

January 2011

Notice to Members No. 27 2010/2011

Notice to Members

NOTICE is hereby given that an Extraordinary General Meeting of the Members of the Association will be held at 1000 hours on Wednesday, 9 February 2011 in the Villa Kennedy Hotel, Kennedyallee 70, 60596 Frankfurt am Main, Germany for the purpose of considering and, if thought fit, passing the following SPECIAL Resolution:

SPECIAL RESOLUTION

THAT alterations to certain Rules of Class 1 and Class 2 (as hereafter set out with commentary) be made to take effect from noon GMT on 20 February 2011:-

INTRODUCTION

Those parts of the 2010 Rules where it is proposed that changes are made are attached with the changes marked. A proposed deletion from the 2010 Rules is identified by striking through the text to be deleted. Proposed additions are underlined. All proposed changes are accompanied by a vertical mark in the margin for ease of identification. Pages headers and page numbering of the Rules will be adjusted once the changes are adopted and prior to printing for the 2011 policy year.

TEXT OF CHANGES - CLASS 1

1. RULE 8 - OTHER LIMITATIONS OF THE ASSOCIATION'S LIABILITY

Given that other Clubs in the International Group and the Club's and the International Group's reinsurers and other reinsurers may be prevented by state or similar interference from meeting obligations to the West of England or to the International Group Pool (particularly by laws relating to sanctions and similar measures) it is proposed that Rule 8 be amended to limit the Club's liability to Members to the amounts the Club may actually recover from the Pool and the Group's reinsurers and other reinsurers.

The most significant present risk for the Club would be a situation where in the case of a very large claim involving Iran or Iranian interests falling on one or more of the Group reinsurance layers, some reinsurers could be prevented from paying their share of any claim by present and future legislation prohibiting them from making payments in relation to Iranian interests. Other Clubs have made or will be making a similar Rule change for 2011.

The amendment reads:

8 Other Limitations of the Association's Liability

(1) Generally

The Association shall in no circumstances be liable hereunder for a sum in excess of the liability in law of the Member for damages or otherwise and, when a Member is entitled to limit his liability, the liability of the Association shall not exceed the amount of such limitation. Where the Association is sued directly by a third party, it shall be entitled to adopt each and every denial, defence and right to limitation of liability that would have been available to the Member in such proceedings were the Member and not the Association to be the party sued.

(2) Unreasonable failure to limit

When a Member is or would be entitled to limit his liability in respect of any vessel, but the Committee determines that he has unreasonably failed to take the necessary steps to limit his liability, the liability of the Association shall not exceed the amount of the limitation. The burden of proving that a failure to limit is not unreasonable shall be on the Member.

(3) Limitation for persons other than shipowners

(a) The Committee shall have power under this Rule to make Bye-Laws from time to time providing for limitation of or other restrictions upon the liability of the Association for claims (otherwise than in connection with oil pollution) against charterers (other than demise charterers) and to vary or revoke any such Bye-Laws.

(b) If a Member has entered a vessel in the Association, and he is not the registered owner or demise charterer of that vessel or the manager or operator having control of the operation and employment of that vessel (being such control as is customarily exercised by a ship owner) or any other person in possession or control of that vessel or an insurer of protection and indemnity risks of such description of persons, then unless otherwise agreed in writing between the Member and the Managers the liability of the Association in respect of any claim brought by the Member relating to that vessel shall not exceed the amount to which he could have limited his liability for the claim if he had been the registered owner and had not been denied the right to limit.

(4) Sums not recovered from the International Group Pool and from its reinsurers

The Association shall in no circumstances have a liability to a Member in respect of that part of any liabilities, costs and expenses which is not recovered by the Association from parties to the Pooling Agreement, and/or under the Group Excess Loss Reinsurance Contract or any other reinsurer because of a shortfall in recovery from such parties or reinsurers thereunder by reason of a sanction, prohibition or adverse action against them by a state or international organisation or other competent authority or the risk thereof if payment were to be made by such parties or reinsurers. For the purposes of this Rule 8 "shortfall" includes but is not limited to any failure or delay in recovery by the Association by reason of such parties or reinsurers making payment into a designated account in compliance with the requirements of any state or international organisation or other competent authority.

2. RULE 14A and RULE 17 - LIABILITY EXCLUDED FOR CERTAIN RISKS and EXCLUSION OF CERTAIN LIABILITIES, COSTS AND EXPENSES OF SALVAGE VESSELS, DRILLING VESSELS, DREDGERS AND OTHERS, SPECIALIST OPERATIONS, DIVING ETC

By way of housekeeping, it is proposed to incorporate Rule 14A into Rule 17 and rename the Rule **Exclusion of Certain Liabilities, Costs and Expenses of Salvage Vessels, Drilling Vessels, Dredgers and Others, Specialist Operations, Diving and other risks.**

The proposed change will delete Rule 14A and add the following paragraph (D) to Rule 17.

