

ix in respect of and in connection with charges, disbursements, accounts received from agents, stevedores, chandlers, brokers, customs, harbour or other authorities, or others connected with the running, management and operation of an insured vessel;

x in respect of amounts due from or to underwriters and any other persons and/or companies conducting the business of marine insurance, other than amounts due to or from the Association;

xi in respect of salvage or towage services rendered by an insured vessel except where the insured vessel is a salvage tug or other vessel used or intended to be used for salvage operations and the claim arises as a result of or during any salvage operations or attempted salvage operations;

xii by or against passengers intended to be, being or having been carried on an insured vessel or their personal representatives or dependants;

xiii by or against officers, crews, stowaways and other persons on or about an insured vessel;

[xiv in connection with the mortgage of an insured vessel;](#)

[xv in connection with the representation of a Member at official investigations, inquests, or other enquiries whatsoever in relation to an insured vessel.](#)

xvi in connection with the building, purchase or sale of an insured vessel;

Provided that

Claims arising in connection with the building or

Rule 6 and to Rule 21C a Member shall be covered in respect of:

A the costs and expenses incurred in obtaining advice in connection with any of the claims, disputes or proceedings described in paragraph 3 of this Rule;

B the costs and expenses of or incidental to such claims, disputes or proceedings including costs which the Member may become liable to pay to any other party to such claims, disputes or proceedings.

5

A There shall be no right of recovery from the Association under paragraph 4 of this Rule unless the Board, in its discretion, has decided that the Member is entitled to such a right of recovery. The Board may, in its discretion impose such conditions on such right of recovery as it thinks fit and shall be entitled at any time to rescind or discontinue any right of recovery or amend or supplement any condition attached thereto.

B In exercising its discretion under this paragraph 5, the Board shall be entitled to take into account any matters that may appear to it relevant, including but not limited to:

i the merits of the claims or disputes or proceedings in relation to which the Member seeks to be covered by the Association;

ii the interests of the Association as a whole in addition to the interests of the individual Member;

iii the reasonableness of the Member's conduct.

6 Unless the Board in its discretion otherwise decides, there shall be no right of recovery under paragraph 3 of this Rule if the principal amount involved in the claim, dispute or proceedings is less than US\$ 2,000.

7 With reference to Rule 24 paragraph 2, any right of recovery under this Rule shall be assessed on the basis that any franchise, deductible or deduction in the hull policies shall be deemed not to exceed 25% of the vessel's insured value.

8 Deductibles

A Unless otherwise agreed by the Managers in writing, each Member shall bear:

purchase of a vessel shall fall within the cover provided by the Association only if an entry has been made with effect from the date of the relevant **ship building contract or the contract for the purchase or sale of the insured vessel** or such date as may be agreed by the Managers in writing.

~~xv in connection with the mortgage of an insured vessel;~~

~~xvi in connection with the representation of a Member at official investigations, inquests, or other enquiries whatsoever in relation to an insured vessel.~~

4 The Board in its discretion shall have power to extend cover to a Member in respect of any claims, disputes or proceedings **which are either:**

i ~~Not covered under paragraph 3A of this Rule which in the opinion of the Board fall within the scope of the Legal Costs Assistance and Defence Cover and it may impose such conditions on such right of recovery as it thinks fit;~~ or

ii **The Managers do not consider have reasonable prospects of success as set out in paragraph 6 of this Rule.**

5 Unless otherwise stated cover under this Rule is subject to the claims procedures, limitations and exclusions set out in Parts 4 and 5 and in the remainder of these Rules.

~~**4** Subject to paragraphs 5, 6, 7 and 8 of this Rule 6 and to Rule 21C a Member shall be covered in respect of:~~

~~**A** the costs and expenses incurred in obtaining advice in connection with any of the claims, disputes or proceedings described in paragraph 3 of this Rule;~~

~~**B** the costs and expenses of or incidental to such claims, disputes or proceedings including costs which the Member may become liable to pay to any other party to such claims, disputes or proceedings.~~

56

A There shall be no right of recovery from the Association under paragraph ~~42~~ of this Rule unless the ~~Managers Board, in its discretion, has decided~~ that the Member's claims, disputes or proceedings **have reasonable prospects of success.** ~~is entitled to such a right of recovery. The Board may, in its discretion impose such conditions on such right of recovery as it thinks fit and shall be entitled at any time to rescind or discontinue any right of recovery~~

i the first US\$ 750 of such costs and expenses as total up to US\$ 3,000 incurred in connection with any claim, dispute or proceedings;

ii one fourth of such costs and expenses as exceed US\$ 3,000 in total, subject to a maximum deductible of US\$ 30,000.