(D)

(a) personnel (other than marine crew) on board the insured vessel (being an accommodation vessel) employed otherwise than by the Member when there has not been a contractual allocation of risks as between the Member and the employer of the personnel which has been approved by the Association; and,

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

3. RULE 19 - DATE COMPLIANCE & EXCLUSION OF COVER IF ADVENTURE ILLEGAL, HAZARDOUS OR IMPROPER

An amendment is proposed to Rule 19 to remove provisions related to "Date Compliance" since the computer date risks associated with the turn of the century are now negligible.

It also proposed to incorporate a paragraph into Rule 19 which provides that cover will not be provided where doing so may expose the club to the risk of sanctions or similar adverse action.

The proposed change is intended to deal with the sanctions imposed in relation to Iran recently expanded in the USA under CISADA and in Europe by EU Regulation 961/2010 and to address similar sanctions legislation which may be passed in those and other jurisdictions in the future.

The proposed change to Rule 19 reads:

19 ~~Date Compliance & Exclusion of Cover if Adventure Illegal, Hazardous or Improper~~ or exposes the Association to sanctions risk

~~(1) Without prejudice to the provisions of paragraph (2) of this Rule and of Rule 23, a Member shall at all times take such steps to protect his interests in relation to Date Compliance as the Committee would expect an uninsured person acting reasonably in similar circumstances to take.~~

~~For the purpose of this Rule "Date Compliance" shall mean that, in relation to computers and other equipment or systems for processing, storing or retrieving data, hardware, software, firmware and microprocessors and any equipment which contains or relies upon microprocessors, neither performance nor functionality is adversely affected, whether before or after any implemented or attempted changes or modifications for the purposes of Date Compliance, by any date and in particular that:-~~

~~(a) no value for current date would cause any interruption in operation~~

~~(b) date based functionality and performance shall behave consistently for all dates~~

~~(c) in all interfaces and data storage, the century in any date shall be specified either explicitly or by unambiguous algorithms or inference Rules. If a Member fails to fulfil the obligations contained in this Rule the Committee may reject or reduce any claim against the Association arising directly or indirectly out of such failure.~~

~~(12) There is no cover in respect of an insured vessel carrying contraband, blockade running or being employed in an unlawful trade, or if the Committee determines that the carriage, trade, voyage or any other activity on board or in connection with the insured vessel, was imprudent, unsafe, unduly hazardous or improper.~~

~~(2) Unless the Committee otherwise determines there is no cover in respect of an insured vessel being employed by the Member in a carriage, trade or on a voyage which thereby in any way howsoever exposes the Club to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation or other competent authority.~~

4. RULES 34, 38 AND 39 – PERIOD OF INSURANCE (34), VARIATION OF CONTRACT (38), TERMINATION BY NOTICE (39)

It is proposed to consolidate the three Rules and to make the notification requirements on the Managers more flexible in respect of proposed premium rate changes and changes to cover at the time of renewals.

The proposed change also allows the Club to terminate cover at 30 days notice in any event, a provision already found in the majority of other Club's Rules.

It is proposed to delete Rules 34, 38 and 39 and replace them with a single new Rule 34 which reads as follows:

RULE 34 - Period of Cover

The cover afforded by the Association shall begin at the time stated in the Certificate of Entry for the commencement of the cover and continue until the end of the then current Policy Year at noon on 20 February next unless otherwise agreed at the time of entry.

Thereafter, subject to a cesser of insurance or to the exercise by the Club of any right to terminate an entry as provided elsewhere in these Rules, the cover shall continue from Policy Year to Policy Year unless:

(1) notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than noon on 20 January in any year, that the insurance specified in the notice is to cease, in either of which events the insurance shall cease at the end of the then current Policy Year; or

(2) the Managers shall have informed the Member orally or in writing at any time before the start of a Policy Year at noon on any 20 February that the terms of the insurance offered to it by the Club for that Policy Year are to be changed for the next Policy Year, including but not limited to premium or deductibles and whether such terms are generally or specifically applicable, in which event, unless terms are agreed between the Member and the Managers by the start of that Policy Year at noon on 20 February immediately following such notice, the insurance shall thereupon cease; or

(3) the Managers by 30 days notice in writing to a Member at any time terminate the entry in respect of any vessel.

An entered ship shall not be withdrawn from the Club at any other time or in any other manner except with the consent of the Managers.

If before the end of any Policy Year these Rules shall have been altered in any respect which affects the terms and conditions of the contract of insurance between a Member and the Association, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next Policy Year.

TEXT OF CHANGES - CLASS 2

It is proposed that Rules 27, 31 and 32 which are the equivalent Rules in this class to Rules 34, 38 and 39 are amended in the same way as these class 1 Rules

By order of the Board
C A P Lockwood
Secretary
33 Boulevard Prince Henri
1724 Luxembourg

January 2011

A Member entitled to attend and vote is entitled to appoint a proxy (who need not be a Member of the Association) to attend and on a poll to vote instead of him. The instrument appointing a proxy shall be left with the Secretary not less than 48 hours before the holding of the Meeting.