B In assessing the Member's rights of recovery from the Association account shall be taken of any costs paid or set off by the other party to the claim, dispute or proceedings and the Member's right of recovery shall be limited to the net costs payable by the Member.

C In the case of a settlement of a claim, dispute or proceedings in which the other party does not make any contribution to the Member's costs, the Board in its discretion shall decide the sum to which the Member's right of recovery from the Association shall be restricted.

~~or amend or supplement any condition attached thereto.~~

B When determining reasonable prospects of success for the purposes of this paragraph, the Managers will ~~In exercising its discretion under this paragraph 5, the Board shall be entitled to~~ take into account any matters that may appear ~~to it~~ relevant to them, including but not limited to:

i the merits of the claims or disputes or proceedings in relation to which the Member seeks to be covered by the Association;

~~ii the interests of the Association as a whole in addition to the interests of the individual Member;~~

ii The prospects of obtaining security for a Member's claim and costs;

iii The prospects of enforcing an award or judgement in our Member's favour; and

~~iiii~~iv the reasonableness of the Member's conduct;

v The size of the sum in dispute versus the legal costs required to resolve the claim, dispute or proceedings.

~~67~~ Unless the ~~Board in its discretion~~Managers otherwise decides, there shall be no right of recovery under paragraph 3 of this Rule if the principal amount involved in the claim, dispute or proceedings is less than US\$ ~~25,000~~.

~~78~~ With reference to Rule 24 paragraph 2, any right of recovery under this Rule shall be assessed on the basis that any franchise, deductible or deduction in the hull policies shall be deemed not to exceed 25% of the vessel's insured value.

~~8~~ Deductibles

~~A~~ Unless otherwise agreed by the Managers in writing, each Member shall bear:

~~i~~ the first US\$ 750 of such costs and expenses as total up to US\$ 3,000 incurred in connection with any claim, dispute or proceedings;

~~ii~~ one fourth of such costs and expenses as exceed US\$ 3,000 in total, subject to a maximum deductible of US\$ 30,000.

9. Rights of recovery

AB In assessing the Member's rights of recovery from the Association account shall be taken of any costs paid or set off by the other party to the claim, dispute or proceedings and the Member's

right of recovery shall be limited to the net costs payable by the Member.

EB In the case of a settlement of a claim, dispute or proceedings in which the other party does not make any contribution to the Member's costs, the Board in its discretion shall decide the sum to which the Member's right of recovery from the Association shall be restricted.

Explanation

This Rule Change is in order to rebrand the cover to 'Legal Costs Cover' in order to better distinguish it from legal costs included in Members' P&I cover. The purpose of the change is also to amend the existing Board discretion by extending the authority of the Managers in line with the authority exercised by Managers for P&I claims, thereby creating parity between the two covers. Board discretion is to be retained for claims where Members challenge the scope of cover and/or the Managers' decision. This rule change also seeks to amend the existing deductible structure.

PART 5 – LIMITATIONS AND EXCLUSIONS

Existing Text:

RULE 21C LIMIT OF THE ASSOCIATION'S LIABILITY FOR LEGAL ASSISTANCE AND DEFENCE CLAIMS

Without prejudice to the discretionary basis of the cover as described in paragraph 4 of Rule 6 the Association's liability for claims arising under Rule 6 shall in any event be limited to US\$ 5 million in the aggregate in respect of any one claim, dispute, or proceedings.

Proposed Text:

RULE 21C LIMIT OF THE ASSOCIATION'S LIABILITY FOR LEGAL COSTS COVER ASSISTANCE AND DEFENCE CLAIMS

Without prejudice to ~~the discretionary basis of the cover as described in paragraph 4 of Rule 6~~ paragraph 6 of Rule 6, the Association's liability for claims arising under Rule 6, paragraph 3 i) to xv) shall in any event be limited to US\$ 5 million in the aggregate in respect of any one claim, dispute, or proceedings.

Without prejudice to paragraph 6 of Rule 6, the Association's liability for claims arising under Rule 6, paragraph 3 xvi shall in any event be limited to US\$ 1 million in the aggregate in respect of any one claim, dispute, or proceedings.

Explanation

The change ties in with the change to Part 3. This provision of a lower limit of liability for new build disputes reflects our underwriting experience which is that these disputes present the highest risk of all legal costs claims